REDUCING UNNECESSARY REGULATORY BURDENS ON BUSINESS (RURB):
DISTRIBUTIVE TRADE

September 2017

Draft Final Report
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.
# Table of Contents

FOREWORD .................................................................................................................. v

Abbreviations ........................................................................................................... vi

Glossary ....................................................................................................................... ix

Section 1: About the review ..................................................................................... 1

1.0 Introduction to the Review .................................................................................. 1

1.1 Conduct of the study ........................................................................................... 4

1.2 Scope of the ASRR Study .................................................................................... 6

1.3 Structure of the Report ......................................................................................... 7

Section 2: Regulations and Regulatory Burdens ....................................................... 9

2.1 Purpose of regulation ......................................................................................... 9

2.2 Regulatory burdens ............................................................................................ 10

2.3 Unnecessary regulatory burdens ......................................................................... 10

2.4 Government Initiative in Good Regulatory Practice ......................................... 17

2.5 Costs of regulatory compliance .......................................................................... 18

Section 3: The Distributive Trade Sector Analysis .................................................. 21

3.1 Introduction ......................................................................................................... 21

3.2 Industry size and characteristics ....................................................................... 22

3.3 Quarterly Performance of Distributive Trade 2015 ......................................... 26

3.4 Disposable Income ............................................................................................. 31

3.5 Household Consumption Expenditure between 2009 and 2014 ...................... 32

Section 4: Policy and Regulation ........................................................................... 39

4.1 Key Policies on the Distributive Trade Sector ................................................... 39

4.2 Policies and Foreign Participation in Distributive Trade .................................... 41

4.3 Distributive Trade Value Chain and Areas of Regulation Intervention ............ 43

4.4 Regulatory Implementation and the Regulators ................................................. 45

Appendices: ................................................................................................................. 53

Section 5: Issues and Feasible Options .................................................................. 57

5.1 Introduction ......................................................................................................... 57

5.2 Issues and Options .............................................................................................. 58
5.2.1 Issue No. 1: Prohibition of franchisor to establish its own outlets (Franchise Act 1998) ................................................................................................................................. 59
5.2.2 Issue No. 2: Foreign participation in relation to the Guidelines on Foreign Participation in the Distributive Trade Services (revision 2010) .................................................. 64
5.2.3 Issue No. 3: Waiting time and costs burden in business licensing .............. 68
5.2.4 Issue No. 4: Consequence of high compliance cost in dealing with authorities ................................................................................................................................. 73
5.2.5 Issue No. 5: Implementation of Price Control and Anti-Profiteering ......... 74
5.2.6 Issue No. 6: Long Waiting Time for Halal Certification .............................. 78
5.2.7 Issue No. 7: Regulation on Sales (events: promotional sales, festive sales, cheap sales, special sales, out-post promotion, etc.) ......................................................... 82
5.2.8 Issue No. 8: Freeze on Foreign Workers .................................................. 88
5.3 Conclusion ............................................................................................................. 89
Section 6: Stage 2: Further Engagements with Stakeholders from Klang Valley...... 91
6.1 Introduction ........................................................................................................... 91
6.2 The Regulatory Interventions by Other Regulatory Authorities .................. 91
   6.2.1 Introduction on New Equity Ruling by DBKL ............................................ 93
   6.2.2 Case Analysis on DBKL Equity Ruling 2017 ........................................... 93
   6.2.3 Regulation on Trading of Essential Goods .............................................. 96
   6.2.4 Permits on products’ information materials/displays used within premises 98
   6.2.5 Regulation on Music Royalty & Copyright ......................................... 101
   6.2.6 Issues on Property Management and Strata Management ..................... 103
   6.2.7 Common Issues with Large Local Retailers ......................................... 105
       6.2.7.1 Ban on plastics shopping bags ....................................................... 106
       6.2.7.2 Challenges in Premise Licensing ............................................... 107
       6.2.7.3 Obtaining Approved Permits for Importation for fruits and vegetables ................................................................................................................................. 107
       6.2.7.4 Duties on imported fruits and other products ................................ 109
       6.2.7.5 Administrative Burdens in Price Control Regulation .................... 109
       6.2.7.6 Control of Number of Sales Events ............................................. 109
       6.2.7.7 The Freeze on Foreign Workers for Hypermarkets ..................... 111
       6.2.7.8 Shortage of Certified Chargeman ................................................. 113
Section 7: Analysis of Business Issues outside the Klang Valley

7.1 Introduction

7.2 Disproportionate Regulatory Burdens on Small and Micro Businesses

7.2.1 Reporting Obligation with Inland Revenue Board (EPF)

7.2.2 Reporting Obligation with Employees Provident Fund Board

7.2.3 Information obligation to Department of Statistics

7.2.4 Dealing with the Ministry of Health

7.2.5 Dealing with PUSPAKOM Sdn. Bhd.

7.2.6 Complying with Goods and Services Tax

7.2.7 Feasible Options

7.3 Regulatory issues on doing business in East Malaysia (Sabah and Sarawak)

7.3.1 Doing business in Sabah by Malaysians not born in Sabah

7.3.2 Immigration requirements for Malaysian investors from outside the states

7.3.3 Import permits for goods from outside the states

7.3.4 Annual licence renewal (trading licence, liquor licence) Sabah

7.3.5 Quotas on control/essential items by MDTCC in Sabah

7.3.6 Dealing with authorities by small businesses in Sarawak

7.3.7 Feasible options to address regulatory issues

7.4 Engagement with businesses from Penang

7.4.1 Issues relating to Certificate of Origin (COO) for Exports to FTA Countries

7.4.2 Permit required for importation of soap

7.4.3 Using Alibaba e-commerce platform for cosmetic products

7.4.4 Issues on poultry farming business

7.4.5 Poor coordination between agencies

7.4.6 Inspection raids by Customs

7.4.7 Temporary Permits for Foreign Workers

7.4.8 Options to relieve the concerns of businesses

7.5 Issues from the East Coast States

7.5.1 Workforce Issues

7.5.2 GST Compliance Issues
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.5.3</td>
<td>Halal Requirement Issue</td>
<td>148</td>
</tr>
<tr>
<td>7.5.4</td>
<td>Feasible options to address issues</td>
<td>148</td>
</tr>
<tr>
<td>7.6.1</td>
<td>Regulatory Issues from the Southern Region (Johor)</td>
<td>149</td>
</tr>
<tr>
<td>7.6.2</td>
<td>Workforce and employment issues</td>
<td>151</td>
</tr>
<tr>
<td>7.6.3</td>
<td>Transportation costs on travellers between Malaysia and Singapore</td>
<td>154</td>
</tr>
<tr>
<td>7.6.4</td>
<td>Unfavourable rules on new entrepreneurs</td>
<td>154</td>
</tr>
<tr>
<td>7.6.5</td>
<td>Dealing with tax authorities</td>
<td>156</td>
</tr>
<tr>
<td>7.6.6</td>
<td>Export of Halal products and other trade barriers</td>
<td>159</td>
</tr>
<tr>
<td>7.7</td>
<td>Concluding remarks</td>
<td>160</td>
</tr>
<tr>
<td></td>
<td>References</td>
<td>161</td>
</tr>
<tr>
<td></td>
<td>Appendix</td>
<td>164</td>
</tr>
<tr>
<td>A)</td>
<td>Foreign Worker Application Form (Services Sector) - BPPA</td>
<td>164</td>
</tr>
<tr>
<td>B)</td>
<td>Circular on Rice Retailing Licence - MOA</td>
<td>168</td>
</tr>
</tbody>
</table>
FOREWORD

The Government continues to leverage policies of national interest on the development of the local economy. Through regulatory interventions we try to influence business behaviour with the aim of safeguarding the consumers’ rights and interests. However, interventions can also have an adverse effect on the dynamics of a free market economy. 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 create market turbulence and as such, will stifle business growth.

The Malaysia Productivity Corporation (MPC) has since 2013, started work on the review of business regulations affecting the conduct of businesses in the country based on the mandate stipulated under the 10th Malaysia Plan and this is being accelerated in the 11th Malaysia Plan. The objective is to review regulations with the view to modernising business regulations to meet the challenges of a competitive and free economy. This is crucial in order for the country to becoming a high-income nation. In line with this, MPC is embarking on reviewing existing business regulations in the 12 National Key Economic Areas (NKEA).

This study is a review of regulations affecting businesses in the Distributive Trade Industry focusing on the Retail Trade sub-sector. The feedback from traders about the difficulty experienced in complying with existing regulations is captured to then help identify unnecessary regulatory burdens. The purpose is to propose alternatives or feasible options for consideration by stakeholders to reduce or eliminate identified unnecessary regulatory burdens.

The study was conducted at the MPC Head Office by the PCD Smart Regulation Directorate led by Mr. Zahid Ismail. This Draft Report is the preliminary output of this study which is published for further public consultation with all interested parties, businesses, authorities and the general public. MPC is grateful to all those who assisted in making this report possible. I would like to thank the study team and the businesses for their invaluable responses and inputs to this Draft Report. The MPC would appreciate your feedback, comments and critiques on the findings and recommendations stated in this Draft Report.

Dato’ Mohd Razali Hussain
Director General
Malaysia Productivity Corporation (MPC)
<table>
<thead>
<tr>
<th>Abbreviations</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACCCIM</td>
<td>Associated of Chinese Chambers of Commerce and Industry Malaysia</td>
</tr>
<tr>
<td>APGC</td>
<td>Australian Government Productivity Commission</td>
</tr>
<tr>
<td>ASEAN</td>
<td>Association of South East Asian Nations</td>
</tr>
<tr>
<td>BLESS</td>
<td>Business Licensing Electronic Support System</td>
</tr>
<tr>
<td>BNM</td>
<td>Bank Negara Malaysia</td>
</tr>
<tr>
<td>BOMBA</td>
<td>Fire &amp; Rescue Department of Malaysia</td>
</tr>
<tr>
<td>BOD</td>
<td>Board of Directors</td>
</tr>
<tr>
<td>BR1M</td>
<td>Bantuan Rakyat 1 Malaysia</td>
</tr>
<tr>
<td>BRO</td>
<td>Bumiputera Retailers Organisation</td>
</tr>
<tr>
<td>CAGR</td>
<td>Compounded Annual Growth Rate</td>
</tr>
<tr>
<td>CCM</td>
<td>Cooperative Commission of Malaysia</td>
</tr>
<tr>
<td>DBKL</td>
<td>Kuala Lumpur City Hall (Dewan Bandaraya Kuala Lumpur)</td>
</tr>
<tr>
<td>DBP</td>
<td>Dewan Bahasa dan Pustaka</td>
</tr>
<tr>
<td>DG</td>
<td>Director General</td>
</tr>
<tr>
<td>DOA</td>
<td>Department of Agriculture</td>
</tr>
<tr>
<td>DOE</td>
<td>Department of Environment</td>
</tr>
<tr>
<td>DOS</td>
<td>Department of Statistics</td>
</tr>
<tr>
<td>DOSH</td>
<td>Department of Occupational Safety and Health</td>
</tr>
<tr>
<td>DSM</td>
<td>Department of Standards Malaysia</td>
</tr>
<tr>
<td>DTG</td>
<td>Guidelines on Foreign Participation in the Distributive Trade Services</td>
</tr>
<tr>
<td>EPF</td>
<td>Employee Provident Fund</td>
</tr>
<tr>
<td>EPU</td>
<td>Economic Planning Unit</td>
</tr>
<tr>
<td>ETP</td>
<td>Economic Transformation Programme</td>
</tr>
<tr>
<td>GDP</td>
<td>Gross Domestic Product</td>
</tr>
<tr>
<td>GMP</td>
<td>Good Manufacturing Practice</td>
</tr>
<tr>
<td>GNI</td>
<td>Gross National Income</td>
</tr>
<tr>
<td>GST</td>
<td>Goods and Services Tax</td>
</tr>
<tr>
<td>HIDC</td>
<td>Halal Industry Development Corporation</td>
</tr>
<tr>
<td>HRDF</td>
<td>Human Resource Development Fund</td>
</tr>
<tr>
<td>IT</td>
<td>Information Technology</td>
</tr>
<tr>
<td>Jakim</td>
<td>Islamic Development Department Malaysia (Jabatan Kemajuan Islam Malaysia)</td>
</tr>
<tr>
<td>Karyawan</td>
<td>Persatuan Karyawan Malaysia</td>
</tr>
<tr>
<td>Acronym</td>
<td>Full Form</td>
</tr>
<tr>
<td>---------</td>
<td>-----------</td>
</tr>
<tr>
<td>KRI</td>
<td>Khazanah Research Institute</td>
</tr>
<tr>
<td>LA</td>
<td>Local Authority</td>
</tr>
<tr>
<td>LHDN</td>
<td>Inland Revenue Board of Malaysia (Lembaga Hasil Dalam Negeri)</td>
</tr>
<tr>
<td>MACP</td>
<td>Music Authors’ Copyright Protection Bhd</td>
</tr>
<tr>
<td>MATRADE</td>
<td>Malaysia External Trade Development Corporation</td>
</tr>
<tr>
<td>MDI</td>
<td>Malaysia Department of Insolvency</td>
</tr>
<tr>
<td>MDTCC (KPDNKK)</td>
<td>Ministry of Domestic Trade, Co-operatives and Consumerism (Kementerian Perdagangan Dalam Negeri, Koperasi Dan Kepenggunaan)</td>
</tr>
<tr>
<td>MIC</td>
<td>Middle Income Country</td>
</tr>
<tr>
<td>MIDA</td>
<td>Malaysian Investment Development Authority</td>
</tr>
<tr>
<td>MITI</td>
<td>Ministry of International Trade and Industry</td>
</tr>
<tr>
<td>MSIC</td>
<td>Malaysian Standard Industrial Classification</td>
</tr>
<tr>
<td>MOA</td>
<td>Ministry of Agriculture</td>
</tr>
<tr>
<td>MPC</td>
<td>Malaysia Productivity Corporation</td>
</tr>
<tr>
<td>MRA</td>
<td>Malaysian Retailers Association</td>
</tr>
<tr>
<td>MRCA</td>
<td>Malaysian Retail Chains Association</td>
</tr>
<tr>
<td>MyCC</td>
<td>Malaysia Competition Commission</td>
</tr>
<tr>
<td>MyIPO</td>
<td>Intellectual Property Corporation of Malaysia</td>
</tr>
<tr>
<td>NCP</td>
<td>National Consumer Policy</td>
</tr>
<tr>
<td>NEM</td>
<td>New Economic Model</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-governmental Organisation</td>
</tr>
<tr>
<td>NKEA</td>
<td>National Key Economic Area</td>
</tr>
<tr>
<td>NPDC</td>
<td>National Policy Development Council</td>
</tr>
<tr>
<td>NPDIR</td>
<td>National Policy on the Development and Implementation of Regulations</td>
</tr>
<tr>
<td>O&amp;G</td>
<td>Oil and Gas</td>
</tr>
<tr>
<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
</tr>
<tr>
<td>OSH</td>
<td>Occupational Safety and Health</td>
</tr>
<tr>
<td>OSHE</td>
<td>Occupational Safety, Health and Environment</td>
</tr>
<tr>
<td>OGA</td>
<td>Other Government Agencies</td>
</tr>
<tr>
<td>PDRM</td>
<td>Royal Malaysia Police (Polis DiRaja Malaysia)</td>
</tr>
<tr>
<td>PEMANDU</td>
<td>Performance Management &amp; Delivery Unit</td>
</tr>
<tr>
<td>PEMUDAH</td>
<td>Special Taskforce to Facilitate Business</td>
</tr>
<tr>
<td>PIA</td>
<td>Permits Issuing Agencies</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Full Form</td>
</tr>
<tr>
<td>--------------</td>
<td>-----------</td>
</tr>
<tr>
<td>PPM</td>
<td>Public Performance Malaysia Sdn. Bhd.</td>
</tr>
<tr>
<td>PR1MA</td>
<td>Perumahan Rakyat 1Malaysia</td>
</tr>
<tr>
<td>QMS</td>
<td>Quality Management System</td>
</tr>
<tr>
<td>QoQ</td>
<td>Quarter-on-Quarter</td>
</tr>
<tr>
<td>R&amp;D</td>
<td>Research and Development</td>
</tr>
<tr>
<td>RIA</td>
<td>Regulatory Impact Analysis</td>
</tr>
<tr>
<td>RIM</td>
<td>Recording Industry Association of Malaysia</td>
</tr>
<tr>
<td>RIS</td>
<td>Regulatory Impact Statement</td>
</tr>
<tr>
<td>RMCD</td>
<td>Royal Malaysian Customs Department</td>
</tr>
<tr>
<td>RPM</td>
<td>Recording Performers Malaysia Bhd.</td>
</tr>
<tr>
<td>RURB</td>
<td>Reducing Unnecessary Regulatory Burdens</td>
</tr>
<tr>
<td>SKM</td>
<td>Malaysia Co-operative Societies Commission of Malaysia (Suruhanjaya Kooperasi Malaysia)</td>
</tr>
<tr>
<td>SMI</td>
<td>Small and Medium Industry (manufacturing)</td>
</tr>
<tr>
<td>SME</td>
<td>Small and Medium Enterprise</td>
</tr>
<tr>
<td>SME Corp.</td>
<td>SME Corporation of Malaysia</td>
</tr>
<tr>
<td>SPAD</td>
<td>Land Public Transport Commission</td>
</tr>
<tr>
<td>SOCSO (PERKESO)</td>
<td>Social Security Organisation (Pertubuhan Keselamatan Sosial)</td>
</tr>
<tr>
<td>SOP</td>
<td>Standard Operating Procedure</td>
</tr>
<tr>
<td>SCM</td>
<td>Security Commission Malaysia</td>
</tr>
<tr>
<td>SSM</td>
<td>Companies Commission of Malaysia (Suruhanjaya Syarikat Malaysia)</td>
</tr>
<tr>
<td>WMS</td>
<td>Warehouse Management System</td>
</tr>
<tr>
<td>WTO</td>
<td>World Trade Organisation</td>
</tr>
<tr>
<td>YoY</td>
<td>Year-on-Year</td>
</tr>
</tbody>
</table>
## Glossary

### 3D manual jobs
Demanding, dirty and dangerous manual tasks

### Customs (Customs Authority)
The Customs Department can be regarded as “the key border agency” responsible for all transactions related to issues arising from the border crossings of goods. Some of these functions are undertaken in close cooperation with other national border agencies, referred to as “Other Government Agencies (OGA) or “Partner Government Agencies (PGA)”.

### Consumer protection
Consumer protection to promote and protect consumer interests. The purposes of consumer protection are to promote industry responsiveness to consumer requirements, consumer confidence in quality of service, widespread access to services and affordability of services to Malaysians. These are achieved through (a) development and enforcement of consumer codes and standards, (b) resolution of consumer disputes, (c) effective rate regulation, and (d) system of universal service provision.

### Convenience store
A convenience store is a small retail business that stocks a range of everyday items such as groceries, snack foods, confectionery, toiletries, soft drinks, tobacco products, magazines and newspapers. Such stores may also offer money order and wire transfer services. Some are licensed to sell alcohol, typically beer and wine. They differ from general stores and village shops in that they are not in a rural location and are used as a convenient supplement to larger stores. A convenience store may be part of a gas/petrol station. It may be located alongside a busy road, in an urban area, or near a railway or railroad station or other transport hub. In some countries, convenience stores have long shopping hours, some being open 24 hours.

### Cosmetic
means any substance or preparation intended to be used, or capable or purported or claimed to be capable of being used, on the various external parts of the human body (including epidermis, hair system, nails, lips and external genital organs) or the teeth and the mucous membranes of the oral cavity for the exclusive or main purpose of cleaning, perfuming or protecting them, or of keeping them in good condition, or of changing or modifying their appearance, or correcting body odours

### Dangerous drug
Means any drug or substance which is for the time being comprised in the First Schedule of Dangerous Drugs Act 1952 (Act 234)

### Departmental store (MIDA)
A departmental store is a distribution store with sales floor area of varying size, usually engaged in retailing an extensive assortment of consumer goods that are departmentalised by gender, age or lifestyle, through self-service or with sales assistance, generally under one

---

2 Control of Drugs and Cosmetics Regulations 1984, P.U.(A) 223/84, Sale of Drugs Act 1952
common store management. A departmental store may include a supermarket of not more than 2,000 m$^2$.

**Direct selling (MIDA)**

Direct selling is defined as sale of goods door-to-door or through mail order or through electronic transaction. Direct selling companies generally appoint dealers who undertake direct contact with consumers.

**Disposable personal income**

Disposable personal income is the amount of money that households have available for spending and saving after income taxes have been accounted for. Disposable personal income is often monitored as one of the many key economic indicators used to gauge the overall state of the economy.

**Distribution services**

Distribution (trade) services include wholesalers, retailers, franchise practitioners, direct sellers and suppliers, who channel their goods in the domestic market, and commission agents or other representatives including those of international trading companies. This is in line with the WTO classification as:
- Commission agents’ services
- Wholesale trade services
- Retailing services
- Franchising
- Others

**Distributive trade (MIDA)**

Distributive trade comprises all linkage activities that channel goods and services down the supply chain to intermediaries for resale or to final buyers. The linkages may be:
- direct or indirect between two (2) parties (or levels) or more than two (2) parties (or levels) within the chain;
- real physical processes or electronic transactions as defined under the relevant laws;
- in person or electronic transactions as defined under the relevant laws; and
- transactions that may or may not involve the transfer of title of ownership to the goods and services.

**Distributive trade (activity)**

Distributive trade is an activity consisting of (a) provision of a service to various types of customers (retailers and other commercial users or the general public) by storing and displaying a selection of goods and making them available for buying; and (b) provision of other services incidental to the sale of those goods or subordinated to the selling such as delivery, after-sale repair and installation services.

---

3 MIDA (2012), *Investment in the Services Sector – Distributive Trade;* Malaysian Investment Development Authority


**Errand-runner**  
… is a personal assistant and concierge service dedicated to improving clients’ lives by providing reliable, efficient and confidential service. The person may serve as go-between, messenger, despatch bearer, person assistant, among others.

**Household consumption expenditure (OECD⁶)**  
Household consumption expenditure covers all purchases made by resident households (home or abroad) to meet their everyday needs: food, clothing, housing services (rents), energy, transport, durable goods (notably cars), spending on health, on leisure and on miscellaneous services.

**Franchisee (Franchise Act 1998)**  
“Franchisee” means a person to whom a franchise is granted and includes -  
a) a master franchisee with regard to his relationship with a franchisor; and  
b) a sub franchisee with regard to his relationship with a master franchisee.

**Franchising (MIDA)**  
Franchising is a method of doing business by which a Franchisee is granted the right to operate a business according to the franchise system as determined by the Franchisor. With this system, a Franchisor grants to the Franchisee the right to use a mark, trade secret, any confidential information and intellectual properties owned or related to the Franchisor.

**Franchisor (Franchise Act 1998)**  
“Franchisor” means a person who grants a franchise to a franchisee and includes a master franchisee with regard to his relationship with a sub-franchisee.

**Hypermarket (MIDA)**  
A hypermarket is a standalone self-service distribution store with sales floor area of 5,000 m² or more, selling a very wide variety of mainly consumer goods, comprising a mix of food and non-food products, in a range of transaction sizes or quantities and in different forms of packaging.

**Kiblat kompas**  
Kiblat kompas (compass) is a simple device that points to Islamic prayer direction Kaaba in Mecca.

**Life cycle (enterprise)**  
Concept that compares the cyclical nature of families, organizations, processes, products, and systems with the cradle to grave life stages (birth, growth, maturity, decay, and death) of living organisms⁷. Enterpise life cycle is the process of changing a business enterprise, from establishment to final termination of the business.

**Mail order selling (MIDA)**  
Sales of products or services by individuals on their own or other authorised persons via mail.

---

⁶ OECDiLibrary; http://www.oecd-ilibrary.org/sites/9789264067981-en/03/01/index.html?itemId=/content/chapter/9789264075108-12-en

⁷ http://www.businessdictionary.com/definition/life-cycle.html#ixzz4DIFmUKfp
<table>
<thead>
<tr>
<th><strong>Middle-income Trap</strong></th>
<th>The middle-income trap is a theorized economic development situation, where a country which attains a certain income (due to given advantages) will get stuck at that level.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Multi-level direct selling (MIDA)</strong></td>
<td>The company appoints individuals as members/distributors to market its products. The members/distributors then appoint other individuals (down lines) to expand their network. The recruitment of members/distributors can be on-going/extended up to a certain level. Each member/distributor receives commission/bonus/incentives from personal sales and sales made under his/her network (overriding bonus).</td>
</tr>
<tr>
<td><strong>Poison Second Schedule of the Poison Act 1952 (Act 366)</strong></td>
<td>Means any substance specified by name in the first column of the Poisons List and includes any preparation, solution, compound, mixture or natural substance containing such substance, other than an exempted preparation or an article or preparation included.</td>
</tr>
<tr>
<td><strong>Protectionism</strong></td>
<td>Protectionism refers to government actions and policies that restrict or restrain international trade, often done with the intent of protecting local businesses and jobs from foreign competition. Typical methods of protectionism are tariffs and quotas on imports and subsidies or tax cuts granted to local businesses.</td>
</tr>
<tr>
<td><strong>Public interest</strong></td>
<td>Welfare of the general public (in contrast to the selfish interest of a person, group, or firm) in which the whole society has a stake and which warrants recognition, promotion, and protection by the government and its agencies. Despite the vagueness of the term, public interest is claimed generally by governments in matters of state secrecy and confidentiality. It is approximated by comparing expected gains and potential costs or losses associated with a decision, policy, program, or project.</td>
</tr>
<tr>
<td><strong>Retailing</strong>&lt;sup&gt;8&lt;/sup&gt;</td>
<td>Retailing is the resale (sale without transformation) of new and used goods mainly to the general public for personal or household consumption or utilization, by shops, department stores, stalls, mail-order houses, door-to-door sales persons, hawkers and peddlers, consumer cooperatives, auction houses, etc.</td>
</tr>
<tr>
<td><strong>Retail trade</strong>&lt;sup&gt;9&lt;/sup&gt;</td>
<td>The Retail Trade sector comprises establishments engaged in retailing merchandise, generally without transformation, and rendering services incidental to the sale of merchandise. The retailing process is the final step in the distribution of merchandise; retailers are, therefore, organized to sell merchandise in small quantities to the general public.</td>
</tr>
<tr>
<td><strong>Rent-seeking</strong></td>
<td>When a company, organization or individual uses their resources to obtain an economic gain from others without reciprocating any benefits back to society through wealth creation.</td>
</tr>
</tbody>
</table>

---

<sup>8</sup> Malaysia Standard Industrial Classification 2008 (MSIC 2008) Version 1.0  
<sup>9</sup> U.S. Census Bureau; https://www.census.gov/econ/retail.html
| **Single-level direct selling**  
(MIDA) | The company appoints sales representatives/agents and pay them a salary/commission/combination of salary and commission on the total sales made. Sales representatives/agents are not permitted to appoint/sponsor other sales representatives/agents. |
| **Specialty store**  
(MIDA) | Store dealing with one main brand name/product/line of goods associated with one (1) product. They may specialise in food catering and restaurant services outside hotel premises; food-drink-tobacco (e.g. food and beverage); household/personal goods; furniture; household appliances; electrical appliances; healthcare products; optical goods; footwear; clothing and apparel; sport goods; books; jewellery; electronic goods; motorcycles/motor vehicles; small machinery (e.g. industrial and agricultural equipment for small users); pharmacy, serviced by a pharmacist at each outlet (retailing only drugs, health and beauty care goods); others |
| **Sundry shop** | A shop, similar to a delicatessen, that sells predominantly miscellaneous small items, usually of no large value and too numerous to mention separately, such as dry goods, toiletries, household items and consumables. |
| **Superstore**  
(MIDA) | A superstore is a self-service distribution store with a sales floor area of 3,000 m2 to less than 4,999 m2 retailing a very wide variety of mainly consumer goods, comprising a mix of food and non-food products. |
| **Trade protectionism** | Trade protectionism are measures used by countries to limit unfair competition from foreign industries. It's a defensive measure that's politically motivated. It works in the short run. But it is very destructive in the long run. It makes the country and its industries less competitive in international trade. |
| **Value chain** | A value chain is a high-level model developed by Michael Porter used to describe the process by which businesses receive raw materials, add value to the raw materials through various processes to create a finished product, and then sell that end product to customers. |
| **Wholesale** | Wholesale is the resale (sale without transformation) of new and used goods to retailers, to industrial, commercial, institutional or professional users, or to other wholesalers, or involves acting as an agent or broker in buying merchandise for, or selling merchandise to, such persons or companies. |

---

10 http://www.investopedia.com/terms/v/valuechain.asp
11 Malaysia Standard Industrial Classification 2008 (MSIC 2008) Version 1.0
Section 1: About the review

Content: (1.0) Introduction to the Review, (1.1) Conduct of the study, (1.2) Scope of the ASRR Study, (1.3) Structure of the Report

1.0 Introduction to the Review

The growth of the Malaysian economy started to plateau after the Eighth Malaysia Plan. This was of great concern to the county’s leadership as we have crossed the half-way mark towards the national Vision 2020 of becoming a high-income and developed nation. The country seems to be stuck in the so-called middle-income trap\(^\text{12}\) (Figure 1.1). The world’s Middle-Income Countries (MICs), are those having a per capita gross national income of US$1,026 to $12,475 (2011).

Figure 1.1: Malaysia: The Middle-income Trap\(^\text{13}\)

\(^\text{12}\) The middle-income trap is a theorized economic development situation, where a country which attains a certain income (due to given advantages) will get stuck at that level.

\(^\text{13}\) The Economist 2016: Focus - The middle-income trap; http://www.economist.com/blogs/graphicdetail/2012/03/focus-3
This realisation prompted the Government to enhance its collaboration with the private sector. The focus of this collaboration is to address the misalignment of regulatory practices that stifle the ease of doing business. In 2007, the Government took a significant step in rationalising Malaysia’s regulatory regime by launching PEMUDAH, a special task force to facilitate business. This is a cross jurisdictional collaborative taskforce between Government ministries and the private sector.

During the first three years of its inception, PEMUDAH worked on issues relating to the ease of doing business as raised by the private sector. Many of the issues which were successfully resolved related to problems of complying with local regulations. From these initial successes the Government realised an institutional programme on good regulatory practice would be needed for the country. This resulted in a new development programme being formally incorporated into the 10th Malaysia Plan.

In the 10th Malaysian Plan, MPC was mandated to carry out regulatory reviews with the goal of making it easier to do business in Malaysia. The review is in line with the aspiration envisaged in the New Economic Model (NEM) to transform Malaysia into a developed economy. The NEM strongly indicates the need for good regulatory management to improve regulatory quality. In Chapter 3 on Modernising Business, of the 10th Malaysia Plan it states:

“The regulatory environment has a substantial effect on the behaviour and performance of companies. Private sector participation in the economy and innovation require a regulatory environment 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 insufficiently powerful”. “To achieve this goal, the Government will begin with a comprehensive review of business regulations, starting with regulations that impact the NKEAs”.

Specifically, the MPC was:

- To review existing regulations with a view to removing unnecessary rules and compliance costs. Priority is given to regulations affecting NKEAs
- To ensure that regulators conduct regulatory impact assessments for new regulations
- To make recommendations to the Cabinet on policy and regulatory changes that will remove unnecessary regulatory burdens and enhance productivity.

The reviews of existing regulations involve public consultation with stakeholders and interested parties. The process will be implemented with the intention to improve the quality of existing regulations. Other processes within MPC will focus on ensuring the good quality of new regulations particularly by applying regulatory impact analysis.
In the Regulatory Review Framework shown in Figure 1.2, the review process takes into account both government and business perspectives as well as reports, data and reasoning of organisations such as the World Bank, the OECD and the Australian Government Productivity Commission (AGPC).

With the mandate, MPC has since implemented the National Policy on the Development and Implementation of Regulations (NPDIR) which was launched in July 2013 by the Chief Secretary to the Government of Malaysia. This document was established to support the modernization of the regulatory regime in the country. The focus of the document states:

“Global competition, social, economic and technological changes require the government to consider the inter-related impacts of regulatory regimes, to ensure that their regulatory structures and processes continue to be relevant and robust, transparent, accountable and forward-looking.”

Essentially, the document is targeted to promote the NEM policy objective of improving economic efficiency through enabling fair competition. The objective of NPDIR is to ensure that Malaysia’s regulatory regime effectively supports the country’s aspirations to be a high-income and progressive nation whose economy is competitive, subscribes to sustainable development and inclusive growth. The policy is to ensure a regulatory process that is effective, efficient and accountable as well as to achieve greater coherence among policy objectives of government.

It took more than three years for the NPDIR to be formulated and established and four years for it to be “officially implemented”. The NPDIR is not merely changing
the rules of implementing regulatory regime, but is nurturing a paradigm change from a “control” regime to a “facilitating” regime. It takes a long time, perhaps a decade or two, for such a paradigm change to take root. This is unfortunate as time is not in the country’s favour with less than five years towards Vision 2020. Unless this is appreciated, Vision 2020 is going to be a pipe dream.

This realisation is observed in the emphasis made in the 11th Malaysia Plan which calls for accelerating regulatory reforms, as stated in clause 1.24:

“Regulation reforms will be accelerated to ensure new and existing regulations as well as their administration and enforcement are aligned with good regulatory practices. This will be done by expanding the adoption of the National Policy on Development and Implementation of Regulations (NPDIR), and conducting regular regulatory review for ministries and agencies. In addition, a “cost-in, cost-out” evaluation will be applied on all new business regulations to reduce regulatory burden. Under this evaluation, the direct cost of each new regulation on the private sector will be determined and the introduction of the new regulation will need to be accompanied by the abolishment of outdated or unnecessary business regulations to ensure that the total regulatory cost to business does not increase.”

Since the introduction of the NPDIR, MPC has carried out various regulatory reviews on Reducing Unnecessary Regulatory Burdens (RURB) on businesses. It has been a slow incremental change in the implementation of the NPDIR which begs the question whether the significance on accelerating regulatory reforms is appreciated by all involved parties in the Government.

In the meantime, MPC continues with the RURB initiative at the sectoral level to promote change in regulatory mind-sets. This particular study on accelerating sectoral regulatory reforms for the distributive trade is another attempt at this. The study is aimed at reviewing the impact of the existing regulatory regime on the ease of doing business in the distributive trade industry and to recommend feasible options to reduce the unnecessary regulatory burdens on the business.

1.1 Conduct of the study

The study will involve the collection, review and analysis of data and information from secondary data obtained from literature reviews and followed with interviews of key stakeholders in the distributive trade industry.

Secondary data are from many sources and are classified as follows:

i. The existing regulations enforce on the industry
ii. Relevant local business information on the trade

---

iii. Research papers published by international agencies such as the World Bank, the UN, the WTO, ASEAN, among others

iv. Country papers such as the AGPC and the OECD

v. Local research papers and reports commissioned by the government such as the Economic Planning Unit (EPU), Ministry of International Trade and Industry (MITI), the Ministry of Domestic Trade, Co-operatives and Consumerism (MDTCC)

vi. The Malaysian Government Plans such as the 5-year plans, the Industrial Master Plan 3, the NKEA

vii. Statistical data from both international and local sources such as the World Bank, WTO, MITI, MDTCC, MATRADE, MIDA, DOS

viii. Other information derived from federal, state and local government agencies, quasi-government bodies, trade associations, businesses and news, reports and statistics

Generally, the study is conducted in a systematic approach as illustrated in Figure 1.3.

In order to identify the issues to be addressed, primary data was collected through interviews with business players, associations, and relevant regulators. The draft report is then released for comments and feedback from stakeholders and other interested parties. These include the businesses, non-governmental organisations (NGOs), the consumers, regulators and other Government agencies.

The study is being carried out in two stages. Firstly is the exploratory stage to prepare the draft report which will identify the feasible options for reducing identified unnecessary regulatory burdens. To facilitate the interviews and data collection, an issues paper with a list of questions was prepared and circulated to the respondents.

The second stage is public consultation with stakeholders and interested parties. After receiving comments and feedback on the draft report, the MPC will produce a final report containing the assessment, comments and final recommendations.
1.2 **Scope of the ASRR Study**

In undertaking the annual reviews, the MPC would:

1. identify specific areas of the Government regulation that:
   
   a. are unnecessarily burdensome, complex or redundant; or
   
   b. duplicate regulations or the role of regulatory bodies, including in other jurisdictions;

2. develop a short list of priority areas for removing or reducing regulatory burdens which impact mainly on the sector under review and have the potential to deliver the greatest productivity gains to the economy;

3. identify regulatory and non-regulatory options for this short list, or provide recommendations where appropriate to alleviate the regulatory burden in those priority areas, including for small business; and
4. identify reforms that will enhance regulatory consistency across jurisdictions, or reduce duplication and overlap in regulation or in the role of regulatory bodies in relation to the sector under review

In proposing a focused agenda and providing options and recommendations to reduce regulatory burdens, the MPC is to:

- seek public submissions beginning January 2017 to consult with businesses, government agencies and other interested parties;
- have regard to any other current or recent reviews commissioned by the Governments affecting the regulatory burden faced by businesses in the sector, including the Government’s response to the report by the Taskforce on Reducing Regulatory Burdens on Business;
- report on the considerations that inform the MPC’s review of priorities and reform options and recommendations; and
- have regard to the underlying policy intent of government regulation when proposing options and recommendations to reduce regulatory burdens on business

The report will be published, and the Government’s response announced as soon as possible.

1.3 Structure of the Report

This report on the Review of Unnecessary Regulatory Burdens (RURB) affecting the distributive trade industry has been organised into seven sections. Section 1 highlights the rationale, the scope and approach of the study.

Section 2 explains regulation and its impact on business. It looks at the regulatory burdens and the potential sources of unnecessary regulatory burdens. It highlights how regulations are reviews and reforms using good regulatory practice principles with the focus on reducing unnecessary regulatory burdens.

Section 3 is the industry analysis of the Distributive Trade sector. It looks at the industry characteristics of the trade and its economic performance for the preceding year 2015. A brief analysis on disposable income and consumption expenditure give some indication on the demand side of Distributive Trade.

Section 4 provides an overview of the regulatory regimes for the Distributive Trade sector in Malaysia. The value chain analysis looks at the life cycle stages of the businesses in the trade and the main areas of regulatory intervention. The related regulations, the regulatory controls and the regulators are identified from the analysis.

Section 5 presents the analysis and findings of the regulatory related issues for this study. Options are proposed for the regulatory issues of concern. Although
the study has identified a wide list of complaints/issues, the focus is only to elaborate on pertinent regulatory issues that could be improved to create a more conducive business environment for the Distributive Trade sector and in particular, the Retail Trade sub-sector.

Section 6 presents the analysis and findings from the engagements made with other stakeholders in the Klang Valley. This further engagement, referred to as Stage 2 engagement, were carried out after the analysis of the inputs captured in the first stage engagement to increase the number of business respondents. This is to ensure that the study captures as complete as possible the views of the retail trades in the region.

Section 7 presents the analysis and findings from the engagements made with other stakeholders of other regions of the country. The engagements were made at the capital cities of the northern region (Penang), east coast region (Kuantan), southern region (Johor Bharu), Sabah and Sarawak of East Malaysia.
Section 2: Regulations and Regulatory Burdens

Contents: (2.1) Purpose of regulation, (2.2) Regulatory burdens, (2.3) Unnecessary regulatory burdens, (2.4) Government Initiative in Good Regulatory Practice, (2.5) Costs of regulatory compliance

2.1 Purpose of regulation

Regulation in and of a business is intended to achieve certain desired objectives which otherwise would not concern business, such as the protection of consumer health and safety, protection of the environment, or ensuring market efficiency among many others. Regulation may be defined differently depending on the context. The “generic” definition embodies all written legal and quasi-legal instruments ranging from primary legislation, secondary instruments, guidelines, circulars, codes, standards and others.

In general, the government uses regulation as the principal means to address risks to society, the economy or the environment which are not adequately addressed by individuals and markets. Regulation encompasses the diverse set of instruments used by government to:

- influence people or control the way people as individuals or groups behave
- achieve a diverse range of economic, social, safety and environmental policy objectives

In addition to the content of written regulations, the way they are implemented, administered and enforced is an important aspect of regulation and can have significant impact on compliance burdens for businesses and the effectiveness of regulation. It is important that the extent and intrusiveness of regulation is commensurate with the risk and, where individuals, communities and businesses are able take actions to address the risk adequately, additional government intervention may not be needed.

Traditionally, 'regulation' has been seen as establishing formal legal requirements (written regulation) by government by way of acts, regulations and rules. A broader view of regulation takes in non-legislative policy tools such as information campaigns, education, persuasion, self-regulation or quasi-regulation (codes of practice, guidelines, etc., that can also influence behaviour).

Written regulation, which reflects a rational approach to risk, focuses on the sources of risk, provides instruments which will address them effectively without putting heavy requirements on business unless the size and the severity of the impact is large enough to justify this. The more severe the impact of a particular hazard, the more likely it is that written regulation will be prescriptive and impose higher penalties for non-compliance.

There are non-regulatory options to manage risks relating to security, safety and health and the environment, such as:
• quality accreditation scheme like the Good Manufacturing Practice (GMP) accreditation
• products standards and traceability standards recognised globally
• commercial and ethical incentives for manufacturers, importers, suppliers, etc. to ensure safety and quality standards are maintained
• promotion and education of businesses on unwelcome outputs such as pollution and environmental standards and practices

2.2 Regulatory burdens\textsuperscript{15}

Where requirements from regulation create a change in business behaviour and practices, a regulatory burden can be said to exist. Businesses invariably experience some costs in complying with regulations that would otherwise not arise. Most fall under the following four categories of cost impacts:

1. administrative and operational requirements, such as:
   • reporting, record keeping
   • getting legal advice, training

2. requirements on the way goods are produced or services supplied, such as:
   • requiring the use of certain forms of transport
   • restrictions on access to certain locations
   • specification on type of handling or storage

3. requirements on the characteristics of what is produced, or the services supplied, such as:
   • how goods are handled, stored and transported
   • bonded warehouse requirements
   • specifications on packaging and labelling

4. lost production and marketing opportunities due to prohibitions, such as
   • when certain products are banned from being retailed
   • limiting hours of service (e.g. for operation hours of hypermarket)
   • restriction on firms cooperating for improving economies of scale

2.3 Unnecessary regulatory burdens

While it is usually necessary that some burden is placed on businesses for regulation to achieve objectives, where regulation is poorly designed or written or it is not administered or enforced well, it may impose greater burdens than necessary.

Businesses that pose high risks to consumers tend to be more highly regulated and thereby experience more regulatory burdens. In this review of regulation on distributive trade, unnecessary regulatory burdens are of the primary interest. The examples of unnecessary regulatory burdens this study will focus on are illustrated in the Box 2.1 below.

**Distributive trade** as an activity consists of (a) provision of a service to various types of customers (retailers and other commercial users or the general public) by storing and displaying a selection of goods and making them available for buying; and (b) provision of other services incidental to the sale of those goods or subordinated to the selling such as delivery, after-sale repair and installation services.\(^{16}\)

**Box 2.1: Types of Unnecessary Regulatory Burdens**

- excessive coverage by a regulation — that is, the regulation affects more activity than was intended or required to achieve its objective (includes ‘regulatory creep’)
- subject-specific regulation that covers much the same issues as other generic regulations
- prescriptive regulation that unduly limits flexibility and prevents businesses from:
  - using the best technology
  - making product changes to better meet consumer demand
  - meeting the underlying objectives of regulation in different ways
- overly complex regulation
- unwieldy licence application and approval processes
- excessive time delays in obtaining responses and decisions from regulators
- rules or enforcement approaches that inadvertently result in businesses operating in less efficient ways
- unnecessarily invasive regulator behaviour, such as overly frequent inspections or irrelevant or duplicative information requests
- an overlap or conflict in the activities of different regulators
- inconsistent application or interpretation of regulation by officials

*Source: MPC 2014*

In general, the distributive trade comprises the wholesale and retail trade; repair of motor vehicles, motorcycles and personal and household goods, Tabulation Category (G) of ISIC Rev. 3\(^{17}\). It includes the following Divisions:

- Sale, maintenance and repair of motor vehicles and motorcycles; retail sale of automotive fuel.

---

\(^{16}\) United Nations 2009; Department of Economic and Social Affairs, Statistics Division, *International Recommendations for Distributive Trade Statistics 2008;*

\(^{17}\) United Nations 2016; *ISIC Rev. 3 and NACE Rev. 1;* http://esa.un.org/unstats/databank/registry/regcst.asp?Cl=3&Lg=1
• Wholesale trade and commission trade, except of motor vehicles and motorcycles.
• Retail trade, except of motor vehicles and motorcycles; repair of personal and household goods.

Given the immense variety of economic goods and the different manner in which they are distributed and retailed, there will be many different regulations involved in its governance. Invariably all goods are subject to regulatory burdens in one form or another. Corruption, the widespread and deep-rooted abuse of entrusted power for private gain, is the greatest obstacle to economic and social development around the world. High regulatory burdens tend to foster corruption, as businesses try to avoid them.

To be rid of the perception on corruption, regulators must be highly transparent in their decision-making, administrative processes and service delivery. They must be efficient in dealing with those they serve and be accountable. Understanding how corruption creates uncertainty and cynicism for businesses and how it undermines the achievement of government objectives will increase the government resolve to eliminate corruption arising from unnecessary regulatory burdens.

In summary, poor governance is the principle cause of unnecessary regulatory burdens, resulting not only from poorly designed or written regulation and/or poor administration or enforcement regulation. This provides opportunities for corrupt practices. Over the years, analysts have identified the more important characteristics which regulation must satisfy to pass this test. Some important characteristics of well written regulations are stated in Box 2.2.

Box 2.2: Characteristics of well-written regulations

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. <strong>Proportionate</strong>: the requirements placed on business are proportionate to the risk being regulated, in particular low risks are not addressed by imposing onerous requirements</td>
<td></td>
</tr>
<tr>
<td>2. <strong>Appropriateness</strong>: the regulations make appropriate use of prescriptive, performance, in-principle and process-based requirement</td>
<td></td>
</tr>
<tr>
<td>3. <strong>Minimum requirement</strong>: the regulatory requirements are the minimum necessary to effectively achieve the objective(s) being targeted by the regulation</td>
<td></td>
</tr>
<tr>
<td>4. <strong>Responsive</strong>: in responsive regulation the regulations provide an adequate range of enforcement instruments to allow regulators some flexibility in addressing non-compliance</td>
<td></td>
</tr>
<tr>
<td>5. <strong>Consistency</strong>: the regulations are consistent with other regulation and do not create conflict, inconsistency or duplication</td>
<td></td>
</tr>
<tr>
<td>6. <strong>Transparency</strong>: the regulations are transparent, communicated effectively and readily accessible by everyone</td>
<td></td>
</tr>
</tbody>
</table>
7. **Accountable**: the regulations place accountability requirements on the regulator such as reporting, appeal and review provisions including some that address probity

Source: MPC (2014)

These important characteristics are achieved when regulations are made according to good regulatory practice principles. There are six core principles that would provide guidance to assess implementation by regulators.

There is a mix of options including self-regulation, quasi-regulation or co-regulation to achieve the same purpose. Regulations that have been formulated through a good practice regulation process can achieve policy objectives without imposition of unnecessary regulatory burdens on business. Policy objectives can be achieved by regulatory or non-regulatory means. According to the OECD, ‘good’ regulation should:

- serve clearly identified policy goals, and be effective in achieving those goals
- have a sound legal and empirical basis
- produce benefits that justify costs, considering the distribution of effects across society and taking economic, environmental and social effects into account
- minimise costs and market distortions
- promote innovation through market incentives and goal-based approaches
- be clear, simple, and practical for users
- be consistent with other regulations and policies
- be compatible as far as possible with competition, trade and investment facilitating principles at domestic and international levels
### Box 2.3: Six Core Principles for Assessing Regulation and its Administration

| Principle 1: | have a proportionate and targeted response to the risk being addressed |
| Principle 2: | minimise adverse side-effects to only those that are necessary to achieve regulatory objectives at least cost |
| Principle 3: | have a responsive approach to incentivize compliance with regulation |
| Principle 4: | ensure consistency across regulation and consistency in the application of regulations across businesses and industries |
| Principle 5: | adopt transparency criteria so interested parties are regularly consulted and it is clear to businesses what their legal obligations are and that all regulations are easily accessed by anyone |
| Principle 6: | accountability so that businesses can seek explanations of decisions made by regulators, as well as appeal to them and that there are probity provisions in order to reduce Corruption (National Integrity Plan, 2004). |

*Source: MPC (2014)*

In 1995, the OECD Council came out with a ten-question checklist reflecting good principles for regulatory decision-making\(^1\) (Box 2.4). These questions provide guidance to the authorities whenever there is a need to consider government intervention in business.

However, there is the temptation for a regulator to lay down a prescriptive rule that must be adhered to. This encourages certainty, particularly in the short term and will suffice when dealing with issues for which limited alternatives exist for achieving the objective of the regulation (such as outright prohibitions). Against that though, a major problem with prescriptive rules is that they can limit flexibility in meeting regulatory objectives and can retard innovation by the business. Other problems with prescriptive rules are that they can be rendered superfluous by technological change or encourage wasteful by-passing tactics by industry.

---


Box 2.4: The OECD Reference Checklist for Regulatory Decision-Making

1. **Is the problem correctly defined?** The problem to be solved should be precisely stated, giving evidence of its nature and magnitude, and explaining why it has arisen (identifying the incentives of affected entities).

2. **Is government action justified?** Government intervention should be based on explicit evidence that government action is justified, given the nature of the problem, the likely benefits and costs of action (based on a realistic assessment of government effectiveness), and alternative mechanisms for addressing the problem.

3. **Is regulation the best form of government action?** Regulators should carry out, early in the regulatory process, an informed comparison of a variety of regulatory and non-regulatory policy instruments, considering relevant issues such as costs, benefits, distributional effects and administrative requirements.

4. **Is there a legal basis for regulation?** Regulatory processes should be structured so that all regulatory decisions rigorously respect the “rule of law”; that is, responsibility should be explicit for ensuring that all regulations are authorised by higher level regulations and consistent with treaty obligations, and comply with relevant legal principles such as certainty, proportionality and applicable procedural requirements.

5. **What is the appropriate level (or levels) of government for this action?** Regulators should choose the most appropriate level of government to take action, or if multiple levels are involved, should design effective systems of co-ordination between levels of government.

6. **Do the benefits of regulation justify the costs?** Regulators should estimate the total expected costs and benefits of each regulatory proposal and of feasible alternatives and should make the estimates available in accessible format to decision-makers. The costs of government action should be justified by its benefits before action is taken.

7. **Is the distribution of effects across society transparent?** To the extent that distributive and equity values are affected by government intervention, regulators should make transparent the distribution of regulatory costs and benefits across social groups.

8. **Is the regulation clear, consistent, comprehensible and accessible to users?** Regulators should assess whether rules will be understood by likely users, and to that end should take steps to ensure that the text and structure of rules are as clear as possible.

9. **Have all interested parties had the opportunity to present their views?** Regulations should be developed in an open and transparent fashion, with appropriate procedures for effective and timely input from interested parties such as affected businesses and trade unions, other interest groups, or other levels of government.

10. **How will compliance be achieved?** Regulators should assess the incentives and institutions through which the regulation will take effect, and should design responsive implementation strategies that make the best use of them.

Source: OECD 1995a
Such ‘black letter’ prescriptive rules are falling out of favour because regulators will never be as smart as those they seek to regulate. Regulators limit themselves when they define behaviour by prescription. Businesses who have met the limits of prescribed behaviour will take it as meeting their obligations, and behaviour which falls outside their limits, whether fitting the intent of the law or not, is acceptable. At the other extreme, business may take the prescribed limit as a challenge “to find ways to get around it”.

Malaysia has traditionally followed the prescriptive approach in regulation and continues to do so today, more so in areas where safety and health are concerned. However, there is now some interest in pursuing the performance-based rules as is being done in other benchmarked countries like UK and Australia. Performance-based rules are most suited to areas for which the desired outcome is easily quantifiable. In specifying the desired outcome, individuals and firms can seek out the optimum cost for achieving it.

However, performance-based rules also have their limitations. Firstly, while allowing firms flexibility in achieving an objective, performance rules provide no flexibility in the objective itself. For example, emission controls generally specify a maximum amount that can be emitted from a particular factory, but the effect on the receiving medium will vary according to a variety of factors, including weather conditions, time of day, and the level of emissions from other factories at the same time.

Secondly, as with prescriptive standards, once an individual or firm has met the performance-based standard, there is little incentive to go beyond that standard even when it would be socially desirable. For example, firms may reduce emissions to levels prescribed in a performance standard but would have little financial incentive to reduce them further, even if further reductions could be achieved at little cost.

Apart from both prescriptive-based and performance-based rules, some regulators have considered the use of principle-based standards. The use of principle-based standards assumes that the detailed preventative rules cannot possibly anticipate and prescribe the inexhaustible variety of human heartlessness and negligence, and at the same time will often be harshly over inclusive. From this perspective, the appropriate strategy is to draft broadly worded statutes and regulations, laced with words such as “reasonable” and “so far as feasible,” enabling regulatory officials to “custom tailor” regulatory requirements and penalties to particular enterprises and situations19.

---

2.4 **Government Initiative in Good Regulatory Practice**

The Government has implemented the initiative on best regulatory practice with the launching of the document on National Policy on the Development and Implementation of Regulations (NPDIR)\(^20\) on July 2013. This policy document applies to all federal government ministries, departments, statutory bodies and regulatory commissions. It is also applicable for voluntary adoption by state government and local authorities. The policy document spells out the objective, operating principles, responsibilities, requirements and process for the regulatory process management.

The national policy also specifically mandates the MPC, through its responsibility to the National Development Planning Committee (NDPC), to implement the functions of the national policy. MPC is to assist in the coordination of implementing this policy.

**Box 2.5: Seven elements of RIA in best practice regulation**

<table>
<thead>
<tr>
<th>Seven Elements of RIA:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. <strong>Problem statement</strong>: RIA should clearly identify the problem/s that need to be addressed</td>
</tr>
<tr>
<td>2. <strong>Objectives</strong>: The “objectives” element should state the intent of the proposed regulatory action in concrete terms and relate this to the broader policy of the agency and Government</td>
</tr>
<tr>
<td>3. <strong>Options</strong>: This element describes the range of regulatory and non-regulatory options to be considered in addressing the issue or risk identified including the proposed regulatory action and the key differences between options</td>
</tr>
<tr>
<td>4. <strong>Impact analysis</strong>: To conduct a comprehensive assessment of the expected impact (costs and benefits) of each feasible option</td>
</tr>
<tr>
<td>5. <strong>Consultation</strong>: Any proposed new regulation or changes to regulation will involve consultation with relevant stakeholders, including the main parties affected by the proposal: Business, non-governmental organisations, the community, regulators and other government agencies</td>
</tr>
<tr>
<td>6. <strong>Conclusion &amp; recommendation</strong>: This should include a clear statement identifying the preferred option based on the impact analysis. The recommendation for the selection of this option must be supported by the preceding analysis and a comparison with other options provided.</td>
</tr>
<tr>
<td>7. <strong>Strategy for implementation</strong>: It is necessary to consider how the option will be implemented and enforced, and to establish a review strategy that will allow the option to be evaluated after it has been in place for some time</td>
</tr>
</tbody>
</table>


---

The Best Practice Regulation Handbook\textsuperscript{21} launched together with the national policy provides the detailed guidance on carrying out best practice regulation – the systematic process to the development of regulations. Basically, a regulator has to carry out a regulatory impact analysis (RIA) and produced a comprehensive report, the Regulatory Impact Statement when it is introducing any regulation that may impact upon businesses. MPC’s role here is to ensure that the RIS is adequately prepared before it is submitted to NPDC for further action. This RIA for best practice regulation involves the seven core elements shown in Box 2.5.

2.5 Costs of regulatory compliance

There are multiple costs in regulation to achieve policy objectives. These costs impact businesses, consumers and the government in general\textsuperscript{22} (Figure 2.1). What is important is that the benefits accrued from achieving the regulatory objectives must be greater than the total cost of regulation. Some regulatory costs are inevitable as can be viewed as the price for the benefits which the regulation brings. High quality regulation is both effective in addressing an identifiable problem and efficient in terms of minimizing unnecessary compliance and other costs imposed on the business. The best regulations achieve their objectives at acceptable levels of cost.

By contrast, poor regulation may not achieve its objectives and can impose unnecessary costs, impede innovation, or create unnecessary barriers to trade, investment and economic efficiency. Given the pervasiveness of regulations in the country, it is not surprising that regulation and red-tape continue to impose significant compliance costs. Direct compliance costs can include the time taken to comply with regulations, the need for additional staffing, the development and implementation of new information technology and reporting systems, external advice, education, advertising, accommodation and travel costs.

As well as having a direct impact on regulated businesses, compliance costs also impact indirectly on the community, by changing pricing and distorting resource allocation, impacting international trade and delaying the introduction of new products or services. There remain concerns that such costs are excessive\textsuperscript{23}.

\textsuperscript{21} MPC 2013, Best Practice Regulation Handbook, Malaysia Productivity Corporation


\textsuperscript{23} Argy S. and Johnson M. 2003, Mechanism for Improving Quality of Regulations, Australia in an International Context, Australia Government Productivity Commission, Staff Working Paper, July 2003
In an international study in 1998, the OECD estimated from survey responses that taxation, employment and environmental regulations imposed over US$17 billion (2.9 percent of GDP) in direct regulatory compliance costs on small and medium-sized businesses in Australia. The cost components are:

- employment regulations accounted for 40 percent (OECD average was 35 percent)
- compliance with tax regulations accounted for 36 percent (OECD average, 46 percent)
- environmental regulations accounted for 24 percent (OECD average, 19 percent)
- The more advanced countries like Australia have taken measures to improve the cost-effectiveness of regulations and to reduce compliance burdens and red-tape. Some of the measures include:
  - the increased adoption of performance-based regulation
  - the consideration and adoption of implementation options that minimize red-tape
  - the improvement of regulatory services through the employment of new technology
  - increased electronic publication of regulatory information
  - licensing reforms and/or reduction in number of licences
  - streamlining of government paperwork requirements
  - privatization of certification and inspection functions
  - stakeholders consultation to improve implementation and compliance

Compliance costs in logistics is particularly important to shippers as it will increase their unit cost and thereby reduce cost competitiveness. The cost eventually will be passed on to the consumers who eventually start paying higher prices for no additional value add.
Figure 2.1: Multiple costs of regulation

<table>
<thead>
<tr>
<th>Types of costs</th>
<th>Who bears these costs?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deadweight loss arising from distortions caused by regulation:</td>
<td>Costs to the economy in forgone economic activity (return to capital and to labour)</td>
</tr>
<tr>
<td>• prices</td>
<td></td>
</tr>
<tr>
<td>• access</td>
<td></td>
</tr>
<tr>
<td>Uncertainty impacts:</td>
<td></td>
</tr>
<tr>
<td>• defensive behaviour</td>
<td></td>
</tr>
<tr>
<td>• inertia</td>
<td></td>
</tr>
<tr>
<td>• resistance to innovation</td>
<td></td>
</tr>
<tr>
<td>Delay costs:</td>
<td></td>
</tr>
<tr>
<td>• deferred investment</td>
<td></td>
</tr>
<tr>
<td>• change in competitive position</td>
<td></td>
</tr>
<tr>
<td>• underutilisation of resources</td>
<td></td>
</tr>
<tr>
<td>Time and other costs to discover and comply with regulatory requirements:</td>
<td></td>
</tr>
<tr>
<td>• internal resources</td>
<td></td>
</tr>
<tr>
<td>• external resources</td>
<td></td>
</tr>
<tr>
<td>Fees and charges levied by government</td>
<td></td>
</tr>
<tr>
<td>Administrative costs by government agencies</td>
<td></td>
</tr>
<tr>
<td>Costs should be minimised for any given benefit achieved</td>
<td></td>
</tr>
</tbody>
</table>

Benefits of regulation need to exceed costs

Cost to business and consumers: (depends on ability to pass on costs to

Net cost to government expenditure

Source: AGPC 2008c
Section 3: The Distributive Trade Sector Analysis

Contents: (3.1) Introduction; (3.2) Industry size and characteristics; (3.3) Quarterly Performance of Distributive Trade 2015; (3.4) Disposable Income; (3.5) Household Consumption Expenditure between 2009 and 2014

3.1 Introduction

The generic definition of distributive trade is an activity consisting of (a) provision of a service to various types of customers (retailers and other commercial users or the general public) by storing and displaying a selection of goods and making them available for buying; and (b) provision of other services incidental to the sale of those goods or subordinated to the selling such as delivery, after-sale repair and installation services.  

Distribution (trade) services include wholesalers, retailers, franchise practitioners, direct sellers and suppliers, who channel their goods in the domestic market, and commission agents or other representatives including those of international trading companies. This is in line with the WTO classification as:

- Commission agents' services
- Wholesale trade services
- Retailing services
- Franchising
- Others

The sector has also been identified as one of the potential growth areas for the development of SMEs. This is also part of the focus of the Economic Transformation Programme (ETP) identified as the Wholesale and Retail segments. According to the ETP (2010), Malaysia’s wholesale and retail sector is a major contributor to gross national income (GNI). It contributed about RM57 billion to GNI in 2009. The sector also contributed almost 500,000 jobs, according to the Department of Statistics. To achieve our 2020 GNI target, retail will be a key driver of domestic consumption, which in turn will lead to economic growth.

As a NKEA, wholesale and retail trade covers various trade activities as defined by the Ministry of Domestic Trade, Co-operatives and Consumerism (MDTCC) in Distributive Trade terms. The segments and sub-segments covered include non-

25 MITI, Trade and Investments in Services; http://myservices.miti.gov.my/web/guest/distribution
store retailing, i.e. vending, home shopping, Internet retailing and direct selling and in-store retailing, i.e. grocery and non-grocery retailers.

Wholesalers are firms that buy large quantity of goods from various producers or local manufacturers or imports, warehouse and distribute or resale to retailers. Wholesalers who carry only non-competing goods or lines are called distributors. Retailing is the point-of-sale for the goods and the retailer is a business or person that sells goods to the consumer, as opposed to a wholesaler or supplier, who normally sell their goods to another business.

The wholesale and retail sector provides a key intermediary service between producers and consumers of final goods. This sector is an important part of the domestic economy on goods trade and it is in general the pulse of consumer confidence in the economy.

According to the Bank Negara Malaysia (BNM) report\textsuperscript{27} the Malaysian services sector contributed 53.5\% to the total economy in 2015 and the wholesale and retail sector contributed 27.4\% to the services economy. Between 2014 and 2015, the services GDP grew significantly at 6.5\% and 5.1\% respectively. The wholesale and retail sector grew at 6.9\% in 2015 and 8.9\% in 2014. This reflects the importance of the sector in driving economic growth.

3.2 Industry size and characteristics

The distributive trades form part of the services sector. Wholesalers sourced, warehouse, distribute and sell new or used products to businesses for resale and to institutions including the government. Retailers specialise in providing new or used goods to final consumers for personal or household consumption. Businesses in retail trade include hyper- and supermarkets, department stores and other shops, motor vehicle retailers and service outlets, stalls, mail order houses (including internet shops), direct sellers, vending machine operators and consumer cooperatives. The classification lists of these activities can be found in \textit{Malaysia Standard Industrial Classification 2008 (MSIC) Version 1.0}.

In MSIC 2008 Section G \textbf{wholesale and retail} refer to sale (i.e. sale without transformation) of any type of goods, and rendering services incidental to the sale of merchandise. Wholesaling and retailing are the final steps in the distribution of merchandise. Also included in this section are the repair of motor vehicles and motorcycles.

Sale without transformation is considered to include the usual operations (or manipulations) associated with trade, for example sorting, grading and assembling of goods, mixing (blending) of goods, bottling, packing, breaking bulk and

repacking for distribution in smaller lots, storage (whether frozen or chilled), cleaning and drying of agricultural products, cutting out of wood, fiberboards or metal sheets as secondary activities.

Wholesale is the resale of new and used goods to retailers, to industrial, commercial, institutional or professional users, or to other wholesalers, or involves acting as an agent or broker in buying merchandise for, or selling merchandise to, such persons or companies. Retailing is the resale (sale without transformation) of new and used goods mainly to the general public for personal or household consumption or utilization, by shops, department stores, stalls, mail-order houses, door-to-door sales persons, hawkers and peddlers, consumer cooperatives, auction houses, etc.

According to the **Census on Distributive Trade 2014** (Figure 3.1), there were a total of 370,725 establishments in 2013 undertaking business activities in Malaysia with 260,664 or 70.3% of business establishments being in the retail trade sub-sector, 57,050 establishments (15.4%) engaged in wholesale trade activity and 53,011 (14.3%) establishments in motor vehicles activity.

<table>
<thead>
<tr>
<th>Sub-Sector</th>
<th>Numbers of establishments</th>
<th>Total number of persons engaged</th>
<th>Value Added (RM Billion)</th>
<th>Average monthly salary (RM)</th>
<th>(%) Women-owned establishments</th>
<th>(%) SMEs establishments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wholesale trade</td>
<td>57,050</td>
<td>442,795</td>
<td>68.5</td>
<td>2,727</td>
<td>8.5</td>
<td>15.3</td>
</tr>
<tr>
<td>Retail trade</td>
<td>260,664</td>
<td>988,741</td>
<td>62.0</td>
<td>2,289</td>
<td>87.1</td>
<td>70.2</td>
</tr>
<tr>
<td>Distributive Trade</td>
<td>370,725</td>
<td>1,699,908</td>
<td>151.9</td>
<td>2,410</td>
<td>19.6</td>
<td>97.7</td>
</tr>
</tbody>
</table>

*Source: DOS (2015)*

There were some 1.7 million employees engaged in the distributive trade sector then, with the majority (53.6%) of the workers employed in the retail trade sub-sector. This is followed by the wholesale trade sub-sector at 30.2% and motor vehicles sub-sector at 16.2%.

In terms of income contribution, total salaries and wages disbursed in 2013 was RM39.0 billion with the retail trade sub-sector recording the highest with RM19.8 billion (50.9%), followed by the wholesale trade sub-sector, RM13.3 billion (34.2%) and motor vehicles sub-sector, RM5.8 billion (14.9%). The distributive trade sector posted an average monthly salary of RM2,410, with the wholesale trade sub-sector

---

recording a higher average monthly salary at RM2,727 followed by the retail trade sub-sector at RM2,289 and motor vehicles sub-sector at RM2,216. SMEs in the sector engaged close to 1.4 million employees with 70.7% employed full-time.

The majority of the enterprises in this sector are SMEs totalling 362,099 establishments or 97.7% in the distributive trade sector. Out of these SMEs 81.4% are micro enterprises, 16.9% small enterprises and 1.7% medium enterprises. The majority of SMEs is in retail trade sub-sector with 254,240 establishments (70.2%), with 55,214 establishments in wholesale trade (15.3%) and 52,645 establishments (14.5%) in motor vehicles sub-sector.

Women ownership in distributive trade sector was recorded at 19.6% or 72,532 establishments. Women-owned establishments were mainly in the retail trade sub-sector accounting for 87.1% followed by wholesale trade sub-sector at 8.5% and motor vehicles sub-sector at 4.4%.

These 370,725 establishments in 2013 generated sales value of goods and services of RM841.6 billion. From the total sales value of goods and services, the wholesale trade sub-sector contributed 52.5% or RM442.2 billion, followed by the retail trade sub-sector at 33.2% or RM279.1 billion and motor vehicles sub-sector, 14.3% or RM120.4 billion. The contribution from SMEs was RM485.0 billion with the largest contribution from the small category at RM235.6 billion or 48.6% (Figure 3.1).
The Distributive Trade sector, catering for an ever growing population, is therefore, in itself, an industry in continuous growth. In the 2014 census, the number of establishments grew from 279,556 in 2008 to 370,725 in 2013 with a Compound Annual Growth Rate (CAGR) of 5.9%. In terms of sales value, the contribution grew from RM611,251 million in 2008 to RM841,638 million in 2013 at a CAGR of 6.6%. Value added contribution rose from RM108,826 million in 2008 to RM151,854 million in 2013 at a CAGR of 6.9%. The CAGR on employment between 2008 and 2013 at 3.1% and the CAGR of 11.7% on wages are indicative of continuing improvement in productivity and income distribution in the distributive trade sector.
3.3 Quarterly Performance of Distributive Trade 2015\textsuperscript{29}

In the 	extbf{fourth quarter of 2015} the Distributive Trade sector recorded RM258.4 billion in sales value which is a growth of 5.9\% compared to the same quarter in 2014 (Figure 3.2). This increase was propelled by the Wholesale trade contribution of RM126.1 billion (4.5\% YoY), the Retail Trade sub-sector of RM96.0 billion (7.5\% YoY), and Motor Vehicles of RM36.3 billion (6.9\% YoY). Total number of persons engaged in this sector was 1.7 million, which is an increase of 2.6\% or 41,298 persons as compared to the previous year (Figure 3.3).

Sales value of the Wholesale Trade sub-sector registered a 4.5 per cent growth at RM126.1 billion as compared to last year. The growth was contributed by Wholesale of Food, Beverages and Tobacco (8.7\%), Wholesale of Household Goods (8.3\%) and Non-specialised Wholesale Trade (6.4\%). The number of persons engaged rose by 2.7 per cent or 10,852 as compared to the corresponding quarter of 2014.

The Retail Trade sub-sector recorded an increase in sales value of RM6.7 billion or 7.5 per cent as compared to the corresponding quarter of the previous year. The increase was driven by Retail Sale of Automotive Fuel in Specialised Stores (13.0\%), Retail Sale of Food, Beverages and Tobacco in Specialised Stores (9.4\%) and Retail Sale of Other Goods in Specialised Stores (9.1\%). Year-on-year, the number of persons engaged increased by 2.5 per cent or 24,168 persons.

For Motor Vehicles sub-sector the sales value went up by 6.9 per cent to RM36.3 billion as compared with the same quarter of the preceding year. The expansion was contributed by Sale of Motor Vehicles (9.6\%), Maintenance and Repair of Motor Vehicles (4.5\%) and Sale of Motor Vehicles Parts and Accessories (3.2\%). The Number of persons engaged registered an increase of 2.6 per cent or 6,278 persons as compared to the same period of the previous year.

---

\textsuperscript{29} DOS (2015a), Performance of the Distributive Trade, 1\textsuperscript{st} Quarter 2015, Press Release 12 May 2015
DOS (2015b), Performance of the Distributive Trade, 2\textsuperscript{nd} Quarter 2015, Press Release 10 August 2015;
DOS (2015c), Performance of the Distributive Trade, 3\textsuperscript{rd} Quarter 2015, Press Release 9 November 2015;
DOS (2016a), Performance of the Distributive Trade, 4\textsuperscript{th} Quarter 2015, Press Release 11 February 2016;
\& DOS (2016b), Performance of the Distributive Trade, 1\textsuperscript{st} Quarter 2016, Press Release 12 May 2016;
In the 3rd quarter of 2015, Distributive Trade sector increased to 5.0% YoY. The growth was propelled by retail trade at 6.1%, wholesale at 4.6% and motor vehicles at 3.8%. On a QoQ basis, sales value showed marginal increase of 1.7 per cent from RM248.1 billion to RM252.4 billion. The total number of persons engaged in this sector was 1.7 million persons with an increase of 2.9 per cent or 47,249 persons as compared to the same quarter of the previous year. There is a marginal increase in employment of 0.7% from the previous quarter.

The Wholesale Trade sub-sector registered a 4.6% growth to RM123.8 billion as compared to the same quarter of last year. This growth was contributed by Wholesale of Household Goods at 10.2%, Wholesale of Food, Beverages and Tobacco (7.9%) and Non-specialised Wholesale Trade (5.4%). The Quarter-on-Quarter wholesale sales recorded an increase of 1.6%. Number of persons engaged in the subsector rose by 3.3% or 13,164 persons as compared to the
corresponding quarter of 2014. On a QoQ basis, the number of persons engaged increased by a marginal 0.8% or 3,285 persons.

**Figure 3.3: Distributive Trade in Quarterly Employment 2015-2016**

![Persons Engaged](image)

<table>
<thead>
<tr>
<th>Quarter</th>
<th>Distributive Trade</th>
<th>Wholesale Trade</th>
<th>Retail Trade</th>
<th>Motor Vehicles</th>
</tr>
</thead>
<tbody>
<tr>
<td>1Q2015</td>
<td>1,642</td>
<td>979</td>
<td>415</td>
<td>248</td>
</tr>
<tr>
<td>2Q2015</td>
<td>1,645</td>
<td>983</td>
<td>414</td>
<td>247</td>
</tr>
<tr>
<td>3Q2015</td>
<td>1,855</td>
<td>989</td>
<td>418</td>
<td>249</td>
</tr>
<tr>
<td>4Q2015</td>
<td>1,684</td>
<td>1,002</td>
<td>426</td>
<td>250</td>
</tr>
<tr>
<td>1Q2016</td>
<td>1,684</td>
<td>1,002</td>
<td>426</td>
<td>254</td>
</tr>
</tbody>
</table>

*Source: DOS (2016a, 2016b, 2015a, 2015b, 2015c)*

Contribution from the Retail Trade sub-sector was RM92.7 billion, a YoY quarterly increase of RM5.3 billion or 6.1%. The increase was driven by Retail Sale of Automotive Fuel (12.5%), Retail Sale of Food, Beverages and Tobacco (9.2%) and Retail Sale from Stalls and Markets (7.6%). On a QoQ basis, sales value of this sub-sector recorded an increase of 2.4%. Year-on-year, the number of persons engaged increased by 2.7% or 26,227 persons. The number of persons engaged increased by 0.6% or 5,508 persons in this quarter as compared to the preceding quarter.

Sales value of Motor Vehicles sub-sector went up by 3.8% to RM35.8 billion as compared with the same quarter of the preceding year. The expansion was
contributed by Sale of Motor Vehicles (4.6%), Sale of Motor Vehicles Parts and Accessories (3.1%) and Maintenance and Repair of Motor Vehicles (3.0%). Quarter-on-quarter, sales value recorded an increase of 0.7 per cent. Number of persons engaged registered an increase of 3.3% or 7,858 persons as compared to the same period of the previous year. Quarter-on-quarter, the number of persons engaged increased by 0.8% or 2,013 persons.

In the 2nd quarter of 2015, the Distributive Trade sector recorded an increase of 5.0% compared to the corresponding quarter of 2014. This increase was propelled by Retail Trade subsector (7.2%), Wholesale Trade (4.0%) and Motor Vehicles (3.1%). On a QoQ basis, sales value showed a decrease of 0.4% from RM248.6 billion to RM247.7 billion. Total number of persons engaged in this sector was 1.6 million with an increase of 2.5% or 39,536 persons as compared to the same quarter of the previous year. Quarter-on-quarter the number of persons engaged rose by a marginal 0.1 per cent or 1,812 persons.

The Wholesale Trade sub-sector registered a 4.0% growth to RM121.9 billion as compared to last year. The growth was contributed by Wholesale of Household Goods (8.1%), Non-specialised Wholesale Trade (6.2%) and Wholesale of Food, Beverages and Tobacco (6.0%). Quarter-on-quarter, this sub-sector recorded an increase of 0.5%. The number of persons engaged rose by 2.8% or 11,170 persons as compared to the corresponding quarter of 2014. On a QoQ basis, the number of persons engaged decreased by a marginal 0.2% or 703 persons.

From the Retail Trade sub-sector an increase of RM6.0 billion or 7.2% as compared to the corresponding quarter of the previous year was recorded. The increase was driven by Retail Sale from Stalls and Markets (11.5%), Automotive Fuel (11.4%) and Retail Sale of Other Goods in Specialised Stores (9.4%). On a quarterly basis, sales value of this sub-sector fell by 2.3%. Year-on-year, the number of persons engaged increased by 2.2% or 21,571 persons. The number of persons engaged increased by a marginal 0.4% or 4,383 persons in this quarter as compared to the preceding quarter.

As for the Motor Vehicles sub-sector sales went up by 3.1% to RM35.6 billion as compared to the same quarter of 2014. The expansion was contributed by Maintenance and Repair of Motor Vehicles (4.0%), Sales of Motor Vehicles (3.7%) and Sales of Motor Vehicles Parts and Accessories (2.2%). Quarter-on-quarter, sales recorded an increase of 1.7%. The number of persons engaged registered an increase of 2.8% or 6,795 persons as compared to the same period of 2014. Quarter-on-quarter, the number of persons engaged decreased by a marginal 0.8% or 1,868 persons.

In the 1st Quarter of 2015 the Distributive Trade sector sales increased by 7.1% as compared to the corresponding quarter of 2014. This increase was propelled by Retail Trade subsector (11.3%), Motor Vehicles (7.5%) and Wholesale Trade (4.0%). On a quarterly basis, sales value showed an increase of 1.5% from
RM244.0 billion to RM247.7 billion. The total number of persons engaged in this sector was 1.6 million with an increase of 2.9% or 45,723 persons as compared to the same quarter of 2014. Quarter-on-quarter, the number of persons engaged rose by 1.5% or 23,725 persons.

Sales contribution from the Wholesale Trade sub-sector was RM120.5 billion or 4.0% growth to as compared to last year. The growth was contributed by Non-specialised Wholesale Trade (9.6%), Wholesale on a Fee or Contract Basis (8.5%) and Wholesale of Household Goods (7.2%). Quarter-on-quarter sales decreased by a marginal 0.2%. The number of persons engaged rose by 4.4% or 17,367 as compared to the corresponding quarter of 2014. On QoQ, the number of persons engaged increased significantly by 2.3% or 9,154 persons.

The Retail Trade sub-sector recorded an increase of RM9.4 billion or 11.3% as compared to the corresponding quarter of 2014. The increase was driven by Retail Sale of Automotive Fuel (14.4%), Retail Sale in Non-Specialised Stores (13.9%) and Retail Sale of Other Goods in Specialised Stores (10.8%). On QoQ, sales of the Retail sub-sector increased significantly by 3.2%. Year-on-year, the number of persons engaged increased by 2.3% or 21,889. The number of persons engaged increased by 1.1% or 10,203 in this quarter as compared to the preceding quarter.

Form the Motor Vehicles sub-sector sales went up by 7.5% to RM35.0 billion as compared with the same quarter of 2014. The expansion was contributed by Maintenance and Repair of Motor Vehicles (9.8%), Sale of Motor Vehicles Parts and Accessories (8.8%) and Sale, Maintenance and Repair of Motorcycles and Related Parts and Accessories (6.9%). The Quarter-on-quarter sales recorded an increase of 3.0%. The number of persons engaged registered an increase of 2.7% or 6,467 as compared to the corresponding period in 2014. The Quarter-on-Quarter number increased by 4,368 or 1.8%.

In the 1st quarter of 2016, sales value for the Distributive Trade sector continued to improve with an increase of 4.3% as compared to the 1st quarter of 2015. This increase was propelled by Retail Trade (7.9%) and Wholesale Trade (4.4%) although Motor Vehicles sales dropped by 5.5%. Compared to the previous quarter, there is an increase of 0.3% from RM258.4 billion to RM259.3 billion. The total number of persons engaged in this sector was 1.7 million with an increase of 2.5% or 41,199 persons as compared to the same quarter 2015. Quarter-on-quarter the number of persons engaged rose by 1.5% or 24,768.

The Wholesale Trade sub-sector contribution saw a 4.4% growth of RM126.7 billion as compared to the same quarter of 2015. The growth was contributed by Wholesale of Food, Beverages and Tobacco (7.9%), Wholesale of Household Goods (7.2%) and Non-specialised Wholesale Trade (4.6%). Compared to the previous quarter this sub-sector recorded an increase of 0.4%. Number of persons engaged rose by 2.7% or 11,135 as compared to the corresponding quarter of
2015. This was a significant increase of 2.3% or 9,659 persons from the previous quarter.

The Retail Trade sub-sector sales recorded an increase of RM7.3 billion or 7.9% as compared to the corresponding quarter in 2015. The increase was driven by Retail Sale via Stalls and Markets (10.8%), Retail Sale of Cultural and Recreation Goods in Specialised Stores (9.8%) and Retail Sale of Food, Beverages and Tobacco in Specialised Stores (8.9%). Compared to the last quarter, sales value of this sub-sector increased by 3.8 per cent. Year-on-year, the number of persons engaged increased by 2.4% or 23,647. The number of persons engaged increased by 0.9% or 9,411 as compared to the preceding quarter.

The Motor Vehicles sub-sector continued to perform poorly with a decline of 5.5% or RM33.1 billion as compared to the same quarter of 2015. This is due to the decline in sales of Motor Vehicles (-9.0%), Maintenance and Repair of Motorcycles and Related Parts and Accessories (-3.9%) and a marginal increase in Sales of Motor Vehicles Parts and Accessories (0.1%). Compared to the last quarter sales decreased by a whopping 9.0%. The number of persons engaged however, increased by 2.6 per cent or 6,418 persons as compared to the same period in 2015. This was an increase of 2.3% or 5,699 persons from the last quarter.

3.4 Disposable Income

The Distributive Trade sector grows in tandem with the disposable personal income\textsuperscript{30} of the population and therefore household consumption expenditure reflects the economy of the distributive trade sector. Other factors influencing the sector growth include the inflation rate, GDP growth, aging population and gross income.

Overall, the country continues to enjoy reasonable real GDP growth over the years even under global economic uncertainty as shown in Table 3.2. Inflation rate is always of concern but remains stable between 2-3% with positive policy actions. The aging population is growing at an annual growth of 6.2% between 2012 and 2016. Consumer expenditure in tandem with gross income and disposable income grew at an annual average of 2% between 2012 and 2016. The slower rates are due to the introduction of GST in 2015 and the depreciation of the Ringgit experienced recently.

\textsuperscript{30}Disposable personal income is often monitored as one of the many key economic indicators used to gauge the overall state of the economy; http://www.investopedia.com/terms/d/disposableincome.asp
### Table 3.2: Malaysia Country Economic Indicators\(^{31}\)

<table>
<thead>
<tr>
<th>Areas: 332,965 km(^2)</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>Average Annual Growth</th>
</tr>
</thead>
<tbody>
<tr>
<td>Economic indicators</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Real GDP Growth (% growth)</td>
<td>5.5</td>
<td>4.7</td>
<td>6</td>
<td>5</td>
<td>4.7</td>
<td>5.2</td>
</tr>
<tr>
<td>Inflation (% growth)</td>
<td>1.7</td>
<td>2.1</td>
<td>3.1</td>
<td>2.1</td>
<td>2.3</td>
<td>2.3</td>
</tr>
<tr>
<td>Population Aged 65+ ('000)</td>
<td>1,509.60</td>
<td>1,607.40</td>
<td>1,696.80</td>
<td>1,790.50</td>
<td>1,883.20</td>
<td>6.2</td>
</tr>
<tr>
<td>Consumer Expenditure (USD million)</td>
<td>164,167.80</td>
<td>176,568.90</td>
<td>187,830.60</td>
<td>168,452.80</td>
<td>177,422.80</td>
<td>2.0</td>
</tr>
<tr>
<td>Gross Income (USD million)</td>
<td>198,345.80</td>
<td>212,546.50</td>
<td>225,582.00</td>
<td>203,541.30</td>
<td>214,811.60</td>
<td>2.1</td>
</tr>
<tr>
<td>Disposable Income (USD million)</td>
<td>168,576.40</td>
<td>180,593.80</td>
<td>191,611.80</td>
<td>172,840.10</td>
<td>182,363.00</td>
<td>2.0</td>
</tr>
<tr>
<td>Internet Users ('000)</td>
<td>17,755.30</td>
<td>18,508.00</td>
<td>18,896.50</td>
<td>19,652.60</td>
<td>20,201.30</td>
<td>3.4</td>
</tr>
</tbody>
</table>

Source: Euromonitor International (2016)

### 3.5 Household Consumption Expenditure between 2009 and 2014

From the Report on Household Expenditure 2014\(^{32}\) which reports the overall monthly household consumption expenditure in years 2009 and 2014, the mean monthly household consumption expenditure for Malaysia increased from RM2,190 in 2009 to RM3,578 in 2014 which was 9.8 per cent per annum at the nominal value. While at a real value, the annual growth rate is 7.5 per cent for the same period (Figure 3.4).

In 2014, the biggest contributors to household consumption were for housing, water, electricity, gas and other fuels at 23.9% followed by food and non-alcoholic beverages at 18.9%, transport at 14.6% and Restaurants and hotels at 12.7%.

For these major contributors to household expenditures, the proportion for housing, water, electricity, gas & other fuels recorded an increment from 22.6 per cent in 2009 to 23.9 per cent in 2014, while food and non-alcoholic beverages expenditure decreased incrementally from 20.3% to 18.9% and transport from 14.9% to 14.6%. Expenditure on education has incrementally grown from 10.9% in 2009 to 12.7% in 2014.

---


There are variations in spending patterns across the range of household expenditure category. In the Khazanah Research Institute (KRI) report (2014), *The state of households*[^33], has shown that there are significant variations in spending patterns from low income to the higher income range as in Figure 3.5 below.

According to the study, the lower the household income, the higher the proportion spent on food, housing and utilities as a percentage of total expenditure. Therefore, lower income households would be disproportionately affected by rising food and utilities prices. The average monthly household expenditure is RM2,190 and median household expenditure is RM1,793.22 in 2010. This means half of Malaysian households fall into the lower expenditure categories, from those that spend less than RM500 a month to those that spend RM1,000 to RM2,000 a month.

Monthly household expenditure in urban areas tend to be higher than that of rural areas in the country (Figure 3.6). In 2014, urban expenditure recorded RM3,921 as compared to the rural expenditure at RM2,431 a difference of over 60%. The mean monthly household consumption expenditure in urban areas showed an increment at a rate of 9.3% annually from RM2,465 to RM3,921 while that in rural areas also increased at a rate of 8.4% annually from RM1,599 to RM2,431 between the period of 2009 and 2014.

These indicators are a reflection of higher merchandise trade activities in urban areas resulting from higher disposable incomes and greater opportunities for shopping. The overall high Compounded Annual Growth Rate (CAGR) of 9.8% over the period is indicative of dynamic growth of the distributive trade sector.

Findings in 2014 reveal that W.P. Putrajaya recorded the highest mean monthly household consumption expenditure of RM5,627, followed by W.P. Kuala Lumpur RM5,559, Selangor RM4,646, Melaka RM3,809 and Johor RM3,808. The other states recorded the mean monthly household consumption expenditure below the national level at RM3,578 (Figure 3.7). With the exception of Pulau Pinang, this reflects that the concentration of spending is in the more urban states in the country.
Compared to 2009, all states recorded an increase in the mean monthly household consumption expenditure. During the period, six states exceeded the national growth rate of 9.8 per cent. W.P. Putrajaya and Johor recorded the highest growth rate which was 12.7%, followed by W.P. Kuala Lumpur at 12.1%, Selangor at 11.1%, Terengganu at 10.0% and Negeri Sembilan at 10.0%. Terengganu is the only odd state, but can be explained by the concentration of O&G industries in the state that have a high-income workforce.

According to Khazanah Research Institute, KRI (2014), even though the majority of Malaysians are in the low-to-middle income category, there is a high level of
consumerism. A very high proportion of households own cars (78%), motorcycles (66%), refrigerators (96%), and washing machines (91%). Almost every household owns a television (98%) and a mobile phone (95%). More than 57% subscribe for pay Television (Astro) with 39% having an internet subscription (Figure 3.8).

Most Malaysians do not buy in cash but do so with easy credit. Generally, the wealthiest pay by cash while the better-off choose credit based on interest rates and the least well-off choose based on what is on offer and the instalment payments they can afford. For example, a Perodua Viva car was affordable at RM271 per month in 2014. KRI (2014) reported this as the scourge of ‘ansuran mudah’ in consumer spending.

The lower income group, the majority of Malaysian, will generally have very little savings from their disposable income, as the income is used for all the “necessary” living expenditure. However, purchasing ability of these is affected by many factors, such as increasing fuel cost due to the removal of subsidy, the GST introduction, and inflationary pressure from the falling Ringgit value. These have negative implication on the retail sector of distributive trade in the country. Nevertheless, the sector continues to grow as the Government also intervenes appropriately, basically to help the citizens face these vulgarities of the domestic economy with BR1M\(^{34}\) payment, bonuses to civil servants, price control on certain food items, \textit{Kedai Rakyat 1 Malaysia}\(^{35}\), PR1MA housing\(^{36}\), and personal income tax incentives, among others.

\(^{34}\) BR1M or “Bantuan Rakyat 1 Malaysia” program is devised by Prime Minister Datuk Seri Najib Tun Razak as part of the Government’s effort to ease the burden of the lower income group in Malaysia; http://www.br1m.info/about-br1m/

\(^{35}\) Kedai Rakyat 1 Malaysia is part of the 1Malaysia initiative, initiated by Prime Minister YAB Dato’ Sri Najib Tun Razak due to his concern over the increasing cost of living affecting the low income rakyat living in the urban areas; http://www.kedairakyat1malaysia.com.my/

\(^{36}\) Perumahan Rakyat 1Malaysia (PR1MA) Berhad was established under the PR1MA Act 2012 to plan, develop, construct and maintain high-quality housing with lifestyle concepts for middle-income households in key urban centres; https://www.linkedin.com/company/perbadanan-pr1ma-malaysia
Figure 3.8: Ownership of Vehicles, Household and Personal Goods

Source: KRI (2014)
Section 4: Policy and Regulation

Contents: (4.1) Key Policies on the Distributive Trade Sector; (4.2) Policies on Foreign Investment; (4.3) Distributive Trade Value Chain and the Regulation, (4.4) Distributive Trade Value Chain and the Regulation, (4.5) Regulatory Implementation and the Regulators

4.1 Key Policies on the Distributive Trade Sector

As the distributive trade activity is very important to the domestic economy both from the supply and demand perspectives certain national policies relating to the sector are necessary to protect both the businesses and the consumers.

On the supply side, the trade is dominated by medium, small and micro enterprises which are largely local businesses. Although tourist receipts are significant, the consumers are the local residences. On the nature of such character, it is in the interest of the country that the businesses in the trade need to be regulated and protected. Therefore, certain sub-sectors or categories of the business have prohibitions and restrictions with regard to foreign participation and ownership (Box 4.1).

Box 4.1: Restricted Sector in Distributive Trade

Guidelines on Foreign Participation in the Distributive Trade Services Malaysia

Please be informed that companies in the distributive trade services sector are required to comply with the Guidelines on Foreign Participation in the Distributive Trade Services Malaysia issued by the Ministry of Domestic Trade, Co-operatives and Consumerism. According to the Guideline, foreign involvement is restricted in certain sectors as outlined below. Therefore, applications for any long-term pass (more than 3 months) including Employment Pass for companies in these sectors is NOT ALLOWED. You may refer to http://www.kpdnkk.gov.my for more information.

Restricted sectors for foreign involvement under the Guidelines on Foreign Participation in the Distributive Trade Services Malaysia

1. Supermarket/mini market (less than 3,000 square sales floor area)
2. Provision shop/general vendor
3. Convenience store (that opens for business for 24 hours)
4. News agent and miscellaneous goods store
5. Medical hall (inclined towards traditional alternative medicines plus general dry foodstuff)

37 Expatriate Services Division, Immigration Department of Malaysia (2015); https://esd.imi.gov.my/portal/latest-news/announcement/guidelines-on-foreign-participation-in-the-distributive-trade-services-malaysia/
6. Fuel station with convenience store
7. Fuel station without convenience store
8. Permanent wet market store
9. Permanent pavement store
10. National Strategic Interest
11. Textile, restaurant (non-exclusive), bistro, jewellery shops
12. Others

Source: Immigration Department of Malaysia (2015)

Apart from the imposition of regulatory restriction, the Government has established key policies for the development of the sector and at the same time ensure adequate protection of consumers’ rights and interests. On the trade, the Government wants to encourage new modes of distribution, enhanced competitiveness, expanding e-commerce, improve linkages between suppliers and distributors and enhance Bumiputera participation. To protect the consumers, the Government wants to ensure price stability and to continue educating consumers of their rights (Box 4.2).

Box 4.2: National Policies on Distributive Trade

1) **Enhancing Competitiveness**

   Efforts to modernise, strengthen and enhance competitiveness of the distributive trade will be pursued to ensure sustainable development in a globalised and liberalized environment. Measures will also be undertaken to provide an enabling administrative and legislative environment.

2) **Developing New Modes of Distribution**

   The development of new distribution modes will continue to be encouraged to offer a wide variety of choices for consumers to suit their convenience and preferences. This will generate a positive competition effect, and it will help increase efficiency, improve services and lower cost.

3) **Expanding E-Commerce**

   Retailers will be encouraged to develop and up-grade their e-commerce in order to competitively offer a wider range of products and services on-line. Internet start-up retailers without a physical store presence will be also encouraged as it is less expensive to start and operate a business. To instil consumer confidence in on-line trading, emphasis will be place on the security aspect of e-commerce.

4) **Increasing Bumiputera Participation**

---

Efforts to provide credit facilities, business premises, technical and advisory services as well as training to increase Bumiputera participation in the retail and wholesale trade will proceed. Efforts will also be made to ensure Bumiputera entrepreneurs are able to secure business premises at strategic locations.

5) **Strengthening Linkages with Other Sectors**

Efforts will continue to focus on achieving better linkages between distributive trade and other sectors through an increase in economic activities, especially agriculture and manufacturing. In addition, a more efficient and market driven marketing and logistic chain will be developed to promote production and distribution based on consumer needs.

6) **Ensuring Price Stability**

A combination of policies involving both demand- and supply- related elements will be implemented in a flexible, coordinated and pragmatic manner. While adequate supply of essential goods will continue to be ensured to prevent undue price pressures, micro measures will be undertaken to address infrastructure and distribution bottlenecks.

7) **Consumer Education and Protection**

Consumer education will continue to be a means of increasing awareness on consumer rights to safeguard their interests, as increased consumer awareness on their rights will act as a deterrent against unethical trade practices.

*Source: EPU (2016)*

### 4.2 Policies and Foreign Participation in Distributive Trade

To protect and develop capacity of local businesses in merchandised trade and in particular the Distributive Trade sector, the Government has introduced Administrative Conditions\(^39\) (Box 4.3) on foreign participation in the sector. This intervention is built into existing regulatory requirements on licensing and approval for establishment of the trade businesses.

Foreign business operators engaged in the distributive trade services in Malaysia are therefore subject to policy requirements specified in the established Guidelines on Foreign Participation in the Distributive Trade Services\(^40\) issued by the Ministry of Domestic Trade, Cooperatives and Consumerism (MDTCC). Distributive traders include wholesalers, retailers, franchise practitioners, direct sellers, suppliers who channel their goods in the domestic market, and commission agents or other representatives including those of international trading companies.

---


According to Raslan.Loongs (2015)\textsuperscript{41} distributive trade businesses in Malaysia must obtain approval from the MDTCC in accordance with the \textbf{Guidelines on Foreign Participation in Distributive Trade Services Malaysia}, which came into effect on 6th January 2010. This is a policy document having no force of law. The sector is considered as an unregulated services sector\textsuperscript{42}. The term "\textit{unregulated}" is a misnomer as the Distributive Trade sector is subject to numerous policy requirements and administrative rules imposed by many different Federal and State authorities. Since the sector is \textit{regulated} it is subject to any existing regulations relating to incorporation, establishment, location, employment, taxation, products control, OSHE, trading operation, consumerism and others.

The Distributive Trade Guidelines (DTG) set out various operational, capitalisation and equity requirements based on the proposed retail stores specific format. Store categories include, hypermarkets, departmental stores, superstores, specialty stores, franchises, and other distribution formats. With the exception of hypermarkets, none of the retail store formats are presently subject to any equity requirements but may be required as a matter of policy to maintain a minimum paid up capital for each retail outlet. A summary of regulations for foreign participation in the Distributive Trade section by Christopher & Lee Ong, 2016\textsuperscript{43} is given in Appendix 2.

\begin{flushright}
\textsuperscript{42}BLESS, 2012, Checklist for Unregulated Services Sector Business Application; http://open.bless.gov.my/documents/10181/5fd579f2-3d9a-4f1f-9f51-0ead699d8826
\end{flushright}
Box 4.3: Requirements on Foreign Participation in Distributive Trade

**Administrative Conditions**

With effect from 6 January 2010, all proposals for foreign involvement in distributive trade shall obtain the approval of MDTCC. These include:

- Acquisition of interest;
- Mergers and/or takeover by foreign participation;
- Opening of new branches/outlets/chain stores;
- Relocation of branches/outlets/chain stores;
- Expansion of existing branches/outlets/chain stores;
- Buying over/taking over of outlets of other operators; and
- Purchase and sale of properties to operate distributive trade activities prior to obtaining the approval/licence from local authorities and other agencies to operate distributive trade activities.

Any ancillary business carried out by foreign business operators shall obtain prior approval of MDTCC.

Notwithstanding the above, any approval under the repealed guidelines shall continue in force and have effect as if it had been made under the guideline.

All distributive trade companies with foreign equity shall:

a) Appoint Bumiputera director/directors;

b) Hire personnel at all levels including management to reflect the racial composition of the Malaysian population;

c) Formulate clear policies and plans to assist Bumiputera participation in the distributive trade sector;

d) Hire at least 1 percent of the total hypermarket workforce from persons with disabilities;

e) To increase the utilisation of local airports and ports in the export and import of the goods;

f) To utilise local companies for legal and other professional services which are available in Malaysia;

g) Submit annual financial reports to the Ministry of Domestic Trade, Co-operatives and Consumerism; and

h) Comply with all by-laws and regulations of Local Authorities.

*Source: MIDA (2015)*

### 4.3 Distributive Trade Value Chain and Areas of Regulation Intervention

In an attempt to illustrate the myriad Federal and State government regulatory requirements placed on businesses, the study has constructed value chains for the
distributive trades (Box 4.4). The value chain indicates the key regulatory requirements that businesses have to face at each stage of their enterprise life cycle.

Generic regulation, such as taxation, occupational safety, health, and environment (OSHE), incorporations and industrial relations legislation are included in the value chain because they are a potential source of burden to business. These do not have a particular or discriminatory impact on the distributive trade sectors. However, there are other regulatory requirements incorporated in the key national policy areas that have discriminatory impacts (see Box 4.3), particularly on foreign participation in the sector. These policy requirements are built into licensing and establishment registration with the aim of protecting local SMEs and the development of SMIs which are the mainstay of the domestic economy.

Box 4.4: Distributive trades value chain and the regulatory map

<table>
<thead>
<tr>
<th>Key government intervention</th>
<th>Key stages of life cycle</th>
<th>Federal/State Regulatory regimes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Incorporation (types)</td>
<td>Establishment and construction/acquisition of premises</td>
<td>Business incorporation</td>
</tr>
<tr>
<td>Foreign participation</td>
<td></td>
<td>Land code/use and planning</td>
</tr>
<tr>
<td>Financing</td>
<td></td>
<td>Building code/By-laws</td>
</tr>
<tr>
<td>(access to finance)</td>
<td></td>
<td>Commercial tenancy/premise licensing</td>
</tr>
<tr>
<td>Construction regulation</td>
<td></td>
<td>Trade licensing</td>
</tr>
<tr>
<td>Trade classes/types</td>
<td></td>
<td>Transportation</td>
</tr>
<tr>
<td>National land transport regulation</td>
<td></td>
<td>Food safety</td>
</tr>
<tr>
<td>Trade classes &amp; practices</td>
<td></td>
<td>OHSE compliance</td>
</tr>
<tr>
<td>Product regulation</td>
<td></td>
<td>Land use and planning</td>
</tr>
<tr>
<td>(control items, standards, labelling, etc.)</td>
<td></td>
<td>Local government rates &amp; charges</td>
</tr>
<tr>
<td>Suppliers (SME/SMI)</td>
<td></td>
<td>Hazardous goods handling/transport</td>
</tr>
<tr>
<td>Trade practices</td>
<td></td>
<td>Product safety</td>
</tr>
<tr>
<td>Taxation (GST, Income tax)</td>
<td></td>
<td>Consumer protection</td>
</tr>
<tr>
<td>Industrial relations</td>
<td></td>
<td>Trading hours</td>
</tr>
<tr>
<td>Employment</td>
<td></td>
<td>OHSE requirements</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Employment</td>
</tr>
</tbody>
</table>
Regulatory interventions start from the establishment of the trade business. Most retail trade outlets or premises are through tenancy arrangement, although some businesses may purchase its own ready-built premises. There are also retail establishments, particularly the larger establishments, which may develop their own purpose-built premises. The construction of these premises is subject to a number of different regulations which are enforced by different regulators. This area is dealt with under the study on dealing with construction permits.

The wholesale trade and the larger retail trade may also be involved in upstream supply side such as the importation of merchandise goods. The importation of different types of goods is subjected to strict regulatory controls particularly those goods that have serious impact on public health and safety or the environment. Here again there are numerous regulations which are enforced by many different regulators. This area is covered in the study on logistics and warehousing of goods.

This particular study on the Distributive Trade sector will mainly focus on the retail side of the business life cycle, i.e. on the establishment of the business, the trade operation, growth and expansion, and final cessation or ownership change. There may be some overlapping concerns and issues with the other studies that impact the sector and will be analysed accordingly.

### 4.4 Regulatory Implementation and the Regulators

As mentioned earlier, the Distributive Trade sector is considered an unregulated services sector as it is not subject to a specific written regulation. It is therefore, subject to numerous policy requirements and administrative rules imposed by many different Federal and State authorities in areas relating to incorporation, establishment, location, employment, taxation, products control, OSHE, trading operation, and consumerism among others. The regulatory mapping for the life

<table>
<thead>
<tr>
<th>Suppliers (SME/SMI)</th>
<th>Foreign workers</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Islamic requirements</td>
</tr>
<tr>
<td></td>
<td>Food safety &amp; hygiene</td>
</tr>
<tr>
<td>Construction regulation</td>
<td>Expansion or Ownership change</td>
</tr>
<tr>
<td>Incorporation regulation</td>
<td>Ownership change</td>
</tr>
<tr>
<td>Corporation regulation</td>
<td>Cessation of operations</td>
</tr>
<tr>
<td>Redundancy provisions</td>
<td>Land code/use and planning</td>
</tr>
<tr>
<td></td>
<td>Building code/By-laws</td>
</tr>
<tr>
<td></td>
<td>Commercial tenancy/premise licensing</td>
</tr>
<tr>
<td></td>
<td>Trade licensing</td>
</tr>
<tr>
<td></td>
<td>Liquidation/insolvency</td>
</tr>
<tr>
<td></td>
<td>Land code/use and planning</td>
</tr>
</tbody>
</table>
cycle of Distributive Trade business is as shown in Box 4.5. It is to be noted here that this is a general Regulatory Map and is therefore not exhaustive, as there are other Government policy requirements and regulations applicable to certain types of firms, activities or products that are not specifically considered here.

**Box 4.5: Regulatory Map for Distributive Trade Life Cycle**

<table>
<thead>
<tr>
<th>Primary Regulation</th>
<th>Regulatory instrument</th>
<th>Regulator</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Business incorporation</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Companies Act 2016 [Act 777]</td>
<td>• Business name approval</td>
<td>▪ Company Commission Malaysia (SSM)44</td>
</tr>
<tr>
<td>• Registration of Businesses Act 1956 [Act 197]</td>
<td>• New business and renewal of business registration (with certificate)</td>
<td>▪ Malaysia Co-operative Societies Commission of Malaysia (SKM)45</td>
</tr>
<tr>
<td>• Trust Companies Act 1949 [Act 100]</td>
<td>• Changes in business particular</td>
<td>▪ MDTCC</td>
</tr>
<tr>
<td>• Limited Liability Partnerships Act 2012 [Act 743]</td>
<td>• Establishment and registration of co-operatives</td>
<td></td>
</tr>
<tr>
<td>• Malaysia Co-operative Societies Commission Act 2007 [Act 665]</td>
<td>• Guidelines on Foreign Participation in Distributive Trade Services Malaysia</td>
<td></td>
</tr>
<tr>
<td>• Malaysian Co-operative Societies Commission Act (Amendment) Act 2014 [Act 1470]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Co-operative Societies Act 1993 (Amendment) 2007 [Act 502]</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Public listing</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Securities Commission (Amendment) Act 2015</td>
<td>• Listing requirements are administered by Bursa Malaysia Berhad (Malaysian Stock Exchange)46</td>
<td>▪ Security Commission Malaysia (SC)</td>
</tr>
<tr>
<td>• Capital Markets And Services (Amendment) Act 2015</td>
<td></td>
<td>▪ Bursa Malaysia47</td>
</tr>
<tr>
<td>• Capital Markets and Services Act 2007</td>
<td></td>
<td>▪ MITI</td>
</tr>
<tr>
<td>• Securities Commission Malaysia Act 1993</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Securities Industry (Central Depositories) Act 1991</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Demutualisation (Kuala Lumpur Stock Exchange) Act 2003</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Securities Industry Act 1983</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Rules of Bursa Malaysia Securities Berhad</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Futures Industry Act 1993</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Establishment licensing</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Companies Act 2016 [Act 777]</td>
<td>• Business name approval</td>
<td>▪ Company Commission Malaysia (SSM)</td>
</tr>
<tr>
<td>• Registration of Businesses Act 1956 [Act 197]</td>
<td>• New business and renewal of business registration (with certificate)</td>
<td>▪ Malaysia Co-operative Societies</td>
</tr>
<tr>
<td>• Trust Companies Act 1949 [Act 100]</td>
<td>• Changes in business particular</td>
<td></td>
</tr>
<tr>
<td>• Limited Liability Partnerships Act 2012 [Act 743]</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

---

44 Companies Commission of Malaysia (SSM); http://www.ssm.com.my/en/about-ssm
46 Bursa Malaysia, Listing Requirements; http://www.bursamalaysia.com市场/regulation/rules/listing-requirements/main-market/listing-requirements
47 Bursa Malaysia (is the frontline regulator of the Malaysian capital market); http://www.bursamalaysia.com/market
| Malaysia Co-operative Societies Commission Act 2007 [Act 665] | Establishment and registration of co-operatives | Commission of Malaysia (SKM) |
| Local Government Act 1976 [Act 171] | Local authority licensing e.g. business premise, advertisement, alcohol, entertainment, parking (see example DBKL[^48]) | MDTCC regulatory agencies/divisions and enforcement division |
| | Local authority assessment tax | • Local Authorities e.g. DBKL |
| | Quota control for controlled items | • Federal (Ministries) and statutory regulatory agencies e.g. MOH, MOA, Customs, LHDN, EPF, SOCSO, HRDF, DOSH, Immigration, etc. |
| | Sales permits | |
| | Price control and anti-profiteering checks | |
| | Controlled items permits | |
| | GST registration and collection | |
| | Employment registration e.g. EPF, SOCSO, HRDF | |
| | Workforce OSH (e.g. food handlers) | |
| | Foreign workforce permits | |
| | Guidelines on Foreign Participation in Distributive Trade Services Malaysia | |
| | Construction permits | |
| | Local authority licensing | |
| | Other taxes | |
| | Business name approval | |
| | New business and renewal of business registration (with certificate) | |
| | Changes in business particular | |
| | Guidelines on Foreign Participation in Distributive Trade Services Malaysia | |
| | Construction permits | |
| | Local authority licensing | |
| | Company Commission Malaysia (SSM) | |
| | Malaysia Co-operative Societies Commission of Malaysia (SKM) | |
| | Local authorities | |
| | MDTCC | |
| | Franchise Register | |
| | Technical authorities e.g. | |

Nevertheless, the principal regulator can be deemed to be the Ministry of Domestic Trade, Co-operatives and Consumerism (MDTCC) as many trading regulations are under its agencies and regulatory and enforcement divisions (Box 4.6 and Box 4.7). The regulations affecting the establishments and operations of the distributive trade businesses implemented by the MDTCC are:

- **Control of Supplies Act 1961**
- **Hire Purchase Act 1967**
- **Weights and Measures Act 1972**
- **Copyright Act 1987**
- **Direct Sales and Anti-Pyramid Scheme Act 1993;**
- **Consumer Protection Act 1999;**
- **Optical Discs Act 2000;**
- **Price Control and Anti-profiteering Act 2011;**
- **Trade Descriptions Act 2011**
- **Franchise Act 1998**
- **Anti-Money Laundering and Anti-Terrorism Financing Act 2001**
- **Competition Commission Act 2010**

---

49 Malaysia Department of Insolvency (MDI); http://www.insolvensi.gov.my/
Box 4.6: Regulatory Agencies and Functions under the MDTCC

1. The **Companies Commission of Malaysia** (SSM) is a statutory body responsible for the regulation of companies and businesses in Malaysia. SSM was established on 16 April 2002 under the Companies Commission Act 2001 [Act 614]. SSM’s main function is to regulate all companies and businesses in Malaysia through the Companies Act 1965 [Act 125] and the Registration of Businesses Act 1956 [Act 197]. Website: www.ssm.com.my


3. On 1 January 2008, the Department of Cooperative Development Malaysia was transformed to become the **Cooperative Commission of Malaysia** (CCM). The Cooperative Societies Act 1993 (Act 502) was enacted to amalgamate the cooperative law throughout Malaysia and was enforced effective from 22 January 1994. Website: http://www.skm.gov.my

4. The Competition Commission Act 2010 was gazetted and enforced on 1 January 2011. Based on section 5(1) Competition Commission Act 2010; the **Malaysian Competition Commission** (MyCC) shall consist of members appointed by the Prime Minister as recommended by the Minister; namely, a Chairperson; four members representing the Government and not less than three but no more than five other members, with experience and knowledge in matters related to business, industry, economic law or any other qualification stipulated by the Minister. Website: www.mycc.gov.my

5. The **Services Industry Division** (http://www.kpdnkk.gov.my/) has the objective to oversee the development of the (a) Unregulated Services and (b) E-Commerce. The main functions are:
   - To develop the unregulated services sector and to be the focal point for the ministry in determining the liberalisation policy in terms of services sector for the international negotiations
   - To regulate the development of the convenience store with foreign interest
   - To develop and to regulate e-commerce matters including to be the focal point for cross border disputes settlement; and
   - To review and to reform the policy and mechanism of Malaysia Trustmark implementation in which KPDNKK is the lead agency

6. The **Consumerism Standards Division** (http://www.kpdnkk.gov.my/) is one of the core divisions under the Ministry’s main wing of Franchise and Consumerism. This division is responsible to review, formulate and implement legislations related to safety standards on consumer goods. The division is also responsible for disseminating information to all levels of societies on issues pertaining to standards and consumer goods safety in accordance with the National Consumer Policy (NCP). The key objectives are:
   - To implement regulations/orders pertaining to safety standards on consumer goods through the establishment of clear legislative provisions;
   - To establish collaboration among other Government agencies in implementing policies and legislations related to safety standards on consumer goods; and
   - To increase consumer protection on the aspect of consumer goods safety.
7. **Enforcement Division** [http://www.kpdnkk.gov.my/](http://www.kpdnkk.gov.my/) is responsible for the combat of domestic trade malpractices. (Box 4.7)

*Source: MDTCC; http://www.kpdnkk.gov.my/*

As the principle authority on distributive trade and retail trade activities, the MDTCC development and regulatory functions are guided by four established national policies. These are:


2) The **Fair Trade Practices Policy** (FTPP)\(^50\), approved on 26 October 2005 with the following policy objectives:

- Promote and protect competition in the market;
- Create dynamic and competitive entrepreneurs;
- Provide fair and competitive market opportunities for businesses;
- Prohibit anti-competitive practices including those originating from outside Malaysia and affecting the domestic territory;
- Prohibit unfair trade practices in the economy;
- Promote rights of SMEs to participate in the market place;
- Promote consumer welfare; and
- Encourage socio-economic growth, generate efficiency and equity;


---

Box 4.7: Regulatory Enforcement Function in MDTCC

The primary function of the Enforcement Division in MDTCC is to combat domestic trade malpractices. The key areas of enforcement involves:

a) The protection of intellectual property rights
b) The eradication of exploitation of subsidised items
c) The protection of consumer rights
d) The monitoring of supplies and prices of goods based on the following laws and subsidiary legislations:
   - Control of Supplies Act 1961;
   - Hire Purchase Act 1967;
   - Weights and Measures Act 1972;
   - Copyright Act 1987;
   - Direct Sales and Anti-Pyramid Scheme Act 1993;
   - Consumer Protection Act 1999;
   - Optical Discs Act 2000;
   - Price Control and Anti-profiteering Act 2011;
   - Trade Descriptions Act 2011
   - Franchise Act 1998
   - Anti-Money Laundering and Anti-Terrorism Financing Act 2001

The functional activities of the division are:

- The investigation of consumer complaints under the laws enforced;
- The protection of intellectual property rights and the eradication of piracy under the Copyright Act 1987 and eradication of the production, distribution and selling of counterfeit goods under the Trade Descriptions Act 2011;
- The regulation of manufacturing of optical discs under the Optical Disc Act 2000, the issuance and the enforcement of optical disc label under the Trade Descriptions (Optical Disc Label) Order 2010
- The eradication of exploitation of subsidised controlled items and to stabilise the supply of essential goods in the market under the Control of Supplies Regulations 1974 and Control of Supplies Act 1961
- The issuance of Authorisation Letter under the Control of Supplies Act 1961
- The stabilisation of prices of essential goods in the market under the Price Control and Anti-profiteering Act 2011
- The implementation of Festive Season Price-Controlled Scheme under the Price Control and Anti-profiteering Act 2011
- The regulation of Franchise activity

Source: MDTCC; http://www.kpdnkk.gov.my/
Appendices:
Appendix 1: DOS Press Releases on Quarterly Distributive Trade Performance

<table>
<thead>
<tr>
<th>Sub-sector</th>
<th>Sales value RM Million</th>
<th>% Changes</th>
<th>Number of Persons Engaged</th>
<th>% Changes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Distributive Trade</td>
<td>259,298</td>
<td>4.3%</td>
<td>1,684,026</td>
<td>2.5%</td>
</tr>
<tr>
<td>Wholesale Trade</td>
<td>126,684</td>
<td>4.4%</td>
<td>426,308</td>
<td>2.7%</td>
</tr>
<tr>
<td>Retail Trade</td>
<td>99,548</td>
<td>7.9%</td>
<td>1,002,394</td>
<td>2.4%</td>
</tr>
<tr>
<td>Motor Vehicles</td>
<td>33,062</td>
<td>-5.5%</td>
<td>254,131</td>
<td>2.6%</td>
</tr>
</tbody>
</table>

1st Quarter 2016

<table>
<thead>
<tr>
<th>Sub-sector</th>
<th>Sales value RM Million</th>
<th>% Changes</th>
<th>Number of Persons Engaged</th>
<th>% Changes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Distributive Trade</td>
<td>258,421</td>
<td>5.9%</td>
<td>1,684,026</td>
<td>2.6%</td>
</tr>
<tr>
<td>Wholesale Trade</td>
<td>126,082</td>
<td>4.5%</td>
<td>426,308</td>
<td>2.7%</td>
</tr>
<tr>
<td>Retail Trade</td>
<td>96,006</td>
<td>7.5%</td>
<td>1,002,394</td>
<td>2.5%</td>
</tr>
<tr>
<td>Motor Vehicles</td>
<td>36,332</td>
<td>6.9%</td>
<td>249,623</td>
<td>2.6%</td>
</tr>
</tbody>
</table>

4th Quarter 2015

<table>
<thead>
<tr>
<th>Sub-sector</th>
<th>Sales value RM Million</th>
<th>% Changes</th>
<th>Number of Persons Engaged</th>
<th>% Changes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Distributive Trade</td>
<td>252,374</td>
<td>5.0%</td>
<td>1,655,315</td>
<td>2.9%</td>
</tr>
<tr>
<td>Wholesale Trade</td>
<td>123,802</td>
<td>4.6%</td>
<td>417,755</td>
<td>3.3%</td>
</tr>
<tr>
<td>Retail Trade</td>
<td>92,733</td>
<td>6.1%</td>
<td>988,511</td>
<td>2.7%</td>
</tr>
<tr>
<td>Motor Vehicles</td>
<td>35,839</td>
<td>3.8%</td>
<td>249,049</td>
<td>3.3%</td>
</tr>
</tbody>
</table>
### 2nd Quarter 2015

<table>
<thead>
<tr>
<th>Sub-sector</th>
<th>Sales value</th>
<th>Number of Persons Engaged</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>RM Million</td>
<td>YoY</td>
</tr>
<tr>
<td>Distributive Trade</td>
<td>247,657</td>
<td>5.0</td>
</tr>
<tr>
<td>Wholesale Trade</td>
<td>121,895</td>
<td>4.0</td>
</tr>
<tr>
<td>Retail Trade</td>
<td>90,183</td>
<td>7.2</td>
</tr>
<tr>
<td>Motor Vehicles</td>
<td>35,579</td>
<td>3.1</td>
</tr>
</tbody>
</table>

### 1st Quarter 2015

<table>
<thead>
<tr>
<th>Sub-sector</th>
<th>Sales value</th>
<th>Number of Persons Engaged</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>RM Million</td>
<td>YoY</td>
</tr>
<tr>
<td>Distributive Trade</td>
<td>247,654</td>
<td>7.1</td>
</tr>
<tr>
<td>Wholesale Trade</td>
<td>120,463</td>
<td>4.0</td>
</tr>
<tr>
<td>Retail Trade</td>
<td>92,194</td>
<td>11.3</td>
</tr>
<tr>
<td>Motor Vehicles</td>
<td>34,996</td>
<td>7.5</td>
</tr>
</tbody>
</table>

*Source: DOS (2016a, 2016b, 2015a, 2015b, 2015c)*
Appendix 2: Summary of MDTCC Regulatory Role in Distributive Trade

"Distributive trade" is given a broad definition in the Guidelines on Foreign Participation in the Distributive Trade Services ("DTG") published by the MDTCC to comprise all linkage activities that channel goods and services down the supply chain to intermediaries for resale or to final buyers. The definition of "distributive trade" does not include: (i) manufacturing companies; and (ii) companies granted the status of regional establishments by the Malaysian Industrial Development Authority. The MDTCC requires all proposals for foreign participation in distributive trade in Malaysia and any ancillary business to obtain prior approval of MDTCC. "Foreign participation" is defined in the DTG to mean any interest, associated group of interests or parties acting in concert which comprises: (i) individual who is not a Malaysian citizen including Permanent Resident; or (ii) foreign company or institutions; or (iii) local company or local institution whereby the parties as stated in item (i) and/or (ii) hold more than 50% of the voting rights in the company or institution. A non-exhaustive list of foreign activities which require the prior approval of MDTCC is set out in the DTG which includes: (i) acquisition of interest in the distributive trade company; (ii) mergers and/or takeovers by foreign interests; (iii) opening of new branches/outlets/chain stores; (iv) relocation of branches/outlets/chain stores; (v) expansion of existing branches/outlets/chain stores; (vi) buying over/taking over outlets of other operators; and (vii) purchase and sale of properties to operate distributive trade activities prior to obtaining the approval/licence from local authorities and other agencies to operate distributive trade activities. The DTG provides that all distributive trade companies with foreign equity shall: (i) appoint Bumiputera director/directors; (ii) hire personnel at all levels including management to reflect the racial composition of the Malaysian population; (iii) formulate clear policies and plans to assist Bumiputera participation in the distributive trade sector; (iv) hire at least one percent (1%) of the total hypermarket workforce from persons with disabilities; (v) increase the utilisation of local airports and ports in the export and import of the goods; (vi) utilise local companies for legal and other professional services which are available in Malaysia; (vii) submit annual financial reports to the MDTCC; and (viii) comply with all by-laws and regulations of local authorities.

The DTG further provides specific incorporation, capital and equity structure conditions for (i) hypermarkets; (ii) department stores; (iii) superstores; (iv) specialty stores; (v) franchisor and franchisee; and (vi) various other distribution formats (i.e. other types of distributive trade businesses not specified in items (i) to (v) which will be considered on the merits of each case with particular reference to their contribution to the socio-economic development of Malaysia). All six (6) types of distributive trades are required to be carried out by companies incorporated locally under the Companies Act, 1965. There are different minimum capital requirements, operational conditions as well as environmental and public interest conditions for each type of distributive trade company. For instance, the DTG specifies that an impact study on existing local retailers should be carried out if the store is to be operational in a standalone building or if the business floor area is not less than 5,000 square meters. Businesses should also ensure a safe and clean environment as well as efficient use of energy. The DTG further imposes an additional equity structure condition on any foreign involvement in hypermarkets. Distributive trade companies operating hypermarkets are required to have at least thirty percent (30%) equity participation by Bumiputera. A grace period of three (3) years for compliance may be given by the MDTCC upon approval to operate a hypermarket. This requirement also applies to operations established prior to the coming into effect of the DTG. However, hypermarket operators are not allowed to open a new branch in Malaysia unless it has fulfilled the requirement of 30% Bumiputera ownership in the company's equity structure.

Although not specifically stated in the DTG, failure to comply with the conditions and approval requirements in the DTG can result in administrative sanctions against a distributive trade company with foreign involvement such as rejection by the Malaysian immigration authorities of any application by foreigners for an employment pass.

It should be noted that the MDTCC has provided for a prohibition of foreign involvement in certain distributive trades listed in the DTG. These include: (i) supermarket/mini market (less than 3000 square meters sales floor area); (ii) provision shop/general vendor; (iii) convenience store (that opens for business for 24 hours); (iv) news agent and miscellaneous goods store; (v) medical hall (inclined towards traditional and alternative medicines plus general dry foodstuff); (vi) fuel stations (with or without convenience store); (vii) permanent wet market store; (viii) permanent pavement store; (ix) national strategic interest; (x) textile, restaurant (non-exclusive), bistro, jewellery shops; and (xi) others as deemed fit by the MDTCC.

A key point that has been clarified by the MDTCC since the implementation of the DTG is that foreign participation in companies that are purely service providers and do not distribute or supply goods are still required to obtain the MDTCC's approval prior to the commencement of business. This sector is known as 'Unregulated Services' and falls under the purview of the 'Services Industry' division of the MDTCC. Although there is no express provision in the DTG stating that the scope of the DTG extends to companies carrying out Unregulated Services that have foreign participation, the MDTCC has taken the view that Unregulated Services would fall under the heading of 'Various Other Distribution Formats' and accordingly, would need to comply with the conditions as set out in the DTG.

The MDTCC has published a list of sub-sectors under the scope of Unregulated Services which would require the approval of the MDTCC. These include: (i) market research and public opinion polling services; (ii) management consulting services; (iii) other business services; (iv) repair services incidental to metal products/machinery and equipment; (v) other land transport services; (vi) supporting services for road transport; (vii) services related to management consulting; (viii) building-cleaning services; (ix) photographic services; (x) leasing or rental services concerning machinery and equipment without operator; (xi) leasing or rental services concerning personal and household goods; (xii) services furnished by membership organizations; (xiii) other services (e.g. dry cleaning services, hairdressing and barbers’ services etc.); (xiv) research and experimental development services on social sciences and humanities; and (xv) real estate services involving own or leased property.

It should be noted that products and services governed by other Acts such as petroleum products, explosives and agricultural raw materials are subject to other acts and regulations for specific reasons. Distributive trade companies intending to carry out the distribution of such products would be required to observe different requirements, conditions and/or rules imposed by other government authorities depending on the types of goods intended to be distributed by the companies. As an illustration, distribution of pharmaceutical, medicinal and orthopaedic products would require a licence from the Ministry of Health Malaysia.

*Source [an extract]: Christopher & Lee Ong (2016)*
Section 5: Issues and Feasible Options

Contents: (5.1) Introduction; (5.2) Issues and Options; (5.2.1) Issue No. 1: Prohibition of franchisor to establish its own outlets; (5.2.2) Issue No. 2: Foreign participation in relation to the Guidelines on Foreign Participation in the Distributive Trade Services (revision 2010); (5.2.3) Issue No. 3: Issue No. 3: Waiting time and costs burden in business licensing; (5.2.4) Issue No. 4: The use of agents in dealing with authorities; (5.2.5) Issue No. 5: Enforcement of Anti-Profiteering; (5.2.6) Issue No 6: Long Waiting Time for Halal Certification; (5.2.7); Issue No. 7: Regulation on Sales Events; 5.2.8 Issue No. 8: Freeze on Foreign Workers (5.3) Conclusion

5.1 Introduction

The institutional framework of governance in Malaysia is highly complex and as a result, the regulatory compliance in doing business in the country can be nightmarishly complicated. Firstly, the Government of Malaysia\(^{52}\) has three levels of government, the Federal Government, the State Government and the Local Government. Although we are one government, at each level there are significant variations in regulation, regulatory implementations, administrative rules and requirements. There are thirteen states and a Federal Territory and over 140 local authorities (city halls, town and municipal councils) and as such the rules of doing business vary across the country and locality.

At the federal level, there are 27 ministries and a Prime Minister’s Office\(^{53}\). These ministries implement numerous national policies and federal regulations often through independent regulatory authorities under various names such as agencies (e.g. Malaysia Qualifying Agency), departments (e.g. Department of Civil Aviation), councils (e.g. Malaysian Medical Council), statutory bodies (e.g. Construction Industry Development Board), boards (e.g. Board of Engineers), registries (e.g. Franchise Register), commissions (e.g. Malaysian Communications and Multimedia Commission), authorities (e.g. Malaysian Industrial Development Authority) or even fund (e.g. Human Resource Development Fund Malaysia). There are also business entities which may be private or government-controlled companies that carried out regulatory activities. Depending on the type of business, the entrepreneurs have to deal with different authorities which have their own legal instruments and implementation rules and criteria.

On the business side, the distributive trades involve different types of businesses or a combination of businesses across the whole supply chain. Supply chains vary in complexity and on the types of products traded. The larger corporation or company may be involved in many activities across the supply chain. Each corporation may be configured differently with the main holding company owning

\(^{52}\) Government o Malaysia, Wikipedia, the free encyclopaedia; https://en.wikipedia.org/wiki/Government_of_Malaysia

\(^{53}\) Government ministries and agencies, One Stop Malaysia; http://www.onestopmalaysia.com/directory/government/ministry/
many different subsidiaries and associate companies to create competitive advantages in the trade. At the retail end, complexity is exacerbated with the variation in retail format being regulated, particularly on foreign participation. Today the brick-and-mortar retailing is facing *creative destruction*\(^{54}\) from virtual stores in e-commerce which is adding complexity to the already complex marketspace. The complexity of the trade makes regulatory interventions difficult and frequently ineffective. In this report, case examples from randomly selected firms’ websites, are highlighted to show the complexity of business models and formats in the retail trade and are used to provide greater clarity on the issues of concern.

This Section 5 reports on the issues raised by the retail businesses and interested parties of this sub-sector. The issues are captured through direct interviews with businesses and their representatives from business chambers and trade associations. A total of 39 respondents representing individual firms and various retail trades were interviewed about their views and experiences on compliance with existing rules and regulations. They represent the retailers from retail chains, speciality stores, hypermarkets (both foreign and local) to mini-markets and sundry stores. The report then analyses these issues on the basis of regulatory (compliance) burdens and formulates feasible options to reduce any unnecessary regulatory burdens through further analysis and background studies. The Draft Report will be used to verify and validate the issues, the analysis and options with other key stakeholders (business persons, regulators, trade associations and other government agencies) to come up with the recommended options in further public consultations. This Draft Report highlights eight issues of major impact on the retail trade and proposed feasible options for them.

5.2 Issues and Options

The issues reported are issues relating to regulatory compliance and those regulatory requirements arising from policy initiatives of the Government. These issues are raised by existing businesses from interviews made with the retail trades sub-sector, covering both foreign-owned\(^{55}\) and locally incorporated business entities. The firms are large companies (multinationals, Bursa listed corporations and large private limited companies) and samples of SMEs. These companies are contacted individually or through the trade associations and development agencies including:

1. Japan External Trade Organization, Malaysia (JETRO)\(^{56}\);
2. SME Corporation Malaysia (SME Corp.); http://www.smecorp.gov.my/

\(^{54}\) Creative Destruction by W. Michael Cox and Richard Alm; http://www.econlib.org/library/Enc/CreativeDestruction.html

\(^{55}\) Foreign-owned companies are companies incorporated in Malaysia with foreign equity of more than 50%.

\(^{56}\) https://www.jetro.go.jp/malaysia/
5.2.1 Issue No. 1: Prohibition of franchisor to establish its own outlets
(Franchise Act 1998)

JETRO, the Japan External Trade Organisation, representing Japanese investors, raised the issue on the investment in Malaysia by a Japanese convenience store chain, a major Japanese franchisor and operator of convenience stores. The Japanese investor wants to invest in Malaysia in a big way but the Franchise Act 1998 has a prohibition on this.

Accordingly, Section 29 (3) of the said Act, which states, “The franchisee shall operate the business separately from the franchisor, and the relationship of the franchisee with the franchisor shall not at any time be regarded as a partnership, service contract or agency” prohibits a franchisor from owning its franchising outlets. This is based on the a priori assumption that doing so will result in an unfair competitive advantage that this outlet would have compared to its other franchised outlet. This is questionable for a convenience store as such an outlet serves a specific localised territory. You do not open a similar outlet next to each other and therefore there is no direct competition between the same franchise outlets.

Japan has three major convenience store chains – Lawson Japan, 7Eleven Japan, and FamilyMart Japan. These businesses have become highly

57 http://mcha-jp.com/21864
58 http://lawson.jp/en/about/message/cycle/
60 http://www.family.co.jp/english/index.html
integrated across their value chains from upstream manufacturing (including services) to the downstream retailing outlets (convenience stores). Franchising is but one of the means of the downstream supply chain. Opening their own outlets and being operated by contract workers allows the franchisors to develop their contract workers into capable franchisees. In a sense, this is a good approach to develop new entrepreneurs as franchisees. Box 5.1 illustrates a Case Example of Lawson Japan.

This prohibition of owning their own outlets makes it unfavourable for the investors because they then have limited opportunity to develop the downstream outlets where revenue is generated (Box 5.2: Prohibited Activities to Foreign Investments in Retail Trade). They are therefore unable to invest into the country as a business. On this, the regulation is in conflict with the development policy of encouraging FDI into the country, liberalising the services sector and developing new entrepreneurs.

Box 5.1: Case Example of Lawson Japan

<table>
<thead>
<tr>
<th>History: Origins of Lawson</th>
</tr>
</thead>
<tbody>
<tr>
<td>The company name of Lawson and its trademark white milk can against a blue background dates back to 1939 in Ohio, the United States, where J. J. Lawson ran a dairy milk store. &quot;Mr. Lawson's milk store&quot; was locally renowned for its fresh and delicious milk and many customers came to buy milk there every morning. J. J. Lawson subsequently established Lawson Milk Co. and developed this into a chain of stores selling various commodities including daily necessities mainly in the northeast of America. The chain name &quot;Lawson&quot; and the milk can logo daily evoking an American dairy farm originated out of this milk trader in the United States. In 1959, Lawson Milk Co. became an affiliate of the American food giant Consolidated Foods Inc. and continued to widely expand its network of stores out of Ohio while establishing the convenience store operating system.</td>
</tr>
<tr>
<td>Opening of the First Lawson Store</td>
</tr>
<tr>
<td>Lawson's operations in Japan began with the opening of the first Lawson store in Sakurazuka (Minami Sakurazuka in Toyonaka City, Osaka Prefecture) on June 14, 1975. At that time, Daiei, which was the parent company of Lawson, had entered into a consulting agreement with Consolidated Foods Inc. The first Lawson store in Japan was established as part of a unique franchise system based on the know-how of Lawson Milk Co. The first store sold party foods on an American theme and was very different from the Lawson stores of today. In September 1975, the first franchise store, the &quot;Momoyama Store,&quot; was opened and this heralded the full-scale deployment of the franchise chain.</td>
</tr>
</tbody>
</table>
Lawson continues to increase corporate value by leveraging its unique customer-oriented business model as a “manufacturing retailer based on a small commercial area model,” through “R&D in pursuit of innovation” and by “deploying an advanced franchise system.” The Company optimizes its business strategies to ensure this model’s appropriate implementation.

Lawson seeks to increase both its “visible capital,” such as resources and funds specified in the financial statements, and its “invisible, but tangible capital” such as human capital and information, by investing appropriately in these business strategies. Lawson has continued to contribute to society as a company indispensable to local communities by adhering to its “Corporate Value Creation Cycle.”
stationery, and sundries that had generally been marketed by individual category in separate stores were sold together with an eye toward promoting consumer convenience. Over the years, the services component has been added to steadily augment the function and role of convenience stores in society. This includes home delivery, third-party bill settlement, concert ticket sales, ATM banking, and postal services. By addressing the small inconveniences of life and solving difficulties faced by local communities, the convenience store industry has enjoyed solid growth. Industry growth was particularly supported by single-person households, namely men in their 20s and 30s. Against the backdrop of continued growth in the convenience store industry, Lawson undertook anticipatory investments in order to build stores that match the needs of customers, taking into consideration population trends and changes in society. The Company has rolled out a succession of new formats. In 2001, the company launched the health-oriented NATURAL LAWSON format. This was followed by the fresh food-type convenience store, LAWSON STORE100, in 2005. Making the most of its unique customer-driven research and development of products that continue to enhance convenience, its position as a manufacturing retailer based on small commercial areas engaged in activities that extend across the entire supply chain, and its franchise system that produces store owners well versed in the needs of the community, Lawson is steadily expanding its nationwide network of stores. Going forward, Lawson will continue to promote its corporate philosophy of “Creating Happiness and Harmony in Our Communities” amid ongoing changes in society.

**Franchising:** From a management and store operating perspective, reinforcing relationships with franchised stores will be increasingly important for the company to prevail over the competition. Historically, the company has conducted Lawson Seminar and Owners’ Meeting events to convey and share with franchise owners our Corporate Philosophy, strategies, and principles. In order to build robust stores and forge a strong position within each community, the company has also held Area Meeting events to share best practices and reinforce collaboration. Looking ahead, the company will endeavour to further reinforce these relationships through a variety of initiatives. In addition, in fiscal 2015, has accelerated the implementation of a new franchise contract, in which headquarters covers a portion of franchise stores’ disposal losses, and activated a new unconventional semiautomatic ordering system based on a fundamental review of the operations. The company will, for example, expand mechanisms to support outstanding franchise owners who exhibit a strong entrepreneurial spirit.

*Source: Lawson Japan: http://lawson.jp/en/about/message/cycle/ (29/10/16)*

Box 5.2: Prohibited Areas to Foreign Investments in Retail Trade
According to the Guidelines on Foreign Participation In The Distributive Trade Services Malaysia of the Ministry of Domestic Trade Co-Operatives And Consumerism, the following retail trade activities are prohibited to foreign participation:

1. Supermarket/mini market (less than, 3000 square meters sales floor area)
2. Provision shop/General vendor
3. Convenience store (that opens for business for 24 hours)
4. News agent and miscellaneous goods store
5. Medical hall (inclined towards traditional alternative medicines plus general dry foodstuff)
6. Fuel Station with convenience store
7. Fuel Station without convenience store
8. Permanent wet market store
9. Permanent pavement store
10. National Strategic Interest
11. Textile, restaurant (non-exclusive), bistro, jewellery shops
12. Others.


Option 1: Maintain the status quo

This will result in losing potential FDI with integrated supply chain. Such FDI has great multiplying potential to create business opportunities across the total product and services value chain. This will also mean that lost opportunity for the development of new individual franchisees in convenience stores. Currently, only large corporations like Berjaya who are master franchisors for Kenny Rogers Roasters, or Berjaya Starbucks Coffee Company Sdn. Bhd. or 7-Eleven Malaysia Sdn. Bhd, the chain of convenience stores. An individual has little opportunity to participate as a franchisee of international franchise chains.

Option 2: Review the implementation of Franchising Act 1998 Section 29(3)

The review of the implementation of Section 29(3) of the Act to allow foreign convenience store chain to invest in the country will encourage new FDI into the country, enhance the liberalisation of services sector, enhance the potential multiplying impact of the consumer product and services value chain, and improve opportunities for individuals to become entrepreneurs through franchising. Ministry and agencies like MITI, MIDA, SME Corp, MOF, EPU led by the MDTCC (Franchising Register) together ought to review objectively the regulation and the policy on foreign participation to enhance the development of this sector.

After the review, MDTCC could consider reviewing the Section 29(3) of the Franchise Act 1998, whereby the franchisor can also operate their own outlets or have equity partnership in running the outlets. Subordinate regulations can be
formulated to ensure that there is no significant unfair competitive advantage between franchisor-owned and franchisee’s outlets.

5.2.2 Issue No. 2: Foreign participation in relation to the Guidelines on Foreign Participation in the Distributive Trade Services (revision 2010)

A number of issues concerned the respondents on foreign participation in the retail trade as expressed in the Guidelines on Foreign Participation in the Distributive Trade Services (revision 2010)⁶¹ and its implementation. The issues of concern are:

1) Although the requirements in the guidelines are straight forward, the respondents find that the authority does not always follow them exactly as stated. The company, having followed the guidelines still experiences approval difficulty resulting in a 2 to 6 - month delay for getting approvals for new stores.

2) The company, when seeking approvals for large shopping mall with multiple outlet formats, has to apply for approval for each individual stores. This becomes burdensome and often results in delays.

3) A Malaysian incorporated company which has a majority foreign equity is considered a foreign company. As a result, it is prohibited from participating in majority-owned subsidiaries for retail format such as chain stores. Without majority control of the subsidiary, the parent corporation is not able to bring into the subsidiary its retailing expertise and management practices.

4) Respondents also experience differences in interpretation of rules by different officials and officers in their licensing applications.

5) A unique case on “pet shops”; Johor state does not permit pet shops to be located within a shopping mall unlike that of DBKL.

Option 1: Maintain the Status Quo

Existing foreign-owned corporations in retail trade, such as Aeon (M) Berhad, continue to operate successfully in the country (see Box 5.3 case example). Aeon (M) Berhad, has been invited into the country in the “Look-East” policy to accelerate the transfer of Japanese retail trade knowhow. However after more than thirty years of operation, it finds the existing restrictive policy stifling new innovations.

Box 5.3: Case Example on Aeon (M) Berhad

| History: | The corporation started as JAYA JUSCO which set up Jaya Jusco Stores Sdn. Bhd. in Malaysia in 1984. This was in response to the then Malaysian Prime Minister Dato’ Seri Dr. |

Mahathir's request to help modernise the retail industry in Malaysia using the world's most advanced management expertise. Dr. Mahathir believed that the modernisation of the retail industry was crucial for the country's economic growth. Prior to this, in 1983 Dr. Mahathir visited Tokyo and met the then JUSCO Co., Ltd. President, Mr. Takuya Okada to discuss the proposition of bringing the JUSCO name to Malaysia. The talks ended on a positive note and Dr. Mahathir invited JUSCO to set up store in Malaysia. All this was part of Dr. Mahathir's Look East policy for Malaysia.

Following this, a joint venture company was established in September 1984. There were three parties involved: JUSCO Co., Ltd., Japan, Peremba, a leading government-owned property company and Cold Storage, a premier supermarket chain store. JAYA JUSCO's aim was to grow with the people of Malaysia through the transfer of expertise from Japan to Malaysia and human resource development, two factors which would contribute greatly to the progress of Malaysia.

**Corporate Profile: AEON CO. (M) BHD.** is a leading retailer in Malaysia with a total revenue of RM3.84 billion for the financial year under review. The Company was incorporated on 15 September 1984, set up in response to the Malaysian Government's invitation to AEON Japan to help modernise the retailing industries in Malaysia. The ‘AEON’ name today is well established among Malaysians as well as foreigners, especially due to its association with the international AEON Group of Companies. It has established itself as a leading chain of General Merchandise Stores (GMS) and supermarkets. AEON's frequent refurbishment of stores to project an image designed to satisfy the ever changing needs and desires of consumers is clear evidence of this. The Company’s performance has been further enhanced by the management’s acute understanding of target market needs and the provision of an optimal product mix. AEON's stores are mostly situated in suburban residential areas, catering to Malaysia's middle income group.

**AEON Group of Companies consists of AEON Co., Ltd.** and about 300 consolidated subsidiaries and affiliated companies. In addition to its core GMS plus its supermarket and convenience store operations, AEON is also active in specialty store operations, shopping centre development and operations, credit card business and services. The AEON Group of Companies is an integrated Japanese retailer and is active not only in Japan but also throughout ASEAN and China. At all times, in every market, AEON's activities are guided by its unchanging ‘Customer First’ philosophy. Its aim is to surpass expectations by combining excellent products with unique personal services that enhance the shopping experience to make customers smile every time they shop.

**Aeon (M) Berhad – Equity distribution:** AEON CO., LTD. (51%); Local incorporated nominees, trustees, companies and individuals (39.29%); Balanced minority shareholding.

**Subsidiary and associate companies:** AEON Index Living Sdn. Bhd. - Furniture retailer; AEON Fantasy (Malaysia) Sdn. Bhd. - Amusement park business; AEON TopValu Malaysia Sdn. Bhd. - Product development of AEON private brand

**AEON Basic Principles:** Pursuing peace, respecting humanity and contributing to local communities, always with the customer's point of view as its core.
Business operation:

AEON manages a total of 24 shopping malls by end of 2015. The Group has currently a total of 41 Wellness pharmacy shops and 26 Daiso flat price shops. The Group’s new business categories such as pharmacy and flat price shops has also continued to expand during the year from opening of new outlets. For the MaxValue supermarket operations the Group currently has four outlets and one for AEON Index Living Mall. In an effort to enhance its operations productivity and produce higher volume to cater to its customer needs, the Group had also during the year under review set up its one stop factory scale food processing centre for the preparation of its delicatessen, sushi, bakery and doughnuts and the subsequent deliveries to all stores. The new food processing centre is targeted to enhance the supply chain delivery process and to give AEON an added competitive edge.

In 2015, the Group commenced its e-commerce business through www.shoppu.com.my. The initiative is still very much in its pilot stage but the Group witnessed an increasing number of visitors and recurring visits to the site. The e-commerce website currently provides merchandise and assortment which are not commonly available in AEON stores. With this strategy, the company would capitalise by merging the unique external assortment with the store offerings so as to be competitive in the e-commerce arena. The Group expects the e-commerce business to play a bigger role in the Group’s business vision in the near future including integration with its existing brick and mortar businesses.

To ensure occupancy rate sustainability in its property management activity, the company, through a rebranding exercise with an innovative strategy repositioned AEON malls, as the destination that allows more interactive activities with communities and shoppers. The increase in the property management services income was mainly due to the contribution from its newly opened shopping malls over the last two years.

Corporate Governance: recognising the importance of corporate governance the company is committed to ensuring the sustainability of the Group’s business and operations through the implementation of the Principles and Recommendations as promulgated by the Malaysian Code on Corporate Governance 2012 (“MCCG 2012”). These are:

- Principle 1 – Establish clear roles and responsibilities of the Board and Management
- Principle 2 - Strengthen Composition of the Board
- Principle 3 - Reinforce Independence of the Board
- Principle 4 - Foster commitment of Directors
- Principle 5 - Uphold integrity in financial reporting by the Company
Option 2: Review the existing guidelines on foreign participation in the distributive trade services

Even though Malaysia continues to encourage FDI and recently liberalisation of services, there are still a few protectionist policies in a number of businesses and trades. The distributive trade sector that is subject to protectionist policy, are largely due to the presumed need to protect the small traders, particularly in the retail trade. The existing policies either restrict or prohibit participation in specific trades. Protectionist policy tends to make local business uncompetitive as they become complacent to improvement and innovation. At the same time it prevents the transfer of external best practices and new knowledge on the retail trade into the country. Protectionist policy may be helpful over a short period of time in order to build up the capacity and capability of local entrepreneurs to compete, but in the long term, becomes counter-productivity and anti-competitive.

If the country aspires to become a developed and high-income nation, protectionist policies impede competition and will only slow down the development process. Many businesses in the services sector remain unsustainable and backward without competition and continuing innovation. This is one big obstacle to getting out of the “middle-income” trap. The retail trade sector needs continuous innovation to meet the dynamic changes in the business environment such as consumer demography, taste, fashion, product innovations and services, and other creative destructions.

As such it will be necessary to review existing protectionist policy objectively. Key review questions need to be objectively applied, and these include:

- Are we protecting unsustainable businesses?
- Are the existing policies anti-competition?
- Are the protection objectives met? Are we making the businesses more innovative and competitive or have they become complacent to improvement?
- Are we restricting transfer of new knowledge and best practices into the protected sector?
- Are the consumers losing out on having better buying experience, better quality services and more value-for-money purchases?
- Are there better ways of facilitating local businesses to become competitive and innovative rather than using equity restriction and prohibition initiatives?
5.2.3 Issue No. 3: Waiting time and costs burden in business licensing

For business owners, delay in getting business licences and in particular, business premise licences (Lesen Premis Pemiagaan) for opening new stores mean substantial monetary losses in direct costs, administrative overheads and sales losses. It also means a delay in serving the needs of the local community. The operation of mini-market (sundry) outlets requires a business licence (Premise Licence) from the local authority before they can obtain other trading licences such as the retail licence from MDTCC, and the rice retailing licence (Lesen Runcit Beras) among many others (Box 5.5).

Sundry shop operators have to obtain and maintain numerous licences, permits and approvals for their small business operations. They are subject to many licensing requirements by both local authorities and the federal agencies, in particular MDTCC (Box 5.4: Sample of MDTCC Licensing). As many as 10 types of licences, permits and approvals may be required for a single sundry shop operation. These include SSM registration, local authority premise licence, signboard permit, advertising permits, licence for rice trading, licence for cooking oil retailing, licence for cooking gas retailing, licence for flour retailing, licence for sugar retailing, licence for liquor retailing, permit for weighing machine, and Bomba fire extinguisher permit and each application is subject to a series of requirements which may vary from one locality to another. Apart from time consuming applications, inconveniences, documentation, and other idiosyncrasies of officials, these create unnecessary compliance burdens on businesses. Businesses such as sundry shop operators are paying heavy burdens to doing business. A trade association I Klang with a membership of a few thousand claimed that the direct cost in licensing fees alone is over RM1000 annually and increases over the years as local authorities seek to increase their revenue collection (see Case Example in Box 5.5).

---

62 Note: See guideline for applying a Premise Licence from DBKL; http://elesen.dbkl.gov.my/UploadControl%5CPortal%5CGARIS%20PANDUAN%20DAN%20SYARAT-runcit.pdf

63 Lesen Runcit Beras; http://www.elesen.moa.gov.my/?p=132
Regulatory licensing has a specific purpose such as ensuring private security of the neighbourhood, but in general, it has been used to keep out new entrants to the trade. The regulatory intervention has limited benefits in the marketplace as the most effective regulators are the consumers themselves. It is inappropriate that local authorities and regulating agencies treat licensing as the means of revenue.
generation as the cost of doing this is higher than the so-called revenue collected. Licensing charges is meant to offset administrative cost of implementation. The cost burden to consumers is indirect and heavy and the implementation frequently disrupts the supply chain and creates market inefficiencies.

Box 5.5: Example of Licensing Charges for Sundry Shop (Majlis Perbandaran Klang)

Source: Submission from members of ACCCIM

It is claimed that local authorities take one to three months to issue the business (premises) licence. Since the retail trade uses rented premises to operate, this 1 to 3 months waiting time incurs direct costs in rental, wages inventory carrying cost and loss sales. For example, for 99 Speedmart (see Box 5.6) which opens over 50 outlets every year, a one-month waiting time would incurs direct costs per year as estimated below:
• Rental of premise (assumed average value) = RM3000.00

• Minimum wage for two workers = RM2200.00

• Number of premises open per year = 50

• Total direct costs per year due to waiting time = RM260,000.00 (50 X RM5200.00)

This total cost of waiting is estimated for one company, and one can imagine the total cost to the retail trade when this applies to the whole economy. The above are only the direct costs for waiting for the approval or licence. The opportunity loss may be even greater for the business and this directly affects Government tax collection (GST, corporate tax, duties). It can be seen that the waiting time for approval and licensing is very costly to businesses in the retail trade and to the Government.

Box 5.6: Case Example of Mini-market Chain Stores

Introduction: The traditional "Sundry Shop" or now commonly known as Mini Market continues to be the popular shopping outlets for house-hold consumables and conveniences. These outlets are ubiquitous all over the country operating from commercial shop-houses. However, the traditional family-owned single outlet cannot achieve sustainable high income for the family and as such, these entrepreneurs have moved towards chain stores, owning a number of stores operated by contract workers. One success story is the 99 Speedmart Mini-market chain (http://www.99speedmart.com.my/).

99 Speedmart started as a single “mom and pop” sundry mart called Pasar Raya Hiap Hoe by the founder Mr. Lee Thiam Wah in Tepi Sungai, Klang in 1987. Today, it has a large chain of 600 over mini-markets over a number of states in Peninsular Malaysia and Sabah complete with centralised purchasing, distribution warehouses, and delivery trucks. (http://www.99speedmart.com.my/store.htm)

Centralised Purchase and Delivery
Unique Selling Proposition: is to provide a hassle free, time-saving ideal shopping environment with low pricing for the local community shopping. The outlets are operated from rented premises (shop-houses) within easy reach of the local community being served. The company develops supportive and happy suppliers through centralised purchasing with a prompt payment system. The distribution warehouses and delivery trucks ensure outlets are well stocked.

Business Partners and Supportive Suppliers: the company continues to develop new merchandisers (suppliers), services and equipment suppliers and new tenancy agreements to continue its expansion of new outlets every week on the average. It always looks for stores available for lease (2000-5000 sq. ft. with high visibility and easy accessibility) or multiple locations available for acquisition or commercial area or light industry park to continue its expansion. Effective marketing and promotion can improve the shop image and increase the frequency of customer visits and sales volume. Desired results can be achieved via a marketing plan that works hand in hand with suppliers and us.

Training & Human Development

By providing training & other learning opportunities to employees, we hope to inspire and motivate them to perform the functions of their position. Our commitment to continue human and business development is the driving force behind our trust towards greater growth.

Source: 99 Speedmart; http://www.99speedmart.com.my/about.htm (27/10/16)

Option 1: Maintain the Status Quo

This means the minimarkets and sundry shops businesses will have to continue to bear the burdens of licensing, many of which have questionable value in serving public interest. These licences are not only unnecessary burdens to the shop owners who are generally small entrepreneurs, but also are stifling their ability to sustain or grow their businesses. These small entrepreneurs cut corners and resort to unscrupulous practices to survive thereby affecting their ability to deliver quality services to the local community.
Option 2: Review all Licences and the Requirements

All the licences for the retail trade should be reviewed objectively. Many of the existing licences that are of questionable value in consumer protection or of public interest need to be eliminated. For example, rice retailing and transportation licences is the legacy of a bygone era which was the Emergency period of the country’s history are still maintained to safeguard the regulatory function of the existing regulatory agency. Worse are the authorities that use licensing as the means to generate revenue. Indirectly consumers are paying for these unnecessary regulatory burdens in the way of higher prices of goods and poorer quality of services.

Option 3: Improve the Efficiency of Licensing

Any necessary licences should be efficiently implemented. Authorities should deliver upon payment for the licences and not use rules and regulation to cover-up their administrative inefficiency. Providing clear and transparent guidelines with online application and approval is the expectation of the Internet age.

5.2.4 Issue No. 4: Consequence of high compliance cost in dealing with authorities

Another feedback (and observation) from the businesses is that the use of intermediaries (agents or errand runners) is preferred in dealing with authorities. It is claimed that the agents have better understanding of the workings of the authorities and they know the ins and outs to resolve business issues when dealing with specific authority. As such, it is believed that agents are able to get issues resolved easier and faster than if the businesses were to deal with it by themselves. Businesses are willing to pay agency fees and has treated this as part of the cost of doing business.

Agents providing such services tend to protect their business interest by conveying the perception that it is difficult to deal with authorities. The difficulty in dealing with authorities is frequently true when there is poor transparency in regulatory processes such as the absence of guidelines or rather the presence of poorly developed guidelines, complicated processes and processing, and frequent changes in requirements or SOP without adequate consultation.

Option 1: Maintain the Status Quo

This is an unnecessary cost of doing business and the perceived contention that dealing with authorities is difficult is not always true. As dealing with licensing is not a routine administrative activity, many businesses tend to find such out-sourced services more convenient and less frustrating.

Option 2: Online dealing with authorities (licence of permit application)
This will remove the need for face-to-face interactions with licensing officers. Online applications will require good transparency in regulatory processes and requirements, and easy applications at the front end with resulting elimination of in-process delays. This is true provided that the online application is properly and well designed. The facility to allow businesses to deal with authorities online without the need of intermediaries’ would reduce the cost of doing business.

Option 3: Continuing to promote the ease of dealing with authorities

Authorities need to continue to educate businesses to remove the perception that it is difficult to deal with authorities in regulatory issues. There is the need to remove the need of intermediaries or agents in dealing with authorities as this increases the cost of doing business, which the end consumers finally pay for anyway.

5.2.5 Issue No. 5: Implementation of Price Control and Anti-Profiteering

Anti-profiteering is to prevent persons or businesses, in the course of trade or business, to make unreasonably high profit in selling goods or services, and this is not restricted to price-controlled goods or services. The regulation for this aims to prevent greedy traders and unscrupulous businesses from charging exorbitant prices for their goods and services.

The anti-profiteering regulation comes under the Price Control and Anti-Profiteering Act 2011 (Act 723) and the mechanism for determination is enforced under the Price Control and Anti-Profiteering (Mechanism to Determine Unreasonably High Profit) (Net Profit Margin) Regulations 2014 P.U. (A) 347 of 2014; which is issued by the Ministry of Domestic Trade, Co-operatives and Consumerism. However, P.U. (A) 347 is applicable for the fixed periods from 2 January 2015 up to 31 March 2015 as well as from 1 April 2015 up to 30 June 2016. Subsequent to the Act 723, there is the Price Control And Anti-Profiteering (Amendment) Act 2014 to deal with prices with the implementation of GST Act 2014, and also to empower the “…Minister of Domestic Trade, Co-operatives and Consumerism, who will determine the mechanism to access if profits are unreasonably high as well as to determine a period during which there shall be no increase in the net profit margin of any goods and services”.

The P.U. (A) 347 gives the formulae for the determination of anti-profiteering pricing. Trying to apply the fancy formulae (see Box 5.7) to the numerous types of goods in a typical retail outlet, it is no wonder that the retail trade finds the tasks extremely burdensome and onerous. Even for the enforcement this would be a tedious exercise to do so. Perhaps this is why enforcement is carried out reactively, i.e. only upon acting on complaints.

64 Malaysia - Price Control and Anti-Profiteering Act 2011; May 13, 2015; Akio Ching Soon Seng, Adnan Sundra & Low; https://www.linkedin.com/pulse/malaysia-price-control-anti-profiteering-act-2011-ching-soon-seng
This is a serious issue with retail trade, particularly those dealing with household goods. Using consumers’ complaints as an indication of potential non-compliance by retailers is a flawed means of regulatory intervention as consumers do not always tell the truth. Such means also incentivise the public mind-set that retailers are unscrupulous and that the authorities are doing a great service of protecting consumers. As a result, unnecessary burdens are imposed on genuine businesses, particularly the large and well-established retailers. These large retailers are few and become easy targets for authorities to justify their continuing relevancy.

The authorities’ action on complaints is that they will carry out an audit on the targeted firm based on the anti-profiteering formulae, i.e. to determine the fixed profit quantum of the initial offered price as compared to the current price for the goods. It is claimed that the calculation used does not take into consideration increases in overheads over the period, the inflation, the fall of the Ringgit exchange rate or new services quality added to improve buying experience for consumers. On this, respondents are claiming that the way anti-profiteering is being implemented is hurting the retail trade and will impact on its sustainability in the long run.

Government intervention or meddling of the marketplace is often the cause of supply chain turbulence and chaos. Whenever the Government makes any announcement on prices or subsidy rationalisation or whatever intervention on consumer goods, consumers will respond overnight with frenzy buying. Households start to stock up their larders with unnecessary purchasing and as a result many retail outlets end up with empty shelves overnight. This further aggravates the consumer spending behaviour with rumours of shortages in the market. The frenzy buying on the specific goods of concern will escalate to other goods thus forcing prices to rise along the supply chain. Stockists, not being able to keep up with the frenzy, start placing abnormal orders for more goods. Due to the artificial shortage at the retail end and stockists’ warehouses, food outlets also increase their purchases to avoid interruption to their operation which further aggravates the supply situation. Manufacturers are forced to ramp up production with extra resources (e.g. overtime) thereby increasing the cost of production. However, this chain effect has a lag time at each stage and when the frenzy buying cools down, often in a few days, the so-called Forrester or Bullwhip Effect results. The resultant consequence is that the total supply chain will end up with excessive stocks, including many household larders.

---

65 The Bullwhip Effect; https://www.atkearney.com/web/beer-distribution-game/the-bullwhip-effect
Box 5.7: Sample of *Net Profit Margin* Formula

<table>
<thead>
<tr>
<th>This is an extract of the Price Control and Anti-profiteering Regulation 2014, P.U. (A) 347 Part III on the formula to determine that no increment in the net profit margin within the period from 1 April 2015 to 30 June 2016</th>
</tr>
</thead>
</table>

**Formula to determine that no increment in net profit margin of goods or services in relation to any taxable person**

3. (1) The formula to determine that there is no increment in the net profit margin of any particular goods sold or offered for sale, or services supplied or offered for supply, by any taxable person within the period from 1 April 2015 to 30 June 2016 shall be as follows:

\[
X_2 \text{ shall not exceed } X_0.
\]

\[
X_0 = SP_0 - [(COG_0 + OC_0) - (STR_0 + IT_0)] - OT_0
\]

\[
X_2 = SP_2 - [(COG_2 + OC_2) - (STR_2 + IT_2)] - OT_2
\]

Where \(X_0\) (a) in relation to paragraph (a) of \(SP_0\), is the net profit margin of the goods or services in Ringgit Malaysia on 1 January 2015;

...

*Source: P.U. (A) 347; http://mltic.my/attachments/Malaysian-law-22802-PUA-347.pdf*

To make matters worse, the Government enforcement arm on anti-profiteering and anti-hoarding have a merry time going after non-compliances, which in this instance has occurred as a result of turbulence and instability of the whole supply chain, where prices go up due to supply-demand dynamics, empty-shelves and inventory shortage due to frenzy buying, and the resulting overstocking due to the bullwhip effect, which is not the intentional hoarding of goods. The authorities fail to realise that the market is capable of moderating itself whenever demand increases on occasions such as during festivals.

MDTCC establishes regulation with creative formulae for profit determination such as the Price Control and Anti-profiteering (Mechanism to Determine Unreasonably High Profit ((Net Profit Margin) Regulation 2014, P.U. (A) 347 (see Box 5.7) without considering the practicality and burden for retailers big and small who have to maintain compliance records. In particular, the small retailers like the many small sundry stores who find difficulty with compliance and thereby run afoul of the law.

The authorities regularly create market turbulence and chaos in the supply chain and continue to self-justify their functional relevance in consumer protection.
through the price control and anti-profiteering enforcement. Not only that, the productive and innovative energy of businesses is diverted into complying with the price control and anti-profiteering regulation rather than into improving productivity and development of new products and services. The authorities should listen more to the views and concerns of businesses instead of looking at traders with an adversary mind-set. In general, retailers are genuine traders and unscrupulous traders are an exception rather than a norm in the marketplace.

Option 1: Continue with current practice

Although price control, particularly for essential items and controlled goods has been a norm in the country, anti-profiteering regulation and its implementation is still a popular, although flawed, regulatory initiative. It would be good practice for the authority to increase its engagement with businesses and improve their awareness of the implementation of this regulatory initiative. Continuing engagement and periodic reviews of anti-profiteering practices with retail businesses will improve transparency and build the culture of fair trade in the sector.

Option 2: Public consultation prior to introducing anti-profiteering intervention

Public consultation should be enhanced to ensure significant businesses are reached whenever new intervention is being planned. It is insufficient to engage only the trade associations and the big boys in the retail trade. In fact, anti-profiteering intervention impacts the small traders more and by that token, that of the local community who should be consulted. Such engagements should also be geographically inclusive.

Option 3: More Laissez-faire on the supply chain with the removal of price control and anti-profiteering interventions

With the exception of the absolutely essential goods, trade should be based on demand and supply dynamics. Consumers are the more effective regulator of prices and profiteering as it is their choice of buy or not-to-buy or who to buy from and when. Government intervention often leads to supply chain turbulence and chaos resulting in excessive consumer spending and wastages. The price control and anti-profiteering regulation should be reviewed or tone-downed or even repealed altogether. The price control and anti-profiteering intervention is flawed as it gives a false sense of (consumer) protection and an illusion of control of the

---

market. Even national consumer associations, over the years of continued regulatory interventions, has developed this illusion of such control.

The *Consumer Protection Act 1999* (Act 599) is sufficient and can be rationalised for greater effectiveness. Perhaps the *Competition Act 2010* should be the main focus of regulatory intervention on price control. As long as there is sufficient competition among businesses, prices will be controlled by consumers’ choice and preferences. The services component in retail trade has increased over time with new innovations. When competition in the market is significant, the retail business will become more innovative and competitive pricing will result in better services quality.

### 5.2.6 Issue No. 6: Long Waiting Time for Halal Certification

This is another regular concern of traders and manufacturers who have interest in trading and exporting Halal certified products. Although this is more an issue with local manufacturers, it affects the distribution, retailing and exports of Halal products. However, all hypermarket chains offer a range of Halal products, many of which are house brands which are sourced from local manufacturers, many of whom are SMEs supported by the hypermarket chain. Some retail chains manages the Halal certification for their suppliers (manufacturers) to ensure the Halal certifications do not disrupt their supply chain. A large hypermarket chain may handle up to 500 certifications that require renewal every 2 years.

Delay in renewal of Halal certificates not only causes disruptions to the supply chain, but the retailer has to also pull out displayed products from their shelves. This incurs huge administrative burdens, opportunity loss and loss of image reputation as customers may lose confidence in the retailer. Furthermore, shelf spaces are allocated to specific vendors and empty shelves cannot be filled with other vendors’ products. Firms claimed that even when renewal applications are made 6 months ahead of expiry, delays are still common.

The concerns are many such as unclear procedures on certification, lack of transparency of the certification process, differences in interpretation of requirements, insufficient auditors, unnecessary documentations, additional requirement imposition, and so forth. All these boil down to the lengthy process and long waiting time for Halal certification. There are three serious aspects to this.

Firstly, on the lack of auditing resources, it is claimed that in Johor state, there are more than 6000 applications for Halal certification at any one time and the number of officers handling the cases is less than a dozen.

---

Secondly, the Halal certification is a product-based certification which requires that the whole production process conforms to the Halal requirements. It is a combination of product and system (process) conformity. This means that for each product being certified, the application has to go through the whole process of auditing the production system, even if it is produced in the same facility or factory which has been approved for another Halal product. This contributes to the duplication in auditing and documentation needed for each certification.

Box 5.8: Reference Documents for Halal Certification

<table>
<thead>
<tr>
<th>The Guidelines requires application to conform with the requirements in the following established documents:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Manual Procedure of Malaysia Halal Certification</td>
</tr>
<tr>
<td>2. Malaysian Protocol For Halal Meat And Poultry Productions</td>
</tr>
<tr>
<td>3. MS 1500 : 2009 Halal Food – Production, Preparation, Handling and Storage – General Guidelines (2nd Revision)</td>
</tr>
<tr>
<td>5. MS 2400-1: 2010 Malaysian Standard – Halalan – Toyyiban Assurance Pipeline – Part 1: Management System Requirements For Transportation Of Goods and/or Cargo Chain Services</td>
</tr>
<tr>
<td>8. Schemes for Malaysia Halal Certification.</td>
</tr>
</tbody>
</table>


Thirdly, transparency of the Halal requirements remain a key issue. It is claimed that the many requirements are not standardised and published and as a result, the Halal auditors interpret requirements differently. Currently, the authority, JAKIM has published the Guidelines for Halal Assurance Management System of Malaysia Halal Certification. The Guidelines also requires applicants to reference various other published documents (see in Box 5.8). Apart from these references, applicants have to comply with the Manual Procedure for Malaysia Halal Certification (Third Revision) 2014 and the Halal certification checklist.

The number of reference documents and guidelines are supposed to facilitate the Halal certification, but instead creates inconsistencies, uncertainty and confusion. Businesses are uncertain of the expectations of the authorities or the outcome of
certification and they are often confused with differences in requirements. They also find inconsistencies in the imposition requirements and performance of the certification officials. When inconsistency occurs, applicants have to content with unexpected requirements. It is claimed that requirements which are not specified in the Standards are being imposed. Some examples cited by the respondents are shown in Box 5.9.

Box 5.9: Case Example of Unpublished Certification Requirements

Respondents have given two case examples of requirements which are not established as a standard requirement for the certification process.

In one case, an auditor requested that the applicant show evidence that the brushes used on the newly painted wall is of Halal material. Since the applicant could not show such evidence, it becomes a major non-conformance and the Halal certification fails. In order to correct this non-conformance, the applicant is required to engage a professional religious authority to “religiously cleanse” the newly painted wall. This is an understandable concern as many types of paint brushes are made from animals’ bristles. However, these types of brushes are expensive and used normally in art and craft and calligraphy and not in industrial use.

In another case, on inspecting the “surau” or the prayer room (Muslim) provided for the employees, the audit requested for official evidence that the “Kiblat” direction has been officially certified by a religious authority. Kiblat is normally determined using the “Kiblat Kompas”, a compass application that is available to any Muslims. The applicant was asked to engage a qualified religious authority to issue a certificate on the Kiblat for the Halal certification.

The case in point is that these requirements are not published in a standard thereby allowing audits to implement any religious requirements they deem fit for the certification.

Source: Feedback from ACCCIM members

Various development agencies like MATRADE, SME Corp. and Halal Industry Development Corporation (HIDC) have been successful in marketing the Malaysian Halal industry and Malaysia’s reputation as a Halal Hub in the region. Businesses benefitted from these promotions but often cannot capitalise on it because of the difficulties and delays in Halal certification. The industry has claimed that it has lost many potential sales because of this and instead, these sales have benefitted other countries such as Indonesia and Thailand where Halal certification is more efficiently managed.

Option No. 1: Continue with the present process

The consequence is the mismatch of Halal promotion in the country and the supply of Halal products. The country will continue to lose business to other countries in the region which are able to manage Halal certification efficiently. The difficulty for retailers to manage the Halal certification impacts on their business revenue and this in turn affects those in the supply chain, many of whom are SMEs.

Option No. 2: Streamlining (Improving) the Current Certification Process

The many weaknesses in the present certification processes need to be studied and resolved. There must be common practising guidelines, established and published Halal Standards, established standards for auditing and training of auditors, established certification SOP, products standards, and may other guiding documents made available and maintained for Halal certification. Obviously, whatever guidelines that have been established have not been able to meet the industry’s needs and expectations. Unfortunately, the option will take time and industry will continue to suffer the existing burdens of certification and the country will continue to lose many Halal future exports to other countries. Such quest for improvement in the current system will not be able to match the pace of development in the industry.

An important consideration to ensure auditing consistency and quality, auditing must carried out according to the requirements of the Halal Standards, e.g. MS 1500: 2009 - Halal Food. Any non-conformances cited must be in accordance with the minimum requirements of the Standards. A Standards for Halal auditing is needed and Halal auditors ought to be trained according to such Standards.

Option No. 3: Revamping the Institutional Structure for Halal Certification

The Halal Certification institutional Infrastructure ought to follow the proven institutional infrastructure of Standards implementation in Malaysia which is governed by the Department of Standards Malaysia (DSM). DSM governs the accreditation of Standards that are used in the country and also the certification bodies (CB) to ensure the efficient and effective implementation of Standards. These practices allow many International Standards to be adopted and implemented efficiently in the country thereby enhancing the growth of trade. The Halal certification can be similarly implemented with the Department of Islamic Development or Jabatan Kemajuan Islam Malaysia (Jakim) as the governing body functioning like the DSM. It can establish, accredit and publish Halal Standards and govern the Halal certification bodies in the implementation of the established Standards. The Standards infrastructure is already established and proven in the country and can be adopted and modified for Halal implementation.
5.2.7 Issue No. 7: Regulation on Sales (events: promotional sales, festive sales, cheap sales, special sales, out-post promotion, etc.)

The retail trades in the country are heavily regulated by the federal institutions e.g., MDTCC, MOA, PPM, MOH, etc. and the local government. Federal regulatory practices, in reality, are inconsistent across state branches posing confusion to businesses. It is worse still at the local government level as different local authorities apply different regulatory regimes. These differences create confusion and heavy administrative burdens for retail chain business, particularly those with centralised management control. Retail trades cannot achieve standardisation on their business models, formats and achieve efficiency in their supply chain.

The current regulation of sales practices is an antithesis to retail trade competitiveness. It reduces the ability for innovation, improvement and learning. The retail business claimed that the regulation for carrying out a sales event is onerous and burdensome. Carrying out a sales event in big cities like Kuala Lumpur or Petaling Jaya involves numerous applications of licences (permits, approvals, inspections, notifications, reporting). Table 5.1 below illustrates a typical listing of licences required for a sales promotion or event, and the types and numbers vary across local authorities.

Table 5.1: Listing of licences required for a sales event.

<table>
<thead>
<tr>
<th>Type of licence</th>
<th>Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Prior approval for scheduled sales</td>
<td>MDTCC</td>
</tr>
<tr>
<td>2. Permit for the event e.g. cheap sales or special sales</td>
<td>MDTCC</td>
</tr>
<tr>
<td>3. Extension of business hours</td>
<td>MDTCC/LA</td>
</tr>
<tr>
<td>4. Advertisement materials (banners, buntings, posters, flyers, etc.)</td>
<td>LA</td>
</tr>
<tr>
<td>a) Outside premise</td>
<td></td>
</tr>
<tr>
<td>b) Within the trading premise</td>
<td></td>
</tr>
<tr>
<td>c) Window displays</td>
<td>DBP</td>
</tr>
<tr>
<td>d) Language approval for Bahasa Malaysia from DBP</td>
<td></td>
</tr>
<tr>
<td>5. Music and video used in the event need licences from:</td>
<td>MyIPO</td>
</tr>
<tr>
<td>a) Recording Performers Malaysia Bhd (RPM)</td>
<td>(MDTCC)</td>
</tr>
<tr>
<td>b) Music Authors’ Copyright Protection Bhd (MACP)</td>
<td></td>
</tr>
<tr>
<td>c) Persatuan Karyawan Malaysia (Karyawan)</td>
<td></td>
</tr>
</tbody>
</table>
d) Recording Industry Association of Malaysia (RIM)

6. Temporary trading licence for “out-post” event  
7. Others for specific products, e.g. pharmaceuticals  

Source: Retailer Associations

In a relatively efficient and free economy, the market space is highly regulated - it is between regulating by government/politicians/bureaucrats versus regulating by market forces (consumer-regulators). The fact is that there is no such thing as an unregulated market\(^69\). It is unfortunate that the authorities (government/politicians/bureaucrats) still have the mind-set that the consumers are ignorant and are “dumb” shoppers thereby needing Government intervention to protect their interests. Government, politicians-in-power and bureaucrats fail to recognise the current socio-economic reality or rather choose to ignore it for their own private agenda and self-interest.

The public in general is well-educated and aware and has accessibility and exposure to a large amount of information on the market, particularly with the advancement in ICT, Internet technology and applications. The public as consumers has become smart market participants and are capable of governing themselves. They have become effective regulators of the market and with the Internet have even become a ruthless, meticulous, and conscientious group of regulators imaginable. These ruthless consumer-regulators waste no time thrashing products/services they don’t like on websites. Examples such as *The Coverage*\(^70\), or *rat in bakery YouTube*\(^71\) have become widespread. Consumers would express their displeasure in newspapers such as The Star and The Straits Times or consumer websites such as The Travel Manuel (http://thetravelmanuel.com/), Malaysian Digest (http://www.malaysiandigest.com/) or social media such as Facebook, Twitters, WhatApps, YouTube, Says. Businesses cannot misbehave without consequences.

On the other hand, the same ruthless consumer-regulators also waste no time praising, endorsing and recommending the products, restaurants, movies, services, sellers, contractors and businesses they like, both by supporting them with plenty of their purchases, and by giving them positive, sometimes even glowing reviews on websites such as Amazon, World Nomads (https://www.worldnomads.com/), Cinema-online (http://www.cinema.com.my/cinemas/cinemalist.aspx) and the like. These

---

\(^69\) Howard Baejter, *No Such Thing as an Unregulated Market*; https://fee.org/articles/theres-no-such-thing-as-an-unregulated-market/

\(^70\) *The Coverage, Malaysia: Rat Poop And Cockroach Eggs Found In 23 Disgustingly Dirty Restaurants* https://thecoverage.my/lifestyle/malaysia-rat-poop-cockroach-eggs-found-23-disgustingly-dirty-restaurants/

\(^71\) *YouTube, rat in bakery - YouTube*; https://www.youtube.com/watch?v=GIFMhgP2Pw
consumer-regulators can break or make a firm’s reputation without the intervention from the authorities.

Market forces regulate continually as competing businesses offer what they hope will be a good value; customers choose among the various offerings and then the competing businesses react to customers’ choices. That process is the market regulation. If the Giant supermarket is charging RM12.00 a kilogram for red peppers, the more upscale Cold Storage supermarket will not be able to charge a whole lot more than that and still sell many peppers. Neither will other grocery stores. All will charge nearly the same price. There is strong regularity to the prices of red peppers at any place and time. This regulation is accomplished by each seller’s reaction to the actions of his customers and competitors. Unfortunately, government interventions in preventing ease of entrance of new businesses, control of prices, control of sales promotion and other market interventions impact the regulating dynamics of the market creating all kinds of chaotic behaviour such as hoarding and frenzy buying that disrupt the supply chain.

The Local Government Act 1976 (Act 171) empowers the local government to formulate and implement regulations (Box 5.10). Some local authorities or city halls tend to go overboard with this to introduce all kinds of licensing to control the retail business. The intention of regulation (regulatory objectives) is to serve public interest or to align that of private interests to that of public interest. It is questionable whether the many types of licensing does in fact serve any of the objectives. In most cases, regulatory interventions are made based on some notion or prior assumption of what’s good for the public.
Box 5.10: Empowerment of Local government to make Regulation

**General power to make by-laws - Local Government Act 1976 (Act 171)**

102. In addition to the powers of making by-laws expressly or implicitly conferred upon it by any other provisions of this Act, every local authority may from time to time make, amend and revoke by-laws in respect of all such matters as are necessary or desirable for the maintenance of the health, safety and well-being of the inhabitants or for the good order and government of the local authority area and in particular with regard to all or any of the following purposes:

(a) … (r)

(s) to control and supervise, by registration, licensing or otherwise, including in proper cases by prohibition, a trade, business or industry which is of an obnoxious nature or which could be a source of nuisance to the public or a class of the public;

(t) … (u)

*Source: Local Government Act 1976*

Oftentimes, local authorities treat licensing as a means to generate revenue. Here, it must be remembered that government regulators are monopolies\(^\text{72}\), and as such, they can misbehave and act unscrupulously behind the regulation they themselves formulate (see examples in Box 5.11, emphasis in *italics*)\(^\text{73}\). They hide behind the gazetted regulations as an excuse for their poor service quality, unreliability and uncertainty of delivery and inefficiency. For example, they do not deliver upon payment (for licensing) unlike business practices that demand payment after delivery or at most, upon delivery.

\(^{72}\) Howard Baetjer Jr., 2016, *Government Regulators are Monopolies*; http://www.freeourmarkets.com/government-regulators-are-monopolies/

\(^{73}\) Note: Although the local government is cited as an example, the same views apply to government in general.
Box 5.11: Examples: Section 107 of the Local Government Act 1976 (Act 171)

<table>
<thead>
<tr>
<th>Licences</th>
</tr>
</thead>
<tbody>
<tr>
<td>107. (1) A local authority in the granting of any licence or permit may prescribe the fees for such licence or permit and the charges for the inspection or supervision of any trade, occupation or premises in respect of which the licence is granted.</td>
</tr>
<tr>
<td>(1A) Any licence or permit granted under this Act may be issued jointly with any other licence or permit.</td>
</tr>
<tr>
<td>(2) Every licence or permit granted shall be subject to such conditions and restrictions as the local authority may think fit and shall be revocable by the local authority at any time without assigning any reason therefor.</td>
</tr>
<tr>
<td>(2A) The revocation of any particular licence or permit issued jointly with any other licence or permit under subsection (1A) shall not affect the validity of any other licence or permit with which it had been jointly issued.</td>
</tr>
<tr>
<td>(3) The local authority may at its discretion refuse to grant or renew any licence without assigning any reason therefor.</td>
</tr>
<tr>
<td>(4) A licence shall be valid for a period not exceeding three years.</td>
</tr>
</tbody>
</table>

Source: Local Government Act 1976

Option no. 1: Maintain the Status Quo

Aside from imposing unnecessary regulatory burdens on the retail trade, this will continue to stifle innovativeness and competitiveness of businesses. The authorities continue to incentivise the minds of the public that government interventions protect their interest whereas there is hardly any objective evidence that price controls or anti-profiteering interventions or control of sales really serve public interest. Furthermore, authorities are starting to use regulation to generate revenue and behaviour as business monopolies.

Option No. 2: To review all licensing regimes and eliminate unnecessary licences

All licences that restrict the freedom of retail trade to innovate and improve their productivity, competitiveness and growth must be eliminated. The prescriptions on sales events and approval on advertisements should be considered for elimination. Other forms of supervisions to prevent fraudulent claims through enforcement should be considered. Protection of private interests through licensing should be reduced or other forms of aligning private-public interests should be studied and considered. The Government should, in general, reduce its intervention of the market ecosystem.
Option No. 3: Good Regulatory Practice Must be enforced on Formulation Subordinate Regulations and Implementation with Accountability

The authorities continue to introduce new rules and regulations without performing adequate Regulatory Impact Analysis (RIA) and public consultations. The thinking that “government knows best” is flawed when in fact public officials are always lagging behind the fast pace of industry’s development. In reality many officials are ignorant of how the market works.

Option 4: Improving Transparency and Accountability in Governance

The country has adopted good regulatory practices principles as set by OECD, yet many of the existing laws are in conflict with these principles. The principles for transparency and accountability in a democracy are universal and as such there should not be an argument that such principles are not relevant for Malaysia.

According to the OECD best practice regulation practices 74 “the regulator exists to achieve objectives deemed by government and the legislator to be in the public interest and operates within the powers attributed by the legislature. A regulator is therefore accountable to the legislature, either directly or through its minister, and should report regularly and publicly to the legislature on its objectives and the discharge of its functions, and demonstrate that it is efficiently and effectively discharging its responsibilities with integrity, honesty and objectivity’.

Secondly, “in addition to publishing objectives, clear operational policies covering compliance as well as enforcement and decision reviews should be made publicly available by the regulator, with any necessary guidance material to aid understanding of these matters. All operational policies and guidance materials should be consistent with the outline contained in the statement of expectations of how the regulator is to conduct itself, and explain to stakeholders how the policy contributes to regulatory outcomes”.

Thirdly, the OECD best practice regulation maintains that “citizens and businesses that are subject to the decisions of public authorities should have ready access to systems for challenging the exercise of that authority”.

Unfortunately, the current law (emphasis in “italic” in Box 5.10) has provisions that allow for the authorities to evade the principles of transparency, accountability and fairness in decision-making. The Government should review and amend all existing regulations that do not provide for transparency, accountability and fairness in governance.

Serving public interest ought to be the overriding objective of good regulatory practice. To achieve high public confidence in this there must be sufficient public engagement on a regular basis. The OECD best practice regulation states that “(a) Regulators should undertake regular and purposeful engagement with regulated entities and other stakeholders focused on improving the operation and outcomes of the regulatory framework or scheme, and (b) Procedures and mechanisms for engagement should be institutionalised as consistent transparent practices. There should be a focus on establishing structured and regular consultation mechanisms with regulated entities”. This must be viewed seriously and practised here.

5.2.8 Issue No. 8: Freeze on Foreign Workers

It is claimed that the Government tends to flip-flop on the employment of foreign workers without understanding the needs of the industry. Controlling foreign workers is always an issue in any country yet they are a necessary resource in many work situations. It is unrealistic to do away completely with the employment of foreign workers. As the country develops and the citizens prosper, there are just jobs which no locals will take up, particularly the so-called Dirty, Dangerous & Demeaning (3D) manual jobs. These 3D jobs exists in all sectors of industries and for the authority to put a blanket freeze on a particular industry or sector just shows a poor understanding of the industry practices and needs.

There is currently a freeze on the employment of foreign workers in the hypermarket and supermarket sub-sector. The failure to recognise that there are many 3D jobs in the backroom operations of modern hypermarkets and supermarkets has impacted the operations in the sector.

Option No. 1: Continue the Existing Practice of Governance

The authority can continue to do what it thinks is good for public interest without consultation with affected parties and understanding the needs of the industry. This will result in flip-flopping in regulatory implementations and create uncertainty, confusion, frustration and burdens the retail trade. In the end, businesses will get into unsavoury practices in order to continue their operations or have to reduce their operational and services quality, safety and hygiene. The outcome will not augur well for the public.

Option No. 2: Adequate Public Consultation with Affected Parties

It is impossible for public officials to have full understanding of business operations and requirements. As such any “dreamed-up” policy decisions will likely have serious consequences on affected parties. To overcome this deficiency authorities must have regular public engagement through public consultations whenever new policy and rules are being considered.
Currently, the so-called public consultations being practised are actually briefing and announcing decisions already made. Many of decisions are made on private interest and of questionable self-interest as they are made behind closed doors.

For example, it is claimed that there was a recent announcement on change in equity requirements for foreign participation in retail trade by a city hall (in this case, 50% local equity requirement is to be implemented on all foreign-owned business in the city). Obviously, this policy decision is made behind closed doors by the city hall without even consultation with ministries involved in such policy implementation and through a public consultation process. No regulatory impact assessment had been carried out in the first place. This has created serious uncertainty among the many foreign-owned businesses in the locality.

5.3 Conclusion

The Malaysian Economy has reached its matured stage of development and in particular the Distributive Trade and Retail Trade Sub-sector. The retail trade economy has made Malaysia a shopping heaven in the region and shopping has become a major attraction to tourists and locals alike. The numerous festivals enjoyed by the different communities in the country has further enhanced the retail trade sector. The free access to imported foreign goods from all over the world further adds varieties and enhanced shopping experience in the many modern shopping malls in the country. The country boasts some of the best and largest shopping malls in the region.

With such development the retail trade should be a market-oriented competitive economy. However, in many areas, the Government continues to implement policy and regulatory intervention that are protectionist, monopolistic and anti-competitive in nature. These regulatory interventions are made in the name of protecting the consumers and their rights and protecting local businesses in the country. In the early years of the country’s economic development, such initiatives were useful as the availability of merchandise goods were limited and local businesses were in their infancy. Today, the economy has matured and is able to fend for itself as a free market economy where competition and demand-and-supply dynamics are the drivers. The market can control itself and the consumers are smart regulators in a free economy.

The Government’s constant interventions through price control and anti-profiteering, policy and regulatory restrictions and prohibitions to market entry of new businesses, and subsidies and monopolistic policy in certain areas clearly create market turbulence in the supply chain. This is particularly serious in the consumer goods retail trade where the small shop owners are the most burdened. The Government should review its existing concept of consumer protection and governance of the market economy in order to reduce the unnecessary regulatory
burdens faced by the retail trade and in particular, the small businesses. The present regulatory practices not only create market turbulence but has diverted the productive energy towards regulatory compliance rather than towards economic innovation.

Retail trade is about the competition for and creation of the customers, as well as capturing and growing the market. Sales, promotional events and advertising, and exhibitions are some of the many tools used by the retail trade. For the Government to subscribe how businesses should run these activities is counter-productivity, anti-competitive and stifling to creativity and innovativeness. This is not “public interest” intervention but more of meddling as it saps the productive energy of businesses towards compliance of questionable rules and regulations. The productive energy goes to waste in the form of unnecessary regulatory burdens in the retail trade.

As a democracy, free trade and competition should be the practice in the marketspace. If a market is free, it is closely regulated by the free choices of market participants. Regulation by market forces weakens as a market becomes less free. Government intervention on how businesses operate should therefore be minimum. Regulatory forces should come from the competition between businesses and the consumer-regulators. With the Internet and the world-wide-web, the consumers have access to global information and also the ability to use social media to regulate the market effectively and efficiently.

The purpose of regulation is to serve public interest. Government regulators are monopolies and government regulates or rather government restricts as what government agencies do, is to restrict people’s freedom to make voluntary exchanges. Using regulation as a business by the authorities, i.e. to generate revenue, becomes a horrifying prospect. Yet this is the game being played out and must be stopped for the economy to prosper.
Section 6: Stage 2: Further Engagements with Stakeholders from Klang Valley

Contents: (6.1) Introduction; (6.2) The Regulatory Interventions by Other Regulatory Authorities; (6.2.1) Introduction on New Equity Ruling by DBKL; (6.2.2) Case Analysis on DBKL Equity Ruling 2017; (6.2.3) Regulation on Trading of Essential Goods (6.2.4) Permits on products information materials/displays used within premise; (6.2.5) Regulation on Music Royalty & Copyright; (6.2.6) Issues on Property Management and Strata Management; (6.2.7) Common Issues with Large Local Retailers; (6.2.7.8) Skilled and certified professionals (6.3) Concluding remarks

6.1 Introduction

After an initial discussion with the Ministry of Domestic Trade, Cooperatives and Consumerism (MDTCC) on the findings in stage one of the study, further engagements were made with businesses in the Klang Valley and followed with engagement with businesses in the other regions of Peninsular Malaysia, Sabah and Sarawak. This second stage of engagements which was carried out in the months of April to May 2017, captures the views, perspectives and issues of stakeholders outside the Klang Valley. With the exception of the Shopping Malls Association of Malaysia (Persatuan Pengurusan Kompleks Malaysia (PPK)) which is based in Selangor, the business interviews were with members of chambers and trade associations based in the other cities of Malaysia. This section concentrates on the issues raised by other stakeholders in Klang Valley which also verifies the issues analysed in Section 5.

6.2 The Regulatory Interventions by Other Regulatory Authorities

Although MDTCC is the main authority on domestic trade, there are many other authorities that impose regulatory interventions on the retail trade sub-sector. The notable ones are the local authorities who are involved in issuance of licences and permits for business premises, certain controlled trades and advertising, including signboards. The others that are of concern to the trades are the Ministry of Agriculture and Agro-based Industries (MOAAI) for rice and other agriculture produce, DVS for animals, SIRIM for all types of controlled consumer goods (e.g. electrical appliances), and Ministry of Health (MOH) for food products, pharmaceuticals, cosmetics and medical devices, the Ministry of Housing and Local Government (KPKT) (now renamed as the Ministry of Urban Wellbeing, Housing and Local Government) and the Ministry of Finance (MOF). The following reports on the analyses of issues (see examples in Box 6.1) raised by the retail trades with various authorities.

The main authorities most retailers have to deal with is the local authorities of the city councils like DBKL or MPPJ being most frequently cited as examples. This is
understandable as many shopping malls and shopping centres and retail trades are located in these two major cities. Many of the issues reported and analysed in this section are similar to those captured in Section 5, thereby reconfirming the concerns of retail business stakeholders in the region.

Box 6.1: Issues of Concern from Respondents

1. **Which regulation concerns you the most? Why?**
   - DBKL – regulations on product advertisement materials covering signboards, posters, notices, window displays within the retail premise or inside the shopping mall.

2. **Which regulations are hardest to comply with? In what way?**
   - DBKL – New application of Business Premise Licence: At least 50% equity for all business in Kuala Lumpur must be owned by Malaysian. 100% foreign-owned cannot run business in Kuala Lumpur as of 1/1/2017. Not possible to meet such requirements.
   - DBKL – New application for all types of Retail Liquor Licence: All new licences have been frozen, which prohibits the sale of all types of liquor in Kuala Lumpur even though the product is made of herbs for medical use as of 7/8/2014.
   - Pejabat Daerah Petaling - New application for all types of Retail Liquor Licence: All new licences have been frozen, which prohibits the sale of all types of liquor in Petaling even though the product is made of herbs for medical use.
   - Kementerian Pertanian & Industri Asas Tani Malaysia – Lesen Runcit Beras: Restricted to hypermarket (at least 5000 sq. m. trading area) or superstore (3000-4999 sq. m.) and only firms with at least 30% equity owned by Bumiputera. Prohibition to sell rice products in all outlets even though the rice may be health product and sold in small volume. Not possible to meet such requirements for retail chain stores.

3. **What are the costs of licensing to maintain a business operation, e.g. Retail Liquor Licensing?**
   - RM840 per annum
   - Newspaper advertisement cost (Malays and English papers) for two consecutive days at RM2300.
   - Errand runner charges, variable.

4. **What processing is most burdensome to maintain the business operation?**
   - Retail Liquor Licence takes more than 6 months (proviso – not objection from Government), also application can only be made after getting Business Premise Licence which takes (proviso – not objection from Local Authority)
   - Require supporting letters (Surat Sokongan) from various authorities:
     - Polis Diraja Malaysia – with interview at appointed police station
     - Jabatan Kastam Diraja Malaysia - interview may be required
     - Jabatan BOMBA – inspection of premise
     - MOH – requirement depending on local authority

5. **Are regulatory requirements inconsistent?**
   - DBKL equity requirement: The existing Business Premise Application Form and Guidelines from DBKL website does not mention the new ruling. Only a notice was displayed at the counter service noticeboard.

6. **Do you think the regulatory administrators have done a good/poor job? In what way?**
   - Takes too long to obtain supporting letters for application of licenses and to get approval
   - Uncertainty – no way of knowing whether applications will be approved.

7. **Do you find authorities are helpful in advising on compliance? Are there available guidelines?**
   - Telephone calls
     - difficult to call for enquiry, frequently no one entertains during operating hours
   - Walk-in
     - Long queue, officer-in-charge not available, different officer may give different advise or information, confusing the enquirer
   - Public guidelines – some local authorities made guidelines available online, e.g. DBKL

8. **How long do regulators take to respond to applications, queries, etc.?**
   - Business Premise Licence and Signage: 1-2 months
   - Retail Liquor Licence: more than 6 months
   - Wildlife Licence: 2 – 4 weeks
6.2.1 Introduction on New Equity Ruling by DBKL

One of the biggest contentions at the beginning of 2017 is the announcement by Kuala Lumpur City Hall (DBKL) on the new ruling that all new businesses application to DBKL by foreign-owned firms must meet the 50 per cent Malaysian-own equity requirement\(^7\). The notification was made at the counter services notice board (see Figure 6.1). This new ruling impacts many retail trades as Kuala Lumpur is a major retailing hub in the country that has much foreign participation.

According to the report by The Star on a dialogue with the traders and hawkers in Menara DBKL on Nov 24, DBKL stated, “These moves are to curb the monopolisation by foreigners in businesses, especially in critical areas including Jalan Tun Tan Siew Sin, Leboh Pudu, Bukit Bintang, Medan Pasar, Pusat Bandar Utara, Jalan Chow Kit, Leboh Ampang, Petaling Street, Kuala Lumpur Wholesale Market, Selayang Daily Market, Chow Kit Market, Pudu Market and Keramat Market. It has come to a point for us to make a radical decision before the situation gets out of hand.”

According to DBKL, the enforcement unit had confiscated items from 23,553 foreign hawkers and 544 local hawkers’ licences were revoked for using foreign services for the duration 2012 to October 2016. DBKL does not issue hawkers licence to foreigners and local hawkers are strictly forbidden from hiring foreign helpers. DBKL has also identified 7,400 foreigners working for Malaysian hawkers, who are now at risk of having their licences revoked. This new ruling was enforced on 1 January 2017, and toward this end DBKL has formed a task force to engage the business community over the new licence conditions and educate them on what can and cannot be done.

6.2.2 Case Analysis on DBKL Equity Ruling 2017

From the news report above, the key issue of concern to the said authority is that there are too many foreigners (legal or illegal) operating petty trading (hawking activities) in many parts of Kuala Lumpur. These foreigners are carrying out these hawking activities illegally as unlicensed traders (note that local DBKL does not issue hawkers licences to foreigners) or that these foreigners are operating their activities under local licence owners (which is also illegal under DBKL licensing

conditions). On this issue the authority has introduced a regulatory solution without carrying out an impact assessment (RIA) resulting in serious unintended consequences to existing businesses (see Box 6.2). It must be noted here that the case was brought to PEMUDAH of which DBKL is a member, in February 2017 for deliberation, after which the decision was made to temporarily rescind the order until the impact assessment is made. Unfortunately, there were reports that DBKL had been adamant on this and intends to re-introduce the equity ruling in 2018 on the belief that such ruling will eliminate illegal foreign traders in Kuala Lumpur.

Box 6.2: The case of an existing foreign-owned retail chain store

This case study is developed from the feedback of a respondent® and based on other background reports on the case. The respondent brought up the issue to the local business chamber and was later brought to the attention of PEMUDAH.

An existing foreign-owned retail chain store involved in the retailing of healthcare food products and traditional complementary medical products that have been in operation for more than 50 years in the country and having about 100 stores or outlets all over the country has decided to open another outlet in a newly opened shopping mall in Kuala Lumpur in 2016. After signing the leasing agreement with the mall operator/developer, about 1000 sq. ft. outlet was renovated according to the planning requirements of the local authority. On completion of the renovation, the application for the business premise licence was made in December 2016. The application was rejected at the counter service on the reason that the firm did not meet the new equity requirement which would come to force on January 2017 as displayed on the noticeboard (see Figure 6.1).

This new ruling has put the company in a bind as it has invested thousands of Ringgit in the renovation and the leasing agreement. Even though the issue has been brought up to PEMUDAH, it is stuck in the licensing application delay which is costing it thousands in rental, workers’ wages, inventory overheads and lost business.

It is impossible for a retail chain store to comply with such requirements as opening a new store outlet is not opening a new business. It is not reasonable nor feasible to require that a large company restructure its equity just to open an outlet. Obviously, the authority has not thought through the implementation of such requirements for the business premise licensing.

Source: Interviews feedback

Obviously, there are a number of shortcomings in the decision-making and problem-solving initiative of the authority. Firstly, the authority did not define the problem and its objectives accurately or properly. The authority rushed into a decision, for whatever reason, without a formal study of the issue. It based its decision on merely some enforcement statistics (frequently referred as symptom of the problem) without analysing the root cause or causes of the problem.

Secondly, the authority did not carry out a proper RIA on the issue of concern. City Hall of Kuala Lumpur is under the direct purview of a Federal Ministry, the Ministry of Federal Territories and Urban Wellbeing, and therefore has to comply with the

® Note: Under existing protocol of RURB study, business respondent name will not to be mentioned in the report.

Thirdly, a substantive public consultation was not carried out with all affected stakeholders and interested parties. A single dialogue with the petty traders and hawkers in Kuala Lumpur to tell them of the new ruling is not a consultation. All the affected parties were not reached since the notice specified all foreign-owned businesses and not only petty traders and hawkers.

Fourthly, the implementation of the ruling was a rush. No proper guidelines were established to replace the existing guidelines and application forms. The counter services merely implemented the ruling as per the notification to the public (Figure 6.1).

Figure 6.1: Notification of new equity ruling at DBKL

![Notification of new equity ruling at DBKL](Source: DBKL Noticeboard)
6.2.2.1 Option No. 1: Continue with the existing ruling-making practice

The authority can consider different options to prevent such rule-making practices which often result in impracticable intervention or negative consequences to existing businesses.

This usually will result in serious compliance issues for businesses as in the case described. More importantly, rule-making processes that do not follow good regulatory practices (GRP) will often result in regulation that serves interested parties (regulatory capture) instead of resolving issues of concern. Also, without substantive public consultation, infeasible rules are frequently made, causing unnecessary regulatory burdens and business losses.

6.2.2.2 Option No. 2: Proposed regulation must be subject to RIA

This is the only reasonable solution to rule-making for the authority. The NPDIR has established the guidance for GRP which should be followed. This will definitely eliminate flip-flop decision-making on regulatory intervention. GRP will also ensure substantive public consultation be implemented.

6.2.3 Regulation on Trading of Essential Goods

There are some licensing prohibitions on sales of certain types of goods (see Box 6.4) which have restricted the types of goods offered by some specialty goods retailer. In the case concerned, the company wants to retail specialty health rice products, but retailing any rice product requires a *Lesen Runcit Beras* (Rice Retail Licence). However, current policy restriction only allows hypermarkets and superstores to obtain such licences, as quoted below, from an official communication from Ministry of Agriculture and Agro-based Industry Malaysia (MOAAIM);

“Jenis perniagaan runcit yang dijalankan adalah terhad kepada jenis hypermarket atau superstore sahaja…” and for foreign-owned firms, “Sekurang-kurangnya 30% equity syarikat dimiliki Bumiputera,…”

Such prohibition or restriction has prevented firms from bringing in new innovative products thus affecting the growth of the retail trade. More importantly, the consumer has lost the opportunity of enjoying products which may have benefitted the health and promoted wellbeing.

Another restriction faced by such firms is the freezing of the liquor licence by various local authorities, in this case, the DBKL and Petaling District. The freeze is meant to reduce the number of outlets selling general liquor to possibly reduce incidence of alcohol abuse. In this case however, the outlet is selling medicinal liquor products. It is unfortunate that such ruling applies generally to all sales of alcohol products – a one-size-fits-all regulation.
What can be said is that these regulations or policy restrictions were formulated years back when GRP was not the norm in regulatory practices. For example, the control of rice supplies was introduced during the Malayan Emergency period (1947-1960)\textsuperscript{77} for a specific purpose and has not yet been removed, but instead made more restrictive, to this day. The freeze of liquor licence has been formulated without exception and a one-size-fits-all regulation because the impact assessment was not made prior to its introduction.

The supply and distribution of rice are regulated as rice is considered as a security risk on basic food for the country. Whether this strategic concern is relevant in current age and time is subjected to debate. As such, rice supply and distribution continue to be regulated under the Control of Padi and Rice Act 1994, the Internal Security Act 1960. The feedback from the authority, the Bahagian Kawalselia Padi dan Beras, is shown in Box 6.3 below.

Box 6.3: Feedback from Bahagian Kawalselia Padi dan Beras (MOA)

<table>
<thead>
<tr>
<th>According to the Pegawai Penguatkuasa, Unit Perlesenan, Bahagian Kawalselia Padi dan Beras, Kementerian Pertanian dan Industri Asas Tani, Putrajaya,</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The rice retail license is prohibited to all foreign-owned retailers for all types of rice.</td>
</tr>
<tr>
<td>2. Application for the licence is permitted to Syarikat Sdn. Bhd. or Berhad registered with Companies Commission of Malaysia (SSM).</td>
</tr>
<tr>
<td>3. SMEs companies must be 100% Malaysian owned. However, hypermarkets which are owned by foreign company are subjected to the guidelines of the Ministry of Domestic Trade, Co-operatives and Consumerism (MDTCC/KPDNKK). They must meet the requirements of 30% Bumiputera equity ownership and the prescribed size of the facility.</td>
</tr>
</tbody>
</table>
| 4. The regulation is imposed because (according to the official):

   “The rules are to safeguard the interests of the Malaysian people and to enable the government to have control supply and distribution of rice as stipulated in the legislation Control of Padi and Rice Act 1994, the Internal Security Act 1960 and the necessary orders (Control of Rice Supply) 1974.” |

6.2.3.1 Option No. 1: Maintain the Status Quo

As put forth above, such interventions will only reduce the innovative capacity of businesses to grow and improve their productivity and competitiveness. In the end, the consumers will lose out in terms of accessibility to new products and services which may have been beneficial to health and wellbeing.

\textsuperscript{77} The Malayan Emergency (1947-1960); [http://www.historyofwar.org/articles/wars_malaya.html](http://www.historyofwar.org/articles/wars_malaya.html)
6.2.3.2 Option No. 2: Review the existing regulations

Detailed impact assessments are needed for all the regulations that have not been formulated without going through the GRP principles. Public consultations must be the key element in the impact assessment process.

6.2.4 Permits on products' information materials/displays used within premises

Retailers feel that the need to obtain permits for every informational material and display (window displays) used is an overzealous application of the advertisement regulation in retailing of goods and services.

Firstly, retailers need to provide information on the products on sale, and particularly for new products, and there are so many new products being offered daily. This makes introduction of products and the communication of product information burdensome in terms of permit fees and administration of information material.

Secondly, many of such information material are for short-term use during product promotion events which may last only a few days. As shopping malls carry out these promotional events through the year, such permit requirements becomes highly burdensome.

Window displays is another concern with shopping malls and such displays go with the seasons and also the need of changing displays is to attract window shoppers. Window shopping is an important façade for shopping malls as it is a means to draw people, and in particular tourists, to the facilities. Shopping malls want to see their tenants changing their window displays regularly.

The intention of regulatory bodies like the local authorities is to ensure that advertisers and advertisements are:

a) truthful and fair to consumers and competitors;
b) within the bounds of generally acceptable standards of public decency; and
c) not used indiscriminately for the promotion of products which are hazardous or harmful to society or to individuals particularly minors, and to a degree acceptable to society at large.

These are largely grand intentions and are subject to different perspectives and interpretations. As such, adequate guidelines on such activities are needed.

However, businesses do not see the objectivity of this intention and feel that this is a means by local authorities to collect revenue. As the number of retailers in large local authorities or city councils are huge, it is not an effective intervention going

---

78 Varun Varadarajan (Creative Consultant) 2011, Regulation in Advertising; https://www.slideshare.net/VarunVaradarajan/regulations-in-advertising
by the large number of product information materials seen in many shop houses around the cities. It seems that large shopping malls and shopping centres are merely convenient regulatory targets.

A joint memorandum (see Box 6.4: Contents of Joint Memorandum by PPK) by various retail associations via PPK was sent to the Ministry of Federal Territory and the Ministry of Tourism and Culture in November 2016 on this matter. The affected representative associations are:

a) Malaysia Retailers Association (MRA)
b) Malaysia Retailer Chain Association (MRCA)
c) The Chinese Chamber of Commerce and Industry of Kuala Lumpur and Selangor (KLSCCI)
d) Malaysian Association of Hotels (MAH)
e) Malaysian Association of Hotel Owners (MAHO)
f) Persatuan Pengurusan Kompleks Malaysia (PPK)

Box 6.4: Contents of Joint Memorandum

1. **Purposes of Signages/Posters/Notices/Displays within the Leased Premises**
   The above are located within the lease line of the business premises, therefore, deemed to be for internal communications and, therefore, need not be licensed as they are not located at public areas. These signages/posters/notices/displays are put up in relation to the merchandise for sale and are not merely for advertisement purposes but to provide essential information on the products for consumers, e.g. benefits of usage, etc. so that consumers can be better informed and become more knowledgeable and updated on available products in the market.

   Retailers and other business premises are already paying advertisement licences for their façade and advertisement panels etc. within the shopping mall and should not be requested to pay again for advertising licences within their own lease line and premises.

2. **Duration of the Signages/Posters/Notices/Displays Within the Leased Premises**
   The said signages/posters/notices/displays are put up for only short durations e.g. retailers usually run many back-to-back promotions each year which may be for short periods of between 1-7 days (except for sales periods). Therefore, it will be onerous and burdensome as well as time consuming and costly for retailers and business operators to apply for each occasion i.e. even before approval has been obtained, the said duration is already over.

   Retailers and business operators are already required to apply for so many other numerous licences so this is an additional administrative burden and counter-productive to efficiency in business operations and may well be abolished.

3. **The Purpose of Window Displays**
   Window displays of retail outlets globally are essentially for purposes of beautifying the shop façade and to attract shoppers with display of available products etc. besides improving the attractiveness of shop fronts in shopping malls. Therefore, window displays are an essential influence as it helps the shopping mall management determine where shops may be located for best effect.

   Retailers constantly and continuously put up new window displays all the time, throughout the year in line with their seasonal merchandise or promotion periods. If these window displays also require licences, retailers and business operators will reduce the frequency of
new displays to cut down the burdensome application process, and if not, to reduce costs in the long run. This will ultimately result in fresh and attractive window displays being lost (or even replace with other formats) which will undeniably result in less attractive or boring, out-dated shop fronts in shopping malls and shop houses throughout Kuala Lumpur. Even more dreadful and awful, this will see the demise of Malaysia’s favourite lifestyle activity known as “window-shopping”!

4. Kuala Lumpur as a Shopping Destination
Tourism Malaysia has consistently and continuously promoted and attracted tourists to Kuala Lumpur as a shopping destination within our region. In line with this policy, there are 3 national sales periods per year:
- 1Malaysia Super Sales (1MSS)
- 1Malaysia Mega Sale Carnival (1MMSC)
- 1Malaysia Year End Sale (1MYES)

With the proposed licensing policy to embrace all types of signages/posters/banners/displays within leased premises, it will be counter-productive to effectively announce the sales of all merchandise and services to shoppers on a grand scale as there is a natural tendency to reduce such collaterals due to the onerous burden of applications and the cost factor. Such licensing will result in a disastrous step backwards to negate all efforts undertaken by Tourism Malaysia in the past, currently and in the future. Tourism Malaysia targets to attract a total of 30.3 million tourists in 2016 and the shopping and retail industries are all set to work together with them to achieve this objective. We therefore, earnestly hope that the authorities will realise that in the big picture, there is a need to balance out industry interests vs. regulatory procedures which will result in burdensome compliance and becomes counter-productive to achieving a more robust retail and shopping economy under these competitive times.

We reiterate that we unanimously register our strong reservations and objections and urge the relevant authorities to postpone and/or abolish such regulations governing licensing of product advertisements within leased premises.

Source: PPK - Extracts from the Joint Memorandum

6.2.4.1 Option No. 1: Maintain the Status Quo
Retailers and shopping malls and centres will continue to bear this regulatory burdens and enforcement pressure from the local authorities. These burdens will eventually be included into the prices which consumers have to pay for the goods and services. At the same time, a lot of non-value adding activities (permits applications and maintenance) have to be performed thereby reducing retail trade productivity.

6.2.4.2 Option no. 2: Yearly Advertising Licence incorporated into the Yearly Premise Licence

The local authority may want to look at incorporating an advertising licence into the existing premise licence which traders have to renew yearly. This will retain the flexibility which traders require for product promotion and reduce the burdens or applications for individual advertising permits. In this manner, the authorities continue to enjoy the advertising revenue with reduced administrative overheads.
To make such yearly licensing effective, proper guidelines on product promotional materials will be necessary in order that the enforcement units can make regular supervision to ensure that all traders play by the established rules.

6.2.4.3 Option No. 3: Introduce Standards for Self-regulation

This option will totally remove the non-value adding activities of regulation and allow traders to be innovative and improve their competitiveness. However, this has to be accompanied by good enforcement activities by highly competent personnel with high standards of integrity. A proper system of checks and balances such as reporting of activities and performance, complaint and appeal procedures and an oversight body will be needed. On possible loss of revenue, local authorities can include licensing fees for advertisements for retail trades.

6.2.4.4 Option No. 4: Public Consultation with stakeholders for improvement

Public concerns must be debated and resolved through adequate consultation initiated by the authorities. It is through such engagements that generally acceptable solutions can be developed. No proposed options generated by any individual, organisation or authority will ever likely be accepted without full consultation.

6.2.5 Regulation on Music Royalty & Copyright

An important concern of PPK are the payments for royalty for music used in shopping malls, shopping centres and retail outlets. A joint memorandum on this issue has been made to the principle authority, Intellectual Property Corporation of Malaysia (MyIPO) through the office ACCCIM, in May 2017. The representations to this memorandum are:

a) Associated Chinese Chambers of Commerce & Industry Malaysia (ACCCIM)
b) Malaysia Retailers Association (MRA)
c) Malaysia Retailer Chain Association (MRCA)
d) Malaysian Association of Hotel Owners (MAHO)
e) Malaysian Association of Hotels (MAH)
f) Persatuan Pengurusan Kompleks Malaysia (PPK)
g) BB-KLCC Tourism Association

This joint memorandum requests MyIPO to adjudicate the discussions between the four agencies dealing with the collection of fees, being Music Authors’ Copyright
Protection Berhad (MACP)\textsuperscript{79}, Public Performance Malaysia (PPM)\textsuperscript{80}, Recording Performers Malaysia Berhad (RPM)\textsuperscript{81} and PRISM BERHAD (Performers Rights and Interest Society of Malaysia) (PRISM)\textsuperscript{82}. MyIPO has given authority to these four entities to license and collect licensing fees on music related royalties. To consolidate the licensing roles and fees collections of these four entities, the new Music Rights Malaysia Berhad (MRM)\textsuperscript{83} was established. This is to avoid the licensing confusion\textsuperscript{84} among users’ stakeholders on the licensing and fees collections and to eliminate any duplications that are constantly being disputed. Unfortunately, some teething issues has arisen in the implementation of MRM. Also, there is no published information on the roles and operations of MRM at all. Even JobStreet.com cannot provide any review of the company. Businesses have claimed that even with MRM as the sole body for licensing and fee collection, the other entities continue to harass the traders.

The businesses or user groups (UG) are claiming that the current tariffs are unreasonably high and the formula for calculating the tariff rates is not transparent and the basis for formula is not known. The UG claims that since the licensing and fees collection have been centralised under MRM, the administrative costs should be lower and therefore there should not be any increases in fees. The UG also would like the authority to establish a tribunal to adjudicate any future disputes between users and the different copy right holders.

6.2.5.1 Option No. 1: Maintain the Status Quo

Since the centralised licensing and fees collection is newly established some teething problems in implementation is expected. However, this initial implementation ought to be monitored closely by the authorities and constant engagement with the licensing entity and the affected stakeholders’ needs to be made to ensure that any issues encountered are dealt with promptly. MyIPO as the authority on this regulation should take cognizance of the memorandum from the associations to initiate the engagement.

6.2.5.2 Option No. 2: Review the regulatory regimes

\textsuperscript{79} MACP is a non-profit organization whose main functions are to license users of music (radio and television stations, entertainment outlets, shops, online and mobile service providers etc.) and pay the songwriters and publishers when their works are broadcast and publicly performed; http://www.macp.com.my
\textsuperscript{80} PPM, a wholly owned non-profit subsidiary of the Recording Industry Association of Malaysia (“RIM”) is a licensing body whose functions are recognized under the Copyright Act of 1987 (Act 332).
\textsuperscript{81} RPM recognised by MyIPO to represent recording artistes and musicians in Malaysia, and to act as a Licensing Body on their behalf; www.rpm.my/
\textsuperscript{82} PRISM was established with the main role to collect, distribute, protect the interest and rights of performers; www.prismberhad.com.my
\textsuperscript{83} MRM is established by the 4 music licensing bodies (MACP, PPM, RPM & PRISM) with the endorsement of MyIPO to provide fair and effective centralized copyright licensing convenience to music rights holders (songwriters, music publisher, recording companies, recording artistes & recording musicians) and commercial music users alike.
\textsuperscript{84} RIM Media Release, Music Licensing Confusion (2 September 2014); http://www.rim.org.my/main/index.php?option=com_content&task=view&id=427v
The MfIPO has endorsed MRM which was established by the four interested parties without carrying a regulatory impact analysis (RIA) on the change in the regulatory regime. This has resulted in the business stakeholders questioning the new regulatory implementation and in particular, the increase in the amount of fee payable. Without a proper RIA, the implementation strategy and plan has not been established resulting in unforeseen teething issues.

This unfortunate oversight ought to be corrected by the authority by carrying out a post-RIA on the implementation of MRM. It should be noted that MRM is another self-funding or profit making entity and likely to have its own interest to take care of. Through this, engagements could be made with all stakeholders to formulate a better and more acceptable solution of royalty collections and licensing.

6.2.6 Issues on Property Management and Strata Management

6.2.6(a) Valuers as Property Managers

Property management companies like the shopping malls and shopping centres operators claim that they cannot employ property managers who are not registered valuers according to the existing regulation. Firstly, there are not many registered valuers who function as property managers. This has resulted in a mismatch of demand and supply of registered valuers as property managers.

According to Peter Drucker, management as a discipline and as a practice deals with the human and social values. A practice feeds from a large body of true sciences – economics, psychology, mathematics, political theory, history and philosophy.

To quote Drucker;

“Management is a practice, rather than a science or profession, although containing elements of both. No greater damage could be done to our economy or our society than to attempt to professionalise management by licensing managers, for instance by limiting access to management positions to people with a special academic degree.”

It is unfortunate that some of the existing laws has treated business management as a profession. In the case of the Valuers, Appraisers and Estate Agents Act 1981 (Act 242), Section 19 (c) states that;

19. Subject to the provisions of this Act a registered valuer or appraiser who has been issued with an authority to practise by the Board shall be entitled to practise his profession and shall be authorised to undertake--

c) **property management and the making or checking of inventories of furniture, fixtures, trade stocks, plant or machinery and other effects.**

This has been taken to imply that property management is the function of a valuer and therefore a property manager has to be a registered valuer. Property management is more than the function of valuation, although valuation is an element in property management. The role of a property manager is to manage the valuation function but not necessarily to perform the valuation. Unless this understanding of management is recognised, the regulation will continue to restrict the employment of property managers and create unnecessary burdens for the sector. The industry foresees that this restriction will cause serious problems in the near future as the number of strata properties is growing at a fast pace.

### 6.2.6(b) Strata Title and Strata Management Regulations

The prescriptive requirements in many sections of the regulations have caused much confusion and difficulty in interpreting and applying the regulations and property development has moved into mixed-used development or integrated development. When there are new formats of development, it is very difficult to separate common shared facilities and services, such as security, cleaning, use of lifts and escalators, etc., between commercial and residential owners. The formula for the determination of sharing of management services fees becomes very complicated.

There is no evidence that the changes in the strata title regulations have not undergone the impact assessment and public consultations as required under the NPDIR and as a results many implementation issues are being raised by the stakeholders so affected. Currently, affected stakeholders and the regulators are continuing their deliberations to resolve the many implementation issues as they arises. Since this does not relate directly to the retail trade and the issues are being deliberated in other platforms, only a couple of generic options are proposed here.

#### 6.2.6.1 Option No. 1: Maintain the Status Quo

As long as the current interpretation of the regulation of the property management function continues, the regulation has to be complied with as it is. It is unfortunate that the property manager’s position is monopolised by valuers and property owners have to engage registered valuers to supplement the property manager’s function. It is adding cost to strata title owners on the additional overheads.

---

87 Mixed-use development is a type of urban development that blends residential, commercial, cultural, institutional, or industrial uses, where those functions are physically and functionally integrated, and that provides pedestrian connections.; [https://en.wikipedia.org/wiki/Mixed-use_development](https://en.wikipedia.org/wiki/Mixed-use_development)
6.2.6.2 Option No. 2: Review the implementation of the Strata Title and Strata Management regulations.

As property development will continue to introduce new formats of development, an overly prescriptive requirement in any regulation needs to be reviewed to allow for flexibility in regulatory regimes. Innovation will mean new ways of determining requirements and new formulas to use and regulations should not restrict such continuing development. It is necessary for the authorities to constantly monitor business changes through regular engagements and redefining regulatory rules and requirements so that the economy can progress rapidly.

Although the Strata Management Act 2013 Act 757 and Strata Titles Act 1985 Act 318 incorporating all amendments up to 1 January 2006 are a recent introduction and facing many teething implementation problems, it is necessary that authorities continue to engage with businesses to resolve implementation issues. The engagements need to focus on resolving conflicts of interest and looking for win-win solutions that best serve public and business interests.

6.2.7 Common Issues with Large Local Retailers

An engagement was made with a large local retailer with has over 300 different kinds of retail outlets all over Malaysia to capture its experiences on the common regulatory issues. The category of outlets comprises hypermarket, shopping mall, emporium, minimarket, convenience shop, franchise store, bazaar, premium store and restaurant. It also operates and manages the KR1M stores for the Government. The company faces numerous issues in regulatory compliance which add unnecessary regulatory burdens to the business operations. The main issues of concern are summarised in Box 6.5. Continuing is the discussion and analysis on the issues of concern.

Box 6.5: Other Issues of Concern from the Retail Trades

<table>
<thead>
<tr>
<th>Engagement with a large local retailer which operates a hypermarket, mall, emporium, minimarket, convenience shop, franchise store, bazaar, premium store and premium restaurant and government sponsored KR1M stores yielded many common issues of concern to the retail trade. These issues affect both the growth of the trade, shopping convenience, consumer spending and cost of living. The captured issues are:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The ban on the use of plastics bags (totally or on specific days of the week). The different regulation of the use of plastics bags across different states poses huge challenges to retailers in managing costs and supplies.</td>
</tr>
<tr>
<td>2. The differences in premising licensing across states and local authorities continues to be a challenge for large retail chains which have operations all over the country. Special issues are faced</td>
</tr>
</tbody>
</table>

KR1M - Kedai Rakyat 1Malaysia, stores are owned by the Government (MDTCC). It is an initiative introduced by the Government to bring low-priced goods to the lower-income public. Generally, the operation of KR1M stores are outsourced to local private retailers who are competent in such trade.
in certain states like Sabah (on immigration requirements) and Kedah and Kuala Lumpur (on KR1M stores).

3. Restricting the issuance of Approved Permits (AP) for the importation of fruits, vegetables, rice and other goods. Although hypermarkets chains have large turnovers on many consumer items such as fruits, vegetables and rice, they are prohibited from importation of these goods as APs for these are given to appointed individuals or entities of the Government.

4. The taxes imposed on some consumer goods are questionable as there is no perceived objectives for them. For example, the "Delima" fruit or pomegranate fruit is subject to very high duties making the fruit very expensive in the country. Some fruits have no duties (oranges) while others have different tariff rates. These differences in tariff rates makes retailing challenging (in pricing and purchasing).

5. Price control regulation is a huge burden to the retail trade in administrative costs as they have to maintain up to 3 years of sales record for inspection when demanded.

6. Restriction in Sales Events by MDTCC with the reduction from 6 permitted events to 4 has reduced the retail trade in managing its supplies, inventory and clearing of stocks. This limits the opportunity for consumers to enjoy lower prices from frequent discounts.

7. Freezing of intake on foreign workers for the hypermarket chains has resulted in a number of issues for the trade. There are many backend 3D type jobs with low pay and are unattractive to locals. Even when foreign workers are employed they are not allowed to handle frontend operations such as cashiering and this results in inflexibility of deploying the workforce, particularly during rush period of intense sales.

Source: Compilation from interviews

6.2.7.1 Ban on plastics shopping bags

Although it is generally accepted as a national aspiration to totally abstain using plastics shopping bags for environmental reasons, the implementation of the ban is left to the states and local authorities. The ban on shopping plastics bags on a specified day started in Penang, Selangor, Kuala Lumpur and now other states have imposed this over the last few years. The specified-day ban was then escalated to total ban for Penang and later by Selangor.

According to feedback from the respondents, the ban imposition in Penang was viewed as more successful as it was implemented gradually with good promotion and education of the public and businesses. In general, the shoppers in Penang have accepted the new way of shopping with no plastic shopping bags. However the imposition made in Selangor was deemed drastic without sufficient notice and preparation.

The concern to businesses, particularly the hypermarkets and supermarkets where both wet and dry goods are retailed is with regard to the different ways the implementation was made in different states. Firstly, most hypermarkets/supermarkets are retail chains that operate outlets across the country. The different regulatory implementation makes the management of supplies of plastic bags difficult. It is also perceived that the smaller retailers do not comply with the ban thereby making it a competitive disadvantage to the big retailers.
Secondly, the regulation allows for the use of biodegradable plastic bags but there are few qualified (by SIRIM) suppliers/manufacturers to choose from and the prices for biodegradables bags are 5-8 times higher than that of the normal plastics bags. Customers, on the other hand, are unhappy that they now have to pay for the use of plastics bags and perceive that the businesses are raking in further revenue from this ban.

The argument here is on the introduction of the ban and whether it is the better solution to resolve the environmental issue of plastic bag pollution. There is no study or impact assessment on the problem and authorities have proceeded to implement the regulation as the solution to pollution from the use of plastic bags. As is obvious, plastics are used widely as packaging materials. Are they less polluting than plastic bags? Is the plastic bag the cause of pollution or is it how they are used? Are there alternatives to the use of plastic bags and what are the costs? Isn’t the use of plastic shopping bags a convenience of the modern lifestyle, a progress in living standard? In other words, what are the cost-benefit assessment of using plastic bags? Many other questions can be posed as argument. The point here is that a formal assessment ought to be made before introducing a regulatory solution.

6.2.7.2 Challenges in Premise Licensing

This is a common issue among all retail chains intending to open new stores or branches in any state. Every state and local authority has their own rules and requirements making it a huge burden to retail chains, particularly those that have centralised management. The regulatory affairs or the legal functions have to understand the varied requirements and have to maintain a large number of functional staff to deal with licensing applications and regulatory approvals. Not only does this increase the burden of administrative costs, but valuable management overheads are expended which would otherwise be utilised for innovation and productivity improvement. Another issue is that different requirements placed by different authorities reduce the potential of standardisation of chain stores. This further escalates the cost of retailing that will be passed to consumers.

6.2.7.3 Obtaining Approved Permits for Importation for fruits and vegetables

Large hypermarket chains, whether foreign majority-owned or home grown, retail tons of fruits and vegetables monthly. Unfortunately, importation of fruits and vegetables are regulated and restricted Approved Permits (AP) are issued by the agriculture ministry that controls the imports of agricultural produce. According to respondents, there has been no official established restriction on APs but they
have not been able to obtain approvals with the yearly applications. It is perceived that APs have been issued to interested parties.

In the past, when the country’s foreign trading was still in its infancy stage of development, restrictions placed on food import were necessary to control and ensure supply sustainability. However, the country now has a matured trading economy and it is questionable whether such interventions by the Government are necessary. The result of such control today is that these interested parties with AP can control and manipulate imported food supply and prices. The lack of competition creates market inefficiencies with the absence of consumer-regulated dynamics.

The modern competition in trade is the ability to compete not only in price, quality, delivery and services but in having an efficient supply chain. When the government intervenes into specific activity, in this case, the AP for imports, then the traders cannot compete on supply chain as import efficiency can greatly influence the cost of goods purchased. In the end, the consumers stand to lose on better prices of goods sold.

The prohibition on importation of some types of agricultural produce is both to protect local farmers and for protection of the local environment from alien pests (Box 6.6). However, certain percentage of a produce is considered for importation in order to cater for demands that are beyond local capacity to supply.

Box 6.6: Feedback from DOA: Bahagian Biosekuriti Tumbuhan, Jabatan Pertanian

According to the Department of Agriculture (Jabatan Pertanian)

1. **Bahagian sekuriti tumbuhan, Jabatan Pertanian** Kuala Lumpur issues approval permit (AP) for two imported agriculture produce: cabbage and coconut. Previously, coffee is placed under the control of imported item, but now it has been liberalized. For coconut, AP are issued if it is for the processing industries such as *kerisik* or *santan*.
2. The primary reason of controlling the imported agriculture produce is to protect our local products and local farmers.
3. Business has to fulfil the requirements prescribed by the DOA in order to get the permit. Among the conditions are the refrigerator declaration and the facility. DOA officials will carry out inspections or spot check on the facility to ensure the requirements are met.
4. If the application for AP is rejected, normally the applicant will be informed of the reasons.
5. The business frequently will request to increase its import quota. There are justification that DOA will consider for increasing quota, such as; how they import the product, how much to import and how much to use, what are the outputs and what is the percentage of export. Decisions are made on product not only for the local market but also for exports.
6. The contract of AP will be issued as such, if the business want to process coconut with 10 million ton every year, then import approval permit will be given for 8 million ton, and 2 million ton has to come from local produce. This is to protect local farmers/producers.
7. The imported products are also permitted from certain countries. This is necessary sanitary and phytosanitary (SPS) measures to protect the local plantations.
Based on the feedback, this study proposes that any review of the existing rules and regulations should follow the GRP processes. Current rules and regulations and the criteria and requirements need to be transparent to businesses. Transparency in regulation facilitates compliance and reduce any wrong perceptions in implementation of permits.

6.2.7.4 Duties on imported fruits and other products

There seem to be duties imposed on certain fruits such as pomegranate which has duties of 30% as compared to zero duties for oranges (inputs form respondents). This makes the pomegranate very expensive at retail outlets. The country does not produce pomegranate and the fruit is popular as a drink and salad mix. There are also duties imposed on other types of fruits which are not produced locally. The industry questioned the logic of these duties as they increase the prices of these goods beyond the reach of many consumers.

6.2.7.5 Administrative Burdens in Price Control Regulation

The implementation of Anti-profiteering and Price Control Regulations in its current form imposes high administrative burdens on the retail trade. In line with this, the traders have to keep records of prices on the multitude of goods sold for up to three years in case of audit by the authorities. There has never been any assessment of whether such administrative cost burdens actually are beneficial at all. The feedback on this regulation is shown in Box 6.7 below.

Box 6.7: Feedback on the Price Control Regulation Implementation

According to the Ministry of Domestic Trade, Co-operatives and Consumerism (MDTCC), the Government has established price control through the gazetted regulation, on which:

1. The mechanism of controlling has been determined by the government.
2. The businesses have to keep sales record for every 3 years and enclosed with the purchase cost data.
3. The concept of one regulation one Act was applied to all KPDNKK (MDTC) offices. The issue of inconsistent information may occur due to the understanding and the way the information communicated may be different for some officers.
4. KPDNKK has issued a guidebook, a standard of operation (SOP) book and a compliance guideline (included methods, forms, the developed formula) for officers to ensure consistency of information and on the implemented regulations.

6.2.7.6 Control of Number of Sales Events

When the authorities reduced the number of sales event from 6 to 4 times a year, it had serious impact on the retail trades. With only 4 sales a year (3 gazetted for festive sales) the trades have only one sales event to manage with. In other words, the potential use of sales for managing inventory, supplies, new arrivals, taste and
fashion, cash flow, shelf lives, among many other reasons is greatly stifled. Again the cost benefits of such regulatory intervention has never been studied or reviewed. The policy and implementation of the regulation on sales and sales events from the MDTCC is shown in Box 6.8 below.

Box 6.8: Policy and Implementation on Control of Sales and Sales Events

**Policy requirements**

According to the Ministry of Domestic Trade, Co-operatives and Consumerism (MDTCC/KPDNKK), the Government has established and implement the Cheap Sales regulation since 1988. However, the regulation has been periodically amended until last year 2016.

1. The purpose of the regulation is to ensure that the sales is genuine in terms of its price and quantity. Until now, KPDNKK still received complaints that there are sales for which the prices are higher than the normal prices.
2. Currently, KPDNKK has announced the number of cheap sales events has been amended from 4 times a year to 5 times. The five times of sales are determined for 3 events of the cheap as gazetted events and 2 events are an optional for businesses. The three gazetted sales with their respective durations are as follows:
   - Early year sales (31 days)
   - 1Malaysia Mega/Carnival Sales (77 days)
   - Year End Sales (61 days)

However, the duration of each sales may be prolonged taking into account the big festivals such as Hari Raya, Chinese New Year, Hari Gawai, and Hari Keamatan.

On pricing at sales events, the followings are the agreed policies with MRA, MRCA, BRO and other retail associations:

- The minimum discount on sales is to be at least 10% on the normal price.
- At least 50% of the premise products have to be discounted during the sales.

These policy requirements are applicable to all kinds of traders included the SMEs. However, perishable items such as vegetables, fruits, flour are excluded from the sales policy.

Consumers felt that they could be deceived by the traders as such the reasons for the regulation on sales are due to:

- Consumers' complaints with regard to sales price
- Quantity of the item offered was limited. There are cases where only 5% of items in the outlet are offered for sales whereas another 95% are not.

**Notification of the cheap sales events**

1) Businesses have to notify KPDNKK about the sales events 14 days before that.
2) KPDNKK officer will then response to the notification within 3 days of notification.
3) They only have to use the form that can be uploaded from the KPDNKK system to list out the items that are going to be on sales.
4) The officer will come and inspection randomly before sales, or during sales or after sales.
5) The officer will ensure the events run for the determined period of time and assess the accuracy of the sales price. As a requirement of the law, the business has to keep sales record for every 3 years.
6) If the top management of the company headquarter decided to arrange sales events at its branches, they may only notify the KPDNKK HQ with the list of participating branches. The
KPDNK officers at the HQ shall then inform the KPDNKK branch concerning the company branch sales event. e

Other non-gazetted sales

- **Conditional/ Happy Hour Sales**

This kind of reduction of price or sales occurred when certain conditions are fulfilled such as run at a limited or certain period i.e. 1pm-3pm, for a certain item or perhaps only for outlet’s membership holder.

This kind of sales do not required notification. Nevertheless, the requirements for such events must be met by the businesses.

- **Single Price (Best Buy Event)**

The businesses may reduce their products price at any time but with a single price display. If they display the comparison prices i.e. price of before and after sales, then it will be categorized as a cheap sales event. Notice for cheap sales event has to be submitted to KPDNKK while notice for best buy event is not required.

**Failure to comply with the Trade Descriptions (Cheap Sale Price) Regulations 1997**

The followings are some of the sanctions for non-compliance:

- On the minimum percentage of price deduction (10%)  
  Body Corporate: Fine not exceeding RM100 000 (1st offence) and not exceeding RM200 000 (2nd offence)  
  Individual: Fine, not exceeding RM50 000 or Imprisonment not exceeding 3 years (1st offence)  
  Second Offence: Fine not exceeding RM100 000 or  imprisonment not exceeding 5 years (2nd offence)

**Similar sanctions are applicable for:**

- False particular items or advertisement  
- No notice submission

http://www.commonlii.org/my/legis/consol_reg/tdspr1997419/

---

6.2.7.7 **The Freeze on Foreign Workers for Hypermarkets**

The present economy of Malaysia needs foreign workers in all sectors, including 3D-type jobs which are avoided by Malaysians as well jobs in hypermarkets and many other retail outlets. A change in this scenario is unlikely in the foreseeable future. As such, the foreign workforce will continue to be a common feature in all sectors of the economy. A blanket policy to disallow the employment of foreign workers in the retail sector is again a one-size-fit-all solution without truly understanding the needs of the sector.

---

89 3D jobs, "Dirty, Dangerous and Demeaning" (often "Dirty, Dangerous and Demanding" or "Dirty, Dangerous and Difficult"), also known as the 3Ds, is an American neologism derived from the Asian concept, and refers to certain kinds of labour often performed by unionized blue-collar workers.; https://en.wikipedia.org/wiki/Dirty,_dangerous_and_demeaning
Other issues of concern are on the use of only Nepalese as security activities and fixing the types of activities foreign workers can perform (example, not allowing for cashier activity) constraints the use of labour and limits the flexibility for traders to operate efficiently.

In the engagement with MOHR through the Institute of Labour Market Information & Analysis (ILMIA), it is suggested that MPC study should assess both views of the industry and that of the Government, which is what the engagement exercise with MOHR is all about. On this, ILMIA has presented its view on behalf of MOHR from its study on foreign workforce in the country as presented in Box 6.9 below. ILMIA also suggested that consultation be made with MDTCC to propose to JKKPA-PATI (Mesyuarat Jawatankuasa Kabinet Mengenai Pekerja Asing Dan Pendatang Tanpa Izin) of the Ministry of Home Affairs on the requirements of foreign workers for the retail sub-sector.

Box 6.9: MOHR (ILMIA) views on the use of Foreign Workers

<table>
<thead>
<tr>
<th>The Institute of Labour Market Information &amp; Analysis (ILMIA), Ministry of Human Resources (MOHR), claimed to have made extensive study on the use of foreign workers in the industries. It has concluded that:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The industry is playing with sentiment to achieve their agendas with such statements that; locals shy away from 3D jobs, local labours cannot work longer hours or salary offered cannot attract locals.</td>
</tr>
<tr>
<td>2. The study involve engagements and discussions with industries including substantive discussion on foreign labours, before coming out with a policy on salary mechanism. Over 50 initiatives were formulated. However, some initiatives are successfully implemented and some of that was unable to execute due to industry resistance.</td>
</tr>
<tr>
<td>3. Malaysia produces a lot of manpower. The study questioned whether the country has failed to produce enough skilled workforce or is it that the businesses are not willing to move up the value chain and pay better wages?</td>
</tr>
<tr>
<td>4. From the ILMIA study, Malaysians working in Singapore primarily in the following sectors (3D jobs):</td>
</tr>
<tr>
<td>a. Plant &amp; Machine Sector</td>
</tr>
<tr>
<td>b. Cleaner, Waitress, Bar tender</td>
</tr>
<tr>
<td>c. Construction Labourer</td>
</tr>
<tr>
<td>d. Manufacturing</td>
</tr>
<tr>
<td>5. Higher wages were observed in the manufacturing. Singapore offered salary rate of SGD1000 to SGD1200 which on conversion is more than RM3000 to Malaysian. From this, the study concluded that locals are willing to do the 3D jobs if the wages are higher!</td>
</tr>
<tr>
<td>6. In terms of labour cost, Malaysia has the lowest labour cost as compared to the other countries but this represented only 20% of the total manufacturing cost.</td>
</tr>
<tr>
<td>7. The retail sub-sector is not permitted to bring in the foreign workers on the belief that such would encourage locals to recede from this sub-sector.</td>
</tr>
<tr>
<td>8. Also if business brings in a lot of foreign workers, there is the belief that wages will not increase, as foreign labour supply is greater than the demand side. The study also showed that the cost of hiring a foreign worker is cheaper than locals.</td>
</tr>
<tr>
<td>9. The local business continues to claim that it is difficult to employ locals as the locals will not work long hours and will take leaves whenever possible, or will not work on 3D jobs, or foreign workers are easier to manage and are more hardworking than locals. In a nutshell, it is all because of the cost.</td>
</tr>
</tbody>
</table>
On the reason for not moving up the value chain, the study stated that industry in general, are not strategizing to move up the value chain as it continues to depend on cheap foreign labour. On this, MOH continues to consult with both MTI and MDTCC to identify sectors that the existing policies intend to support in order to achieve the aspiration of a developed and high income economy.

6.2.7.7.1 Option No. 1: Maintain the Status Quo

It can be seen that many of the policy and regulatory instruments of intervention on the retail trade are those put in place years ago and followed without review. There are only three general options to consider here.

We can opt to do nothing and continue with business-as-usual. This option is not viable because we need to move forward in expanding our economy through innovation to improve productivity and competitiveness. The legacy regulatory interventions will only continue to stifle the economy and prevent the country from reaching its aspiration of Vision 2020.

6.2.7.7.2 Option No. 2: Review all policy and regulation using GRP principles

All present regulatory controls and implementation need serious review using impact assessment (RIA) and cost-benefit analysis (CBA) with substantive public consultation with all stakeholders and interested parties. Without substantive public consultation, government officials will never be able to understand and be empathetic of both businesses and the consumers. The authorities ought to estimate the administrative cost burden on business using concepts such as the Standard Cost Model (SCM) to understand the implications of a regulation impact.

6.2.7.7.3 Option No. 3: Understanding businesses through Public Consultation

Engaging with businesses to resolve issues and concerns ought to be a norm in regulatory implementation. It is with continuous engagements between authorities and businesses through the consultation process that the needs of businesses and the intentions of regulators can be adequately matched. Businesses tend to progress and change at a faster rate and such engagements will facilitate regulators to work more effectively and efficiently to meet policy objectives.

6.2.7.8 Shortage of Certified Chargeman

There are still many areas where skilled and certified professionals are required by businesses. Big shopping malls and centres and other commercial buildings require the employment of electrical chargeman to oversee the electrical maintenance of their facilities. This certification is available through the Energy
Commission (Suruhanjaya Tenaga (ST)). Unfortunately, the country’s economic growth is much higher than that the capacity of ST certifications of chargeman⁹⁰ resulting in a serious shortage of chargeman. This resulted in many businesses employing retired chargeman in order to comply with the regulation.

Another reason claimed for the shortage of chargeman is the shortage of technical education institutions producing such professionals, which is probably due to the poor demand for such programmes.

The statistics given by the ST (Box 6.10) showed that there are very few qualified and certified electricians (Jurutera Perkhidmatan Elektrik, Jurutera Elektrik Kompeten, Penyelia Elektrik), although there are significant number of wireman (Pendawai). ST has established KPI to increase by 5% yearly the number of certified electricians and has a number of initiatives in place to achieve this. As ST statistics showed, there are 144 institutions which are offering such training, but these have yet to meet the demand requirements as the businesses are facing shortages of electricians. There may be barriers of entry for such training or the intake for such training is poor. Whatever the reasons, it must be reviewed and perhaps greater promotional efforts are needed to attract candidates for such programmes.

6.2.7.8.1 Option No. 1: Maintain the Status Quo

There will come a time when businesses will not be able to comply with the regulation due to this serious shortage of certified personnel. Although the government is looking into increasing the number of technical institutions through the Technical and Vocational Education and Training or TVET initiative, greater promotion and funding is needed for technical education. The future of economic growth is not just dependent of the new digital economy; many traditional professionals will always be required.

6.2.7.8.2 Option No. 2: Improving supply of Certified Chargeman

Over the last two decades, the promotion of university education has resulted in the neglect of vocational and technical education. This has resulted in the shortage of technical workforce in the country, particularly in areas where professional or occupational licensing are mandatory. It is pertinent for qualifying agencies like ST for electricians, CIDB for construction green cards, and DOSH for various technical and occupational skills to monitor the changing needs of industries and promote such employment. There ought to be regular balancing of supply and demand of key technical and vocational resources in the country.

6.2.7.8.3 Option no. 3: Reducing the role of Government agencies for occupational licensing

It is difficult for agencies like ST to match the increasing demands and changing needs of industry. As such occupational licensing may be delegated to professional bodies, trade associations or certified private companies which have capabilities to do such qualifying activities with regulating agencies acting in a supervisory role.

### Box 6.10: Feedback from the Suruhanjaya Tenaga (ST)

1. **Suruhanjaya Tenaga (ST) mengambil maklum mengenai dakwaan kekurangan orang kompeten kategori voltan tinggi (11kV hingga 500 kV), terutamanya kategori Penjaga Jentera Elektrik. Walau bagaimanapun, ST sedang berusaha bagi meningkatkan bilangan orang kompeten voltan tinggi bagi memenuhi keperluan industri elektrik negara.**

2. **Berikut adalah statistik perakuan kekompetenan elektrik yang telah dikeluarkan oleh ST:**
   
   i. **Statistik perakuan kekompetenan elektrik yang telah dikeluarkan sehingga 2016.**
      
      | Perkhidmatan Elektrik | Bilangan Perakuan |
      |-----------------------|-------------------|
      | Jurutera Perkhidmatan Elektrik | 259 |
      | Jurutera Elektrik Kompeten | 1,271 |
      | Penyelia Elektrik | 236 |
      | Penjaga Jentera | 50,086 |
      | Pendawai | 69,175 |
      | Pencantum Kabel | 409 |
      | **Jumlah** | **121,436** |

   ii. **Statistik orang kompeten voltan tinggi sehingga 15 Mac 2017.**
      
      | Perkhidmatan Elektrik | Bilangan Orang |
      |-----------------------|----------------|
      | Jurutera Perkhidmatan Elektrik | 259 |
      | Jurutera Elektrik Kompeten | 1,276 |
      | Penjaga Jentera | 8,652 |
      | Pencantum Kabel | 322 |
      | **Jumlah** | **10,509** |

3. **ST telah menetapkan KPI tahunan yang khusus untuk meningkatkan sekurang-kurangnya 5% orang kompeten voltan tinggi.**

4. **Inisiatif untuk meningkatkan bilangan orang kompeten voltan tinggi (sedang dan akan dilaksanakan) adalah:**
   
   a) **Bilangan sesi peperiksaan kekompetenan Penjaga Jentera telah ditambah dari satu (1) sesi kepada dua (2) sesi setahun mulai dari tahun 2016.**

   b) **Melaksanakan pengeluaran perakuan kekompetenan Penjaga Jentera Terhad voltan tinggi.** Pemunya pepasangan boleh mengemukakan kakitangan dengan cara menghadiri kursus selama 2 minggu di institusi bertauliah.

   c) **Menggalakan penubuhan institusi bertauliah baru / menaik taraf institusi bertauliah sedia ada bagi menjalankan kursus dan pereriksaan Penjaga Jentera voltan tinggi.**

   **Sehingga kini, sebanyak 144 institusi yang telah ditauliah oleh ST.**

**Institusi yang sedang menjalankan kursus Penjaga Jentera voltan tinggi adalah:**
Institutions currently under construction for the course of High Voltage Guards are:

- SESB-ILSAS, Kota Belud, Sabah (Installation of high voltage and low voltage cables) – will be presented to the JK Peperiksaan JK for certification on 4 August 2017.

6.3 Concluding remarks

The Section completes the analyses on the information gathered from the retail trades, their representative associations and chambers which are based in the Klang Valley. The information gather has reached saturation stage as no new issues were raised in the last interviews. Many issues raised, particularly by retail chains are variations of similar concerns.

Some of the regulatory interventions of the authorities are legacy regulations inherited in days past and continue to this day. Many of the policies and regulations and the instruments used have questionable objectives and relevance as they are based on economic concepts which were useful during the early years of the country’s economic development. Instead of reviewing these questionable regulations using GRP principles, they continue to be strengthened by some authorities to sustain their relevance. Not only that, many new rules from these regulations are being introduced without impact assessments or substantive public consultations. In a sense, the NPDIR has not been effectively employed as the many authorities continue to ignore it.
Section 7: Analysis of Business Issues outside the Klang Valley

Contents:

7.1 Introduction

7.2 Disproportionate Regulatory Burdens on Small and Micro Businesses;
7.2.1 Reporting Obligation with Inland Revenue Board; 7.2.2 Reporting Obligation with Employees Provident Fund Board; 7.2.3 Information obligation to Department of Statistics; 7.2.4 Dealing with the Ministry of Health; 7.2.4 Dealing with the Ministry of Health; 7.2.6 Complying with Goods and Services Tax; 7.2.7 Feasible Options to address regulatory issues

7.3 Regulatory issues on doing business in East Malaysia (Sabah and Sarawak);
7.3.1 Doing business in Sabah by Malaysians not born in Sabah; 7.3.2 Immigration requirements for Malaysian investors from outside the states; 7.3.3 Import permits for goods from outside the states; 7.3.4 Annual licence renewal (trading licence, liquor licence) Sabah; 7.3.5 Quotas on control/essential items by MDTCC in Sabah; 7.3.6 Dealing with authorities by small business in Sarawak; 7.3.7 Feasible options to address regulatory issues

7.4 Regulatory issues on doing business in the Northern Region (Penang)
7.4.1 Issues relating to COO for Exports to FTA Countries; 7.4.2 Import permit on fragrant soap; 7.4.3 Using Alibaba e-commerce platform for cosmetic products; 7.4.4 Issues on poultry farming business; 7.4.5 Poor coordination between agencies; 7.4.6 Carrying out raids by Customs; 7.4.7 Temporary Permits for Foreign Workers; 7.4.8 Options to relieve the concerns of businesses

7.5 Issues from the East Coast States (Pahang)
7.5.1 Workforce Issues; 7.5.2 GST Compliance Issues; 7.5.3 Halal Requirement Issue; 7.5.4 Feasible options to address issues;

7.6 Issues from the Southern Region (Johor)
7.6.1 Regulatory Issues from the Southern Region (Johor); 7.6.2 Workforce and employment issues; 7.6.3 Transportation costs on travellers between Malaysia and Singapore; 7.6.4 Unfavourable rules on new entrepreneurs; 7.6.5 Dealing with tax authorities (7.6.6) Export of Halal products and other trade barriers

7.7 Concluding remarks
7.1 Introduction

The purpose of taking this study outside of Klang Valley is to gather regulatory issues faced by the retail trades at other major cities in the country. This section covers the information gathered from various types of retail trades in Penang, Kota Kinabalu in Sabah, Kuching in Sarawak, Kuantan and Johor Bahru.

The engagements were made with members of the local chambers and trade associations representing various businesses and many medium, small and micro retail traders. The total number of participants engaged was 72 with 43 from Penang, 2 from Kota Kinabalu, 7 from Kuching, 11 from Kuantan and the remaining 9 from Johor Bahru. The engagements were made in the months of April to May 2017.

7.2 Disproportionate Regulatory Burdens on Small and Micro Businesses

In general, regulation is applied equally across all businesses irrespective of their sizes. However, the impact of regulation is disproportionately higher on small and micro businesses91, in terms of administrative burdens92 on small retailers. As the business is small, the owner-operator or proprietor herself has to deal with the authorities, which takes away her valuable time from the business operation. Frequently, the proprietor will outsource the dealings with authorities thereby increasing the business overheads.

Legitimate businesses are subject to numerous governmental regulations making the ease and cost of doing business burdensome, particularly for small and micro businesses (Box 7.1).

Administrative burdens on workforce continues to escalate for businesses in the country as the demand for more information by various authorities and also the introduction of new schemes for the local workforce. SOCSO for example, has introduced a new insurance scheme for workers, the Employee Insurance Scheme93 (EIS) apart from the basic SOCSO contribution. The concern is whether this will further add cost on maintaining the scheme and at the same time introduce a new administrative burden on employment.

---

91 Micro business is a business with less than 5 full-time employees and annual sales turnover of below RM300,000 while small business has annual sales of RM300,000 to RM3million with 6 to 30 employees. SME Corp; http://www.smecorp.gov.my/index.php/en/policies/2015-12-21-09-09-49/sme-definition
92 Administrative burdens are the part of administrative costs that businesses sustain simply because it is a regulatory requirement, International Standard Cost Model Manual; http://www.oecd.org/gov/regulatory-policy/34227698.pdf
Box 7.1: Regulatory Burdens on Small Business

A legitimate business in Malaysia has to comply with numerous regulations which are implemented by different regulating authorities. As a consequence, small businesses are subject to proportionately high regulatory burdens. For a proprietorship of a small or micro business, the entrepreneur has to comply with many regulations and licensing from various authorities to operate legitimately. Some key regulatory burdens are as follows:

- Firstly, the business has to be registered with the Company Commission of Malaysia (CCM or SSM, Suruhanjaya Syarikat Malaysia) at least as a sole proprietorship. The application for the licence is relatively easy, merely submitting a simple form and payment of a small fee, but it has to be made at the CCM office, which is located in a highly busy area in the city. This licence is renewable every year for a small fee. The process can be completed within a day (usually less than an hour).
- If the business operation has a premise, example in a shop lot, a premise licence is required from the local authority. If it is not a controlled business such as an entertainment outlet, the application is relatively straightforward and for a small fee. However, the waiting time for a new application may be at least a month. Again the licence is renewable yearly.
- However, if the business is a limited liability incorporation, the requirements become more complicated. For example, the business has to submit a yearly audited account (by a qualified accountant and auditor through a company secretary) to CCM and for business income tax.
- If the premise requires a signboard, a permit is required from the local authority, again for a small fee. Various requirements may be imposed here, such as getting the language approved by The Institute of (Malay) Language and Literature (the Dewan Bahasa dan Pustaka Malaysia). The process may take some time as another agency is involved.
- On taxation on the income of the business, as a sole proprietorship, the entrepreneur can declare the income in her personal income tax. This can be done online through the Inland Revenue Board website (eFiling of LHDN).
- If the business has a yearly sales turnover of more than RM500,000, it has to comply with the Goods and Services Tax Act 2014 (Act 762). For this, it has to register with the Customs and file GST according to the monthly or 3-monthly schedule. This will incur overheads on the use of GST application software and clerical work.
- Certain types of businesses are subject to more regulatory controls, particularly, those that involve health, safety and the environment. For example, in construction activity, the business is subject to CIDB Act, which requires registration with CIDB.
- If it is for professional services such as legal, medical, engineering and many others, it has to comply with the different types of professional regulations.
- Should the business be identified by the Department of Statistics (DOS), it is mandatory under the Statistics Act 1965 (Act 415) for the business to comply with information demand form the DOS.

The above items illustrate that it is not easy to operate a legitimate business as the regulatory compliance burdens is numerous and proportionately very taxing, particularly for small businesses.

Source: MPC

Concerns raised by the small business respondents include the dealings with:

1. Inland Revenue Board (LHDN – Lembaga Hasil Dalam Negeri)
2. Employees Provident Fund (EPF)
3. Department of Statistics (DOS)
4. Ministry of Health (MOH)
5. PUSPAKOM Sdn. Bhd.\(^{94}\)

\(^{94}\) PUSPAKOM Sdn. Bhd. is a vehicle inspection company appointed by the Malaysian government to undertake all mandatory inspections for commercial and public vehicles, as well as private vehicles.
6) Customs

7.2.1 Reporting Obligation with Inland Revenue Board (EPF)

Reporting obligations under the *Income Tax Act 1967*, means firms have to submit various types of information to the Malaysian Inland Revenue Board (LHDN) for tax clearance purposes. An employer has the responsibility to notify LHDN on cessation of employment, retirement, death or departure from Malaysia of an employee. The LHDN has, on 12 February 2016, issued Operational Guidelines on procedures for application of a tax clearance letter for Individuals. This guideline has also explained the responsibilities of each party in relation to the tax clearance application. This is a complicated and burdensome information requirement on small businesses in the form of CP forms.

A company needs to capture, generate, and maintain employee and company identification and biographical data that supports the reporting requirements of the Inland Revenue Board (IRB). The business needs to produce the CP21, CP22, CP22A, CP8A, CP39, CP159, CP159A/PCB2, EPF Form A, EPF Summary, SOCSO Form 2, SOCSO Form 8A, SOCSO Form 8B, SOCSO Form 3, and Form E forms. It is no wonder that local businesses prefer to employ foreign workers as they don’t have to deal with all these compliance burdens and the high risk of non-compliance penalty.

For example, the CP21 report notifies the LHDN (IRB) of an employee's intention to depart from Malaysia for a period exceeding three months. The CP21 form contains four sections: Employer Details, Employee Details, Remuneration Details, and Other Particulars. Employer details come from the Tax Number Table MYS. Employee details come from the Employee Tax Details, the employee’s Personal Data and Maintain Termination Data pages. Remuneration details show the employee earnings, grouped according to user-defined parameters. Other particulars require details of the tax payments and deductions that have been made, and the employee’s approved EPF contributions.

According to the respondent, the employer has to meet such reporting obligation every 3 months even though the firm has no change in its employee status or that the employees of the company having income which is below the threshold for personal income taxation.

7.2.2 Reporting Obligation with Employees Provident Fund Board

The particular respondent claimed that he has to report to the EPF every 3 months even though he has no employee or any change in his employees’ status. He also

---


96 Oracle, *Understanding Inland Revenue Reporting;* [http://docs.oracle.com/cd/E39904_01/hcm92pbr0/eng/hgpl/concept_UnderstandingInlandRevenueReporting-e34bed.html](http://docs.oracle.com/cd/E39904_01/hcm92pbr0/eng/hgpl/concept_UnderstandingInlandRevenueReporting-e34bed.html)
has to report on his product designer who is only contracted to work on specific projects. On this he has to go to the local EPF office to update on his employment status.

For small businesses which employ five or more employees (local), firms have to submit *Borang A* (see Figure 7.1 below) on a monthly basis. Such regulatory compliance is proportionately heavy for small businesses.

Figure 7.1: Example of EPF *Borang A* Submission

![Borang A Example](image)


According to EPF, businesses do not have to report to the EPF every 3 months on their employees’ changes status. The business only need to update the *Borang A* via online if there is an additional or reduction of their employees. Even, if they employ a contracted worker they have to report this worker employment to the EPF. If there are no employees employed, then the business has to inform EPF (Enforcement Unit) by submitting a formal letter every month for 6 months. After 6 months, if it is still no employees then the employer’s contribution account will be closed.

### 7.2.3 Information obligation to Department of Statistics

Under the *Statistics Act 1965* (Act 415), it is mandatory for firms to reply to any survey made by the Department of Statistics (DOS). The DOS carries out the
establishment survey and other surveys and census regularly to monitor the
economic activity of the country. These surveys are in the form of questionnaires
which are sent to sampled firms for their inputs. Once the firm has been selected,
the obligation is annual.

For small and micro businesses, the administrative burdens of filing the
questionnaires are proportionately high as the questionnaires are substantive. The
respondent claimed that he needs 3 to 10 days to complete the questionnaires and
that he frequently does not understand the content of the questions posed, such
as detail costing of production/operation and forecasting future expectation. He will
just filled the questionnaire form to the best of his knowledge. Other bigger trades
who can afford it resort to external professionals to do this thereby increasing the
regulatory burdens on business.

7.2.4 Dealing with the Ministry of Health

For the retailing of cosmetic products, retailers have to deal with and get
information for the Ministry of Health (MOH) as they have to comply with the
Guidelines for Control of Cosmetic Products in Malaysia of the National
Pharmaceutical Regulatory Agency of Ministry of Health (MOH), Malaysia.
However, the regulatory agency has established a Token membership\(^7\) to access
to the National Pharmaceutical Control Bureau for information on registration. The
respondent claims that the registration requires an annual fee of RM200. To a large
pharmaceutical firm, this is not a cost burden but it is a proportionately high burden
for a micro business that deals with cosmetic retailing.

7.2.5 Dealing with PUSPAKOM Sdn. Bhd.

PUSPAKOM Sdn. Bhd. is the out-sourced inspection firm for the regulation of
motor vehicles. As a private firm PUSPAKOM is in the business of making money.
Therefore every inspection made is a revenue generating activity.

According to the respondent, the inspection of the company vehicle for renewal of
permit has to be done twice a year. Should any inspection review any non-
conformity, correction of the non-conformity is required and frequently re-
inspection is demanded. The business has to pay the full charges for the re-
inspection. The frequent re-inspections become heavy regulatory burdens to small
businesses apart from the time, cost and inconvenience of the inspection activity.

\(^7\) National Pharmaceutical Control Bureau (MOH) 2017, Complete User Guide: Quest 3 Membership Registration;
7.2.6 Complying with Goods and Services Tax

With the introduction of Goods and Services Tax Act 2014, many small businesses are adversely affected in reduced sales. The respondent claimed that the charging of GST has lost many of its customers and reduces its profitability by up to 60%. To retain its existing customer the firm has to absorb the GST into its original sale price. Furthermore, the GST processing and administration is proportionately burdensome to small businesses. The respondent claimed that the annual maintenance of the GST processing software is RM1800 and the cost of labour (outsourced) is about RM600 per month.

Accordingly, it is claimed that local businesses are finding it difficult to compete with the mushrooming of illegal businesses run by illegal foreigners. These illegal foreigner-run businesses do not have to comply with GST or many other regulations as they are not in the radar of the authorities. These illegal businesses are able to sell their goods at up to 40% discount compared to legal entities. It is also claimed that these illegal traders have also established supply chains upstream to manufacturing of products, which are also illegal operations by illegal foreigners. The local business views that poor enforcement on these illegal businesses are affecting the livelihood of local entrepreneurs. Running legal businesses in the country is highly burdensome for small businesses and are motivation for operating illegally.

7.2.7 Feasible Options

Currently, there is a lack of specific governance on small and micro businesses as existing regulation is a “one-size-fits-all” intervention. As a result, the regulatory burdens on retail traders which represent the largest number of small/micro businesses are disproportionately large.

7.2.7.1 Option no.1: Maintain the Status Quo

Let the small and micro businesses cope as best as they can with the existing regulation regime. The consequence is that there will be greater motivation for aspiring entrepreneurs not to officially register their business activities, in other words, to operate illegally. There is great opportunity for this with the growth of e-business and on-line trade. The other consequence is that the numerous regulations will be a disincentive for people to go into retail trades business thereby stifling the growth of new retailers.

7.2.7.2 Option no.2: Introducing special regulatory regime for small and micro businesses

The different regulatory and taxation authorities need to study how best to assist small and micro traders to comply with specific regulations without excessively burdening them with administrative overheads. For example, different trading licences could be consolidated into one composite licence to reduce the burdens of dealing with different authorities. The licence renewal period could be lengthened to 3 or 5 years with exceptions for controlled businesses.
Online applications, renewals and payments should be widely practiced as this will definitely reduce regulatory burdens and inconveniences in dealing with authorities. This will also reduce the use of agents by traders for such purposes.

7.2.7.3 Option no. 3: Removing some of the regulatory rulings on small businesses

Many administrative rulings can be eliminated or reduced for small businesses based on risk management or the improved application of the “De Minimis” approach as used in taxation. For example, Customs ruling on GST that businesses with yearly revenue of less than RM500k need not register for GST procedure.

7.3 Regulatory issues on doing business in East Malaysia (Sabah and Sarawak)

In the formation of Malaysia in 1963, certain specific agreements were made for the states of Sabah and Sarawak. As a result of such agreements, the states retain certain areas of governance of its internal affairs such as immigration and some other state concerns such as land matters and participation in business from outside the state, among others. The states still retain many of its local legislations and some Federal legislations do not apply in East Malaysia. The respondents to this study raised a number of issues that would merit further consideration. They are as follows:

1) Doing business in Sabah by Malaysians not born in Sabah
2) Immigration requirements for Malaysian investors from outside the states
3) Import permits (Sabah) for processed food products from outside the states
4) Annual licence renewal (trading licence, liquor licence) Sabah
5) Quotas on controlled/essential items by MDTCC in Sabah
6) Dealing with authorities by small businesses in Sarawak

7.3.1 Doing business in Sabah by Malaysians not born in Sabah

The state is still very strong in its “protectionist” policy towards investment from Malaysians outside the state. Malaysians from other states require the state approval to invest in the state, particularly in retail trades. In many instances, the investments must have local participation with local controlling interest. Equity participation is generally a difficult compliance requirement for retail chain businesses trying to set up their outlets in the state. This is particularly so for foreign retail chains like the foreign hypermarkets in Peninsular Malaysia. However, the state seems to be relaxing on investments by local hypermarket chains, such as Mydin which already has 3 outlets in Sabah.
7.3.2 Immigration requirements for Malaysian investors from outside the states

Even with the state approval for investment, retail trade chains have to comply with the immigration requirement to get its trading licence. One such requirement of concern is the need for the owner or 2 directors of the company to maintain a valid working permit, even though the persons may not be working in the state. According to a respondent from a Sarawak investor, 2 of its directors have to maintain the annual work permit to satisfy the condition for the trading licence. According to a local supermarket chain operator in Peninsular Malaysia, the owner/Managing Director (MD) has to maintain this annual work permit for the trading licence. This ruling poses difficulty for the MD as his passport is held at immigration for the procedure thereby interfering with his overseas travel plans.

7.3.3 Import permits for goods from outside the states

Goods such as agricultural produce and processed food products imported into Sabah are subject to import control, even goods ordered from other states e.g. Peninsular Malaysia. This is understandable for agricultural produce as Borneo is an island by itself and therefore Sanitary and Phytosanitary (SPS) measures are relevant here. Importation of food products are subject to import permits issued by the state agriculture department (for non-animal food products) and the State veterinary services (http://ww2.sabah.gov.my/tani/s2_perkhidmatan/penguatkuasaan.html).

The respondent claimed that the company was surprised when they were caught red-handed with imported processed food products in their shelf during routine inspections. These processed food products were sourced from Peninsular Malaysia. According to the respondents, this was their first non-compliance with the local regulation as they were not aware that sourcing processed food from other states in the country required import permits. Accordingly, there are no available guidelines on such requirements. Research shows that the Department of Agriculture Sabah has state rules on importation of agricultural produce. (see Box 7.2).

Box 7.2: Import Permits for Agricultural Produce in Sabah

<table>
<thead>
<tr>
<th>3. Cara Mendapatkan Perkhidmatan Permit Import</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. Cara Mendapatkan Perkhidmatan Permit Import</td>
</tr>
<tr>
<td>Para pembawa/pengimport yang ingin membawa masuk tumbuhan ke Sabah dari Seberang Laut, Semenanjung Malaysia, Labuan dan Sarawak;</td>
</tr>
<tr>
<td>• Permit mengimport tumbuh-tumbuhan hendaklah diperolehi terlebih dahulu daripada Pengarah Pertanian.</td>
</tr>
<tr>
<td>• Pengimport hendaklah mengisi borang permohonan untuk pengimportan tumbuhan yang boleh didapati dari Ibu Pejabat dan Pejabat Pertanian Daerah.</td>
</tr>
<tr>
<td>• Permohonan hendaklah dikemukakan kepada Pengarah Pertanian untuk kelulusan.</td>
</tr>
<tr>
<td>• Pengimport hendaklah menghantar satu salinan permit kepada pengekspor di negeri pengeksport dan mestilah memenuhi semua keperluan yang dicatikkan dalam permit.</td>
</tr>
</tbody>
</table>
• Setiap konsaimen yang diimport hendaklah disertakan dengan Permit Import yang sah, dan Perakuan Phytosanitari yang dikeluarkan tidak lebih dari 14 harisebelum menghantar konsaimen itu.
• Bahan tumbuhan yang diimport mestilah bebas dari tanah dan perosak yang berbahaya.
• Pengimportan bahan-bahan dari Afrika Barat dan Amerika Tropikal memerlukan permit tertakluk kepada syarat-syarat khas.
• Semua bahan tumbuhan yang diimport adalah tertakluk kepada pemeriksaan pada masa ketibaan.
• Sesiapa yang melanggar sebarang peruntukan peraturan-peraturan ini jika sabit kesalahan boleh dikenakan denda tidak melebihi RM10,000 atau penjara tidak melebihi 2 tahun atau kedua-duanya sekali.
• Bayaran sebanyak RM15.00 akan dikenakan untuk setiap permit yang dikeluarkan bagi setiap konsaimen. Permit adalah sah bagi tempoh tiga bulan dari tarikh dikeluarkan.


This notice, however is not clear on processed food products. As for the Department of Veterinary Services and Animal Industry Sabah, according to the website information (http://vet.sabah.gov.my/index.php?q=welcome), the main function of the department is in the dealing with life animals and fresh animal produce. There is an obvious lack of information on importation of processed animal products (Box 7.3).

Box 7.3: Main functions of Department of Veterinary Services and Animal Industry Sabah (DVSAIS)

DVSAIS is mainly concerned with the veterinary inspection program based on the practices of GMP (Good Manufacturing Practices) for the plant/premises engaged in slaughtering and meat processing. The program is one of the strategies to upgrade the "meat safety standards" in Sabah. Implementation of this program is in line with the enforcement of the "Slaughterhouses Rules 2003" and "Meat Inspection Rules 2003". The objectives of this program are:

• To ensure that the plant / premises licensed abattoir conforms to GMP principles.
• To ensure a minimum standard of infrastructure criteria, process and conforms to the requirements of knowledge workers "Slaughterhouses Rules 2003" and "Meat Inspection Rules 2003".
• To ensure that meat and meat products conform to local food safety standards under the "Food Act 1983" and "Food Regulations 1985".
• To ensure the slaughtering and processing activities comply with the conditions set by the Environmental Protection Department in terms of side effects of pollution.

Adding to the import burden is the need to have import permits for every stock keeping unit (SKU) of products. In other words, every SKU product needs an individual permits. If a consignment or a container brought into the state from Peninsular Malaysia contains 10 SKUs, then 10 permits are required, and each permit fee is RM15.00. This regulatory charge and associated administrative costs adds to the cost of goods retail in Sabah.

Box 7.4: Feedback of the agricultural authorities

<table>
<thead>
<tr>
<th>Feedback from the Department of Agriculture</th>
</tr>
</thead>
<tbody>
<tr>
<td>According to the Bahagian Biosekuriti Tumbuhan, Jabatan Pertanian (DOA), Peninsular, Sabah and Sarawak are different component regions. Each component region has their regulations. The objective of the particular regulation is to protect their respective plantations or commodities.</td>
</tr>
<tr>
<td>1. There are pests in Peninsular which are not exists in Sabah or Sarawak and vice versa. Ceratitis Capitata is one of the world's most destructive fruit pests, exist in Sabah but not in Peninsular Malaysia.</td>
</tr>
<tr>
<td>2. The regulation is intended to minimized pest reproduction and moving to the other region. Hence, this is necessary as the pests come together with the plants. For example, Penyakit Hawar Daun Amerika Selatan, can destroy rubber plantation industry within one year.</td>
</tr>
<tr>
<td>3. In Sabah, the state agriculture department is the authority who issues the import permit (IP). It regulated the types of items that can be allowed into Sabah.</td>
</tr>
<tr>
<td>4. With regard to the import permit for the processed food products, this is under the purview of the Food Division of Ministry of Health.</td>
</tr>
<tr>
<td>5. The official is of agreement that the current practice on issuance of permits may be confusing to applicants.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Feedback from the Bahagian Kuarantin, Jabatan Pertanian, Sabah:</th>
</tr>
</thead>
<tbody>
<tr>
<td>“The importation of products into Sabah will be classified according to whether the items come under the department of agriculture, fishery, veterinary or health. The processed agricultural products (i.e. coffee, soybean, jam) for human consumption is essentially under the health department (Jabatan Kesihatan). These processed items which are imported into Sabah do not required import permit. However, the items have to undergo food inspection by the food safety unit under the Department of Health, Sabah. This is for safety control and to prevent the crop diseases such as penyakit Pisang, penyakit Betik (Papaya Dieback), penyakit Kumbang Merah Palma (Red Palm Weevil) which are from Peninsular that can spread and jeopardize the oil palm plantation in Sabah.”</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Feedback from the Jabatan Perkhidmatan Haiwan (JPH) Sabah</th>
</tr>
</thead>
<tbody>
<tr>
<td>According to the JPH Sabah (on any animal products imported into Sabah), the following requirements have to be met:</td>
</tr>
<tr>
<td>1. Any animal products including processed animal products and imported into Sabah requires import permit from JPH.</td>
</tr>
<tr>
<td>2. The supplier (exporter) of the processed animal products, say, from Peninsular should know the importer in Sabah i.e. Giant, Tesco or others</td>
</tr>
</tbody>
</table>

Stock Keeping Unit - By definition, a Stock Keeping Unit (SKU) is a number assigned to a product by a retail store to identify the price, product options and manufacturer of the merchandise. A SKU is used to track inventory in your retail store; [https://www.thebalance.com/what-is-a-sku-in-retail-terms-2890158](https://www.thebalance.com/what-is-a-sku-in-retail-terms-2890158)
3. The exporter is responsible to obtain the required documents which are the Veterinary Health Marks (VHM) Certificate from Department of Veterinary Services, (MOAM) Putrajaya and the Halal Product Certificate from JAKIM. The both certificates need to be submitted to the importer in Sabah.

4. The VHM Certificate will provide assurance that the products have been endorsed on food safety, hygiene, sanitation and quality.

5. The importer will liaise with the Department of Veterinary Services & Animal Industry, Sabah to get the import permit once they have completed and submitted the required documents.

In response to this feedback (Box 7.4), the study suggested that permits for importation may be considered on the basis of risk and quality of products or that the fee charge be based on the total value of imports. Such consideration may involve more administration but will provide a more proportionate compliance.

7.3.4 Annual licence renewal (trading licence, liquor licence) Sabah

Many licences required in retail trade are still Annual Licences, which mean that these licences expire on the 31st day of December each year. As licences are processed by different agencies or units within a single agency, the processing timelines and efforts varies. This means that it is quite impossible to be certain in getting all required licences renewed on time. To compound this problem, some licences is linked to other licences for renewal.

For example, the trading licence issued by the local authority may take a month to renew. If the retailer requires a liquor licence (also issued by the local authority but by a different unit), she has to get the trading licence renewed first as this is a requirement for renewing the liquor licence. The renewal process for liquor licence is longer (normally 2 months) as the licensing involves approvals from other agencies (Customs and Police). As a result of this complication, retailers frequently have lapsed liquor licences at the beginning of the year, which are usually festive seasons in the State. Retailers will either break the law by continuing business with lapsed licence or have to pull all such products off the shelf.

7.3.5 Quotas on control/essential items by MDTCC in Sabah

Under the Price Control and Anti-profiteering Act, MDTCC imposed strict controls on the sales and storage essential goods (rice, cooking oil and sugar) using quota control. According to a respondent from a hypermarket, he/she simply couldn’t get the appropriate quota for the business. Accordingly, his/her application for an amount of 10,000kg for rice retailing was rejected and the company was given only 500kg instead. This is a unique situation in Sabah as his/her experience is that the outlet in other states can enjoy a quota of up to 30,000kg.

A simple and rational calculation will show how ridiculous a 500kg quota is for a hypermarket to retail rice. Rice is sold under different brands (20 to 30 brands are common in the country) and are sold in 10kg, 5kg, 2kg and 1 kg packs. If a quota of only 500kg is allowed for the hypermarket, then the shelf can have only 1 or 2
packs of each brand. Not only that, inventory control and ordering control becomes impossible with such small stocks of SKUs.

7.3.6 Dealing with authorities by small businesses in Sarawak

Like other small business elsewhere, small businesses in Sarawak find it disproportionately burdensome to deal with the government authorities. From the respondents in Sarawak, many would outsource any regulatory dealings to agents or their outsourced company secretaries. The only dealings with authorities is to make the necessary payments required such as payments to EPF or SOCSO. Since they do not have administrative staff, such outsourcing will reduce the regulatory burdens.

7.3.7 Feasible options to address regulatory issues

7.3.7.1 Option no. 1: Status Quo

The problem with continuing with current practices is that businesses will continue to suffer unnecessary regulatory burdens in their operations. Further the continuing development of retail trade and changes in retailing practices mean that unnecessary regulatory burdens will continue to increase over time and the mismatch between regulatory regimes and industry practices will widen and worsen.

7.3.7.2 Option no. 2: Review immigration conditions for Trading Licence

Is it necessary for the owner or directors of the company to maintain a valid work permit even though he/she does not officially work in the state outlet? Whatever the intention of this ruling, it needs to be reviewed as it is causing unnecessary regulatory burdens to investors outside the state.

7.3.7.3 Option no. 3: Removal of import permits for processed food from other states of Malaysia

Unless there is reason for SPS control, import permit for processed food is redundant as processed food products manufactured in Malaysia are all subject to the control of the same law, the Food Act 1983 and its associated regulations. The state needs to review the requirements for import permits for all processed food products, and many of them do not require SPS measures.

7.3.7.4 Option no. 4: Operation licences renewal be made yearly and to be independent of each other

Authorities ought to consider amending the requirement for Annual licences from licences which expire on 31st day of December, to licences which are valid for one calendar year. Together with this change, the ruling for individual licence applications or renewal should not have dependency on another licence as each licence has its own purpose. These two actions will resolve the long processing
time and eliminate the lapse of any licences as a consequence of another licence approval.
7.3.7.5 Option no. 5: Quota control on essential items

The MDTCC need to review quota controls practices for essential items in Sabah and bring it in line with that of other states. There needs to be consistency in deciding the quota given at each state depending on the type of retail operation.

7.3.7.6 Option no. 6: Making dealing with authorities convenient and easy

Whether it is paying taxes or regulatory interventions, dealing with authorities should be easy and convenient. Whenever feasible, face-to-face interaction is to be eliminated with the use of ICT and Internet applications.

Most if not all banks in the country already have online services for monetary transactions and the authorities should keep up with this trend. As for information transactions, these are easily done online with a small initial investment on application systems.

7.4 Engagement with businesses from Penang

A business consultation was arranged with members under the umbrella of the Penang Chinese Chamber of Commerce (PCCC), to understand the regulatory issues faced by businesses in Penang. PCCC is the oldest business chamber to be established in the country. It is a well-established and active chamber representing over 50 association members in Penang and Province Wellesley (see Box 7.5).

Box 7.5: Brief Profile of PCCC (https://www.pccc.org.my/index)

<table>
<thead>
<tr>
<th>FOUNDATION:</th>
<th>Established in 1903, the Penang Chinese Chamber of Commerce (PCCC) was one of the pioneer trade organisations founded at the turn of the twentieth century in this region. It has come a long way since its humble inception and is now one of the strongest commercial institutions in Malaysia in terms of membership and organisational and functional characteristic that is well recognised by both the public and private sectors. In year 2003, the Registrar of Society of Malaysia (ROS) presented the Award Certificate of Excellent Society to the Chamber. It has also been awarded the ISO 9001:2000 Quality Management System (QMS) Certificate in March 2006 and upgraded to ISO 9001:2008 QMS in March 2010.</th>
</tr>
</thead>
</table>
| OBJECTIVE | a) to improve and develop trade and industry  
 b) to collect, collate and disseminate commercial information and to issue certificates of authentication  
 c) to arbitrate and settle trade and industrial disputes  
 d) to collect and compile trade statistics  
 e) to organise trade exhibitions, seminars and human resource development programmes either on its own or in collaboration with other institution(s) and  
 f) to support charitable, cultural and educational institutions. |
| MEMBERSHIP: | The Chamber now has more than a thousand members composed of individuals, corporations as well as commercial associations and trade guilds. The members of PCCC are from various business sectors, including enterprises, financial institutions, listed companies, housing & construction, garment & textiles, sole-agents & retailers etc. |
| LINKAGES: | The Chamber has great rapport with the Government at regional as well as national level through its direct affiliation to the Associated Chinese Chamber of Commerce and Industry of Malaysia (ACCCIM) and indirect connection with the National Chamber of Commerce and Industry of Malaysia. PCCC is officially represented at the following public bodies such as IMT- |
The engagement was held under the auspices of PCCC and at the PCCC conference room. There were 42 attendees from 16 member associations of PCCC who had the dialogue with the study team. The member associations of PCCC represented were:

1. The North Malayan Chinese Textiles & General Merchants Association
2. Penang Importers & Exporters Association
3. Penang Electrical Merchants’ Association
4. Penang Master Builders & Building Materials Dealers Association
5. Radio Traders Association of PG. & P.W.
6. Penang & P. Wellesley Café Association
7. Penang & Province Wellesley Farmers’ Association
8. Penang Island Vegetable Wholesalers Association
9. Teochew Merchants Association Penang
10. Lean Seong Kong Hoay (Lean Seong Association)
11. Penang Furniture & Timber Industry Association
12. Penang Hardware & Machinery Merchants Association
13. Persatuan Penjual Kertas dan Alattulis Pulau Pinang
14. North Peninsular (M) Foodstuffs & Toys Merchant Association
15. Penang Industrialist Air-conditioning and Refrigeration Association
16. Penang Goldsmiths and Jewellery Association

Although not all the business representations are directly involved in the retail trades, many of the regulatory issues brought up were cross-cutting issues which were common among many trades and businesses. Some of the issues were systemic in nature while others were short-term or random in nature. This section will report the issues raised and provide feasible options that can address them.

7.4.1 Issues relating to Certificate of Origin (COO) for Exports to FTA Countries

Although this is not related to retail trade, it is concerned with efficiency in dealing with local agencies. COOs are required by FTA countries in order that the exporters may enjoy free access to the importing destination. To enjoy this, the local content must meet the conditions of the FTA and as such MITI has been the agency to oversee this. The COO is applied using the Form A (see Figure 7.2).

There are two issues raised by the respondents. Firstly, it relates to the information requirements for the COO. Exporters find that too much information is required by MITI for processing the COO and this is considerable administrative burden when
the volume and types of cargoes are large, as every product requires a separate application. Secondly, exporters find that the processing time for Form A is too long, normally taking 2 to 3 weeks. This becomes problematic when the export destination is an ASEAN country, as goods are held-up at the importing destination waiting for the COO. Although there is an online application, it is claimed that MITI still takes weeks to confirm the application.

On the other hand, MITI is a government agency and has to maintain its credibility of ensuring that conditions of FTA are met. Therefore, they will need sufficient information in order to properly process the COO. Also, the processing officers may not always be familiar with the export goods and therefore require more time to assess the application. Nevertheless, MITI has made many facilities available to exporting industries on COO application. Many trade associations have been given the authority to process COO on behalf of MITI and these associations are more efficient at this99 (see Directory and Record of Chambers of Commerce/Trade Associations). For example, Federation of Malaysian Manufacturers (FMM) has claimed that COO can be processed within the same day of application.

Figure 7.2: Sample of Form A (Certificate of Origin)


On the administrative burdens of filling the Form A, it would be useful for the industry representatives and MITI to meet to improve on the administration of the COO application.

7.4.2 Permit required for importation of soap

An issue was raised by an importer of fragrance soap which they have been importing for the last 30 years. In the past, they did not require any permit for this import, but without notification to the importer, the Pharmaceutical Bureau has suddenly classified the soap as a cosmetic product which requires an import permit. This imposition put the importer in a spot and he/she was penalised. The Bureau had merely announced the new ruling on their web-site and expected importers to check for new announcements on every importation made.

Dealing with Permit Issuing Agencies (PIA) sometimes can be very costly should a business fail to comply with import requirements. A case related by the respondent on the importation of a small quantity of 250 kg of raw leather relates how the trader failed to get the import permit in time i.e. before the arrival of the goods at the port and was fined RM6000 for it.

7.4.3 Using Alibaba e-commerce platform for cosmetic products

Since digital commerce has gain importance in the country, local traders are facing non-tariff measures (NTM) for exports of cosmetic products to markets like China. The local traders would like agencies like MATRADE and MITI to assist in overcoming this trade barrier, such as negotiating for mutual recognition of local certification of cosmetic products. It is claimed that apart from China, Indonesia and Thailand also require their own countries’ product certification for food and cosmetic products (Box 7.6) for imports. With Halal certified products, countries like Brunei and Indonesia do not recognise the Malaysian Halal certification.

For example, the regulation of cosmetic products in Malaysia is provided in Control of Drugs and Cosmetics Regulations 1984 (P.U. (A) 223/84) of the Sale of Drugs Act 1952 under the Ministry of Health (MOH). The specific requirement for import of cosmetics is in Regulation 10. Declaration relating to imported product or cosmetic. In the case of importation in China, the control comes under their domestic regulation by the China Food and Drug Administration (Box 7.6 below)
According to the feedback from MITI's Beijing Trade office, the regulation for cosmetic comes under the China Food and Drug Administration who is responsible for:

- the laws, regulations, rules and policy on the administration and supervision concerning cosmetics among others;
- the formulation of the investigation and enforcement system for cosmetics including its implementation, investigation and punishment on major violations; and
- the establishment of the recall and disposal system for defect products, and supervise its implementation.

Both domestically produced and imported cosmetics are subjected to licensing requirement in accordance with the "Regulations on Cosmetics Hygiene Supervision", "Detailed Rules for the Implementation of Regulations on Cosmetics Hygiene Supervision", "Health Administrative Approval Procedures for Health-Related Products", "Regulations for the Application & Acceptance of Cosmetics Administrative Approval", and "Essentials for Acceptance & Review of Cosmetics Administrative Approval ".

According to MITI (ASEAN Economic Integration Division) there is continuing dialogue between Malaysia and Indonesia to resolve the recognition issue on Halal certifications for exports into Indonesia (Box 7.7). However, the Halal authorities of both countries are still unable to come to agreement on the requirements of the certifications.

Box 7.7: Continuing Development on Exports of Halal Products to Indonesia

- MITI's view is that there is a need to ensure that recognition of Halal Certificates and Logo will not impede market accessibility or result in technical barrier to trade imposed by a particular country. At the same time, this issue has not only affect the exports of halal products entering Indonesia but also mutual understanding and recognition between Halal Certification Bodies in Malaysia and Indonesia.
- MITI has highlighted that Indonesian products are accepted and marketed in Malaysia without having to go through additional Halal certification requirement. In the spirit of reciprocity, Malaysia requested Indonesia to extend similar treatment to the Malaysian Halal products exported to Indonesia.
- The easiest trade remedy is through MRA. However, the proposed Mutual Recognition Agreement (MRA) on Halal Certification between LPPOM MUI and JAKIM has been put on hold due to disagreement on the following:
  - Imposition on JAKIM to recognize LPPOM MUI’s certification conducted outside Indonesia resulting in halal integrity and enforcement concerns which cannot be compromised; and
  - Malaysian halal companies are required to conduct another round of halal audit by LPPOM MUI for halal goods entering Indonesian retail market with Halal logo as a result of the mandatory labelling policy.
- Following the discussions during 2nd Malaysia-Indonesia Joint Trade and Investment Committee (JTIC) Meeting over the same issue on 30 June 2016 in Jakarta, Indonesian authority issued a letter to JAKIM indicating its agreement to accept audit report from JAKIM. However, the acceptance is conditional upon JAKIM’s recognition onto MUI’s certification on Halal products, tested outside of Indonesia. The issue remains status quo considering JAKIM’s reservation to accept the condition imposed.
On a separate note, "Letter of Intent" between Malaysia & Indonesia was exchanged on 4th April 2017 in conjunction with the 8th Certification Bodies Convention 2017. The content is again to highlight Malaysia’s request for Indonesia to simplify its halal certification process for Malaysia halal certified products through acceptance of JAKIM audit report.

7.4.4 Issues on poultry farming business

Again this is not a retail trade issue, it nevertheless is a common business issue in dealing with authority. The members of the Penang Farmers Association raised a number of issues and concerns on the difficulties of carrying out their business activities. The issues and concerns are as follows:

a) Requirement on Planning Permission for starting a farm

The provision under the Town and Country Planning Act 1976 (Act 172) is that all land use requires the approval of the local authority. One of the functions of the local authority under this act is to “... regulate, control and plan the development and use of all lands and buildings within its area” (Section 6 (1)(a)).

Further to this, Section 19. (1) states that “No person, other than a local authority, shall commence, undertake, or carry out any development unless planning permission in respect of the development has been granted to him under section 22 or extended under subsection 24(3)”. 

The regulation is very clear on this and therefore to start a poultry farm, the business has to obtain planning permission for the use of the land, irrespective of whether the structures erected are permanent or otherwise.

b) Culling of poultry because of Bird Flu

According to the respondents, the present ruling is that all birds within a kilometre radius area where Bird Flu is detected will be culled by the veterinary agency. This is to prevent the potential spreading of the flu to other areas. The farms are concerned that any nearby villages (within the 1 km radius) that keep a few chickens may contact Bird Flu and thereby affecting them who may be having 80,000 to over 100,000 commercial birds. As compensation is not available on such culling, commercial farms can suffer great losses due to the negligence of residents in local villages nearby. Farmers would like to see that some form of compensation fund is made available should such incidents arise.

c) Foreign workers and the 6P Amnesty Program

The 6P program is the initiative by the Government to legalise all the illegal foreign workers in the country over a specific period which started in 2011 and

---

ended in 2014. The farmers have had a bad experience with the 6P Amnesty Program when dealing with their applications and the other enforcing agencies. Their experience was that during the program period, they had to still deal with the enforcing authorities on the illegal workers.

It is unfortunate that many businesses continue to employ illegal immigrant workers for their business activities. Many businesses require foreign workers who are willing to do the 3D jobs which Malaysian workers avoided. Yet there is the conflict between the Government desire to limit the number of foreign workforce in the country and the need of the industries for such workforce.

As many industries cannot function without foreign workers, many resort to hiring illegals when they cannot get approval for their needs. Poultry and the furniture factories are most affected without foreign workers. Their operations constitute the 3D types of jobs which cannot attract Malaysian workforce. They either take the risk to hiring illegals or to close down their operations. This continues to be a serious issue with the growing economy and thus compounds the increase of illegals in the country.

However, since then another form of legalising program for illegals has been introduced via MyEG rehiring program. According to Easy Manpower (http://easymanpower.co/2016-myeg-appointed-to-handle-malaysia-foreign-worker-rehiring/), “MyEG Services Bhd. (MyEG), which last September received a Government contract to register illegal foreign workers, has been appointed to take part in the programme to rehire foreign workers without permits, effective Feb 15, 2016”.

Box 7.8: Feedback from the Ministry of Home Affairs (MOHA)

<table>
<thead>
<tr>
<th>Sectors</th>
<th>Regulatory Agencies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Services</td>
<td>KPDNKK</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>MITI</td>
</tr>
<tr>
<td>Plantation</td>
<td>KPPK</td>
</tr>
<tr>
<td>Agriculture</td>
<td>MOA</td>
</tr>
<tr>
<td>Construction</td>
<td>CIDB</td>
</tr>
</tbody>
</table>

The foreign workers policies of the RA is prescribed by the Jawantankuasa Kabinet Mengenai Pekerja Asing and Pekerja Asing Tanpa Izin (JKKPA-PATI) or Cabinet. RA are the one who
regulate all the policies and will also carry out the interviews with the applicants or employers to determine their entitlement for foreign workers employment. They are the one who determine whether the sector is freeze or open for foreign workers. Let say, if there is demand on foreign workforce from a freeze sector i.e. Service Sector (Borong/Runcit) then the appeal has to be submitted to KPDNKK. KPDNKK will analyse and present the proposal to the JKKPA-PATI which chaired by Deputy Prime Minister.


6P Amnesty Programme
The 6P Amnesty Programme has ended in 2014. However, the programme policy can be verified the Immigration Affairs Division. Currently, there is a new programme called Rehiring Programme which executed by the Malaysian Immigration Department. This programme has been kicked off in 2016 and will end on this Dec 2017.
This programmed is to legalise the illegal foreign workers in order to obtain a valid work permits to meet labour demands in the specific sectors.
Two categories of the illegal foreign workers permitted to undertake the programme:

1. Workers end of employment contract
2. Migrant workers without legal documents enter the country through the gazetted doors.

The move would enable the Government to know the number of illegal foreign workers in the country for monitoring and security purposes.
Under the rehiring programme, government has appointed three vendors:

1. Iman Resources: register the Indonesia illegal foreign workers.
3. MyEG: register illegal foreign workers from the other source countries (Filipina (Male), Thailand, Kemboja, Laos, Vietnam, Kazakhstan, Nepal, Pakistan, Sri Lanka, Turkmenistan, Uzbekistan, Bangladesh, India).

China is not included in the source country.

Sectors Allowed For Foreign Workers

1. Manufacturing
2. Plantation
3. Agriculture
4. Construction
5. Mining and quarry (new)
6. Services- Subsector: Cargo Handling, Restaurant, Cleaning and Washing

Freeze Sectors For Foreign Workers

These sectors are frozen for foreign workers by JKKPA-PATI or cabinet since 2009 due to the economic recession.

1. Tukang Emas
2. Tukang Gunting Rambut
3. Dobi
4. Textile
5. Borong/Runcit
6. Barang logam/lusuh & kitar semula – under Kementerian Dalam Negeri (KDN), Bahagian Keselamatan & Ketenteraman Awam

Other sectors which not mentioned above are considered under external policy sector or “Sektor Dasar Luar” such as courier, workshop, or warehouse. This sector does not permit the use foreign labours.
According to the Ministry of Internal Affairs (MOHA) (Box 7.8) it is confirmed that there is no more outsourcing companies or ‘agen pekerjaan’ since 2014. This is to avoid the issue of human trafficking and to protect the workers’ welfare. Monitoring is easier and more effective if the foreign workers directly forwarded to the employers without the third party. Human trafficking issue in Malaysia has placed the country under Tier 2 which better rating than previously under watch list.

The foreign workers are not allowed to work as front-line workers and this is the decision made by JKKPA-PATI. The essential reason is to offer the job opportunity to locals. Lorry driver is permitted for locals only. In general, the policy is to discourage the use of foreign workers and the country is having too large foreign workforce. The Government is also encouraging industries to move up the value chain as the country moves toward becoming a high income nation. As such, application for foreign workers are restricted to sectors where locals are reluctant to enter, and this is usually low wages sectors at the lower end of the value chain.

In areas that foreign workers are permitted, the Government continues to improve the procedural requirements and processes (Box 7.9 below) to ensure effective implementation of foreign worker policy and also to facilitate the ease of doing business in the country. Unfortunately, there are frequent conflicts of interest in the private sectors wanting to pursue profits at the expense of development policy of the country. As such, managing the supply and demand of foreign workers has to be a dynamic process with strategies that can balance the aspiration of national development and the existing demands of businesses.

Box 7.9: Procedural Requirements on Foreign workers

<table>
<thead>
<tr>
<th>Procedures to apply foreign workers (permitted sectors)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Employer applies via online system. There are two systems;</td>
</tr>
<tr>
<td>1) Sistem Pengurusan Pekerja Asing Bersepadu (ePPAx) [<a href="https://www.eppax.gov.my">https://www.eppax.gov.my</a>]</td>
</tr>
<tr>
<td>i. This system is under Human Resource Ministry (MOHR)</td>
</tr>
<tr>
<td>ii. This system is applicable for all source countries except Bangladesh</td>
</tr>
<tr>
<td>2) Sistem Permohonan Pekerja Asing (SPPA) [<a href="https://www.sppa.com.my/dasar.html">https://www.sppa.com.my/dasar.html</a>]</td>
</tr>
<tr>
<td>i. This system is under Home Affairs Ministry (KDN)</td>
</tr>
<tr>
<td>ii. This system to request Bangladeshi labours</td>
</tr>
</tbody>
</table>

Both systems can be accessed by Jabatan Tenaga Buruh (JTK)

The applicant needs to login into the system.

2. Download the checklist and upload the required documents.
3. Jabatan Tenaga Kerja (JTK) will verify the submitted application.
   i. Comply with Labour Act and laws
   ii. Meet the accommodation standard
### Policy on Freeze sectors which are determined by JKKPA-PATI (2009)

1. Sectors which are previously endorsed for foreign labours, may request for foreign labour replacement.  
   For example, Supermarket A has one foreign worker. After 3 years, the worker has to return to his country. The employer then has to apply for “checkout” memo from the Malaysia Immigration Department. Once, the checkout memo is obtained from the Immigration and the worker has returned to his country, the employer may then request only one replacement for a foreign labour.
2. However, for new companies, they will not be endorsed for hiring foreign workers.
3. The foreign worker which obtains the certified checkout memo from the Immigration Department can be replaced with another new intake. The foreign workers who have fled, expelled or blacklisted will not allow to be replaced.
4. Foreign workers exit through the gazetted doors are allowed to be replaced. If the employer needs to rehire a worker due to his good work performance then the employer can apply to BPPA and bring back the worker after predetermined cooling period.
5. Job contract is determined by the employer. The duration of the foreign worker’s temporary working visit pas (Pas Lawatan Kerja Sementara (PLKS)) is for up to a maximum of 10 years. Every year the employer has to renew the PLKS at the immigration department.

### 7.4.5 Poor coordination between agencies

Dealing with different government agencies continues to be a concern with businesses. In many cases businesses have to obtain approvals from a number of different agencies, for example between Customs and the other PIAs. Hiccups are frequently experienced with specific PIAs resulting in delays in goods clearance or obtaining the required permit/licence. For example, import clearance that requires Sanitary and Phytosanitary (SPS) approvals need to be obtained from the Department of Malaysian Quarantine Inspection Services (MAQIS) in order to clear goods with Customs. As all agencies have their own priority, delays become a natural occurrence.

Businesses are concerned with time and the efficient flow of goods and any delays and inefficiency results in increasing operating costs. Businesses desire that there...
be a one-stop-centre established to overcome the coordinating issues between agencies.

7.4.6 Inspection raids by Customs

A respondent related an unfortunate experience of a Customs raid on his manufacturing facility. A group of Customs enforcement officers came to the facility fully brandishing arms of sub-machine guns in the raid, thereby frightening and intimidating the management and staff of the business. The raid was carried out like a raid on smugglers’ or traffickers’ dens. The respondents felt that they had been treated as criminals in the enforcement process.

The concern of the respondent is the indignity of the process and as the raid was an open one, their business reputation was greatly affected. Businesses do not dispute the authority of Customs to carry out any inspections on suspicion of under declaration of imported goods. What they would like is to be treated with dignity and some respect for a legitimately run business. It is claimed that during the process, the company had to cut its CCTV and all mobile phones were temporary confiscated. In order words, none of the inspection activities could have been recorded.

In the one case, the company account was frozen for over a year, and finally released without any outward non-compliance of Customs regulation. It is claimed that the issue was brought up to Customs through the trade association, but nothing has come out of that.

Sometimes enforcement authorities can get over zealous in their duties and treat both criminals and legitimate businesses alike. This can be embarrassing to the affected parties who are operating legitimate activities. The business community would like the authorities to be professional in their duties and act with discretion and discern between criminal and legitimate business activities.

7.4.7 Temporary Permits for Foreign Workers

A respondent reported on the issue of temporary permits issued for foreign workers in the construction industry. Although this is not a retail trade issue, it illustrates some peculiarity in licensing of foreign workforce between agencies. In this issue, although the immigration had granted temporary permit to the foreign workers recruited by the business, they could not deploy the workers at the construction site unless these workers had been certified with the safety “Green Card” issued by CIDB. Since CIDB only recognises a full permit and not the temporary permit, it will not issue the Green Card for these workers. This meant that a batch of foreign recruits could not enter the construction site.

7.4.8 Options to relieve the concerns of businesses
Overall, the PCCC association members have raised many related issues on dealing with government authorities or regulators from both Federal agencies and Local Authorities. Although not all the issues captured here are directly related to the retail trades, they are nevertheless common issues affecting all industries, although each trade issue has its own peculiarity. The following feasible options, in general, to the issues raised have been proposed:

7.4.8.1 Option No. 1: Status Quo

We can opt to do nothing on these issues raised and continue with the way of dealing with the regulations and regulators. This will mean that businesses will have to continue with the unnecessary burdens of compliance; the regulators continue to behave as they feel right with no improvement in the regulation regimes and processes; and the overall economy continues to suffer with productivity waste and inefficiency of business governance.

7.4.8.2 Option No. 2: Improve coordination between agencies

As many agencies work independently of each other coupled with their different priorities, there will always be conflict in actions. The resulting conflict will result in unnecessary burdens on affected parties. For example, Immigration may issue *Temporary Work Permits* for the foreign workers to resolve certain issues or demands of a particular trade. However, if this temporary permit is not recognised by another agency which has to certify the worker, then the temporary permit is useless.

The solution for this is to ensure that proper consultation of any new rulings is made between agencies regulating the particular business or trade. Communication period needs to be considered to ensure that the agencies’ regulatory systems are informed and the new ruling systemised.

7.4.8.3 Option No. 3: Enforcement carried out professionally

Enforcement activities must be carried out professionally. There must be a code of practice for enforcement officers, particularly those carrying firearms in the enforcement activities. Better still, enforcement officers should not carry firearms as they can work together with the police who are professionally trained in such matters. Customs enforcement officers are to inspect, check, seal or seize goods which have been brought into the country without proper clearance. Delinquents can be brought to court for their misbehaviour. It is unnecessary for Customs to brandish firearms in such enforcement activities.
7.4.8.4 Option No. 4: Improve efficiency of regulatory delivery

Improving the efficiency of regulatory delivery is important for the overall efficiency of businesses and therefore the economic productivity of the country. To businesses, time is cost and lost opportunity. With the Internet and online processing of information, every regulatory transaction should be delivered via online services. Agencies that still take days and weeks to process an application is not delivering services to the expectation levels of a competitive economy. Effort must be made to continuously improve information processing by regulating agencies.

The usual complaints are that the online systems are not reliable. Respondents report that even the Bless application frequently fails when they try to apply for controlled item licence. Online system operators like Bless\(^{101}\) and Dagang Net must ensure that their systems can achieve high quality and reliability (Six-Sigma quality\(^{102}\) service) on their service delivery to businesses in general.

7.4.8.5 Option No. 5: Improving communication and consultation

Frequently, new rules are introduced by the authorities which seriously affect the business communities because they were poorly communicated to the directly affected stakeholders. Publishing a new de-classification of a product on the official website cannot constitute adequate communication. Communication must be direct to the parties who are likely to be affected by the new ruling.

Better still, a formal public consultation must be made for any new ruling to be introduced. There are different degrees or levels of consultation (see Figure 7.3). At the minimum, is to Inform, with such activities as awareness campaign, letter boxing, or mass email blasting. If it is a substantive new regulation, an impact analysis or RIA is desirable, and this has been a published policy for all regulating agencies.

\(^{101}\) BLESS, Business Licensing Electronic Support System is a portal that provides information and facilities for companies to apply licences or permits to start operating business in Malaysia.; [http://www.bless.gov.my/about-bless](http://www.bless.gov.my/about-bless)

\(^{102}\) Six Sigma quality performance means 3.4 defects per million opportunities
7.4.8.6 Option No. 6: Supporting businesses with new facilities

With the advances in e-commerce, new formats in trade have developed and promotional and developmental agencies must keep up with the new trend if they are to support the economy effectively. A current example is that the leadership has brought on board global players like Alibaba\textsuperscript{103} into the country to spearhead the development of digital economy. Unfortunately, many old economic systems are still in place which cannot cater for the new demands of the digital economy. For example, there are still many non-tariff measures (NTM) in place which are restrictions to the digital economy. Developmental agencies like MATRADE, MIDA, and MITI have to initiate new negotiations with our trading partners to ameliorate the constraints of NTM and SPS.

7.4.8.7 Option No. 7: Review regulatory regimes

Technology changes, particularly information and communication technology are taking place at almost a daily pace. Businesses are innovating and coming up with new formats of doing business. As such, developmental agencies must keep up the pace in order to capitalise on these changes which will bring economic growth and improve national competitiveness.

Regulatory regimes and regulatory implementations have to keep pace with such changes. Many regulations will become obsolete and need reviews and removals. International trade agreements have to be similarly worked on by the responsible

\textsuperscript{103} Alibaba: Alibaba Group Holding Limited is a Chinese e-commerce company that provides consumer-to-consumer, business-to-consumer and business-to-business sales services via web portals. It also provides electronic payment services, a shopping search engine and data-centric cloud computing services. The group began in 1999 when Jack Ma founded the website Alibaba.com, a business-to-business portal to connect Chinese manufacturers with overseas buyers.; \url{https://en.wikipedia.org/wiki/Alibaba_Group}
ministries. For example, e-commerce of the digital economy will be disruptive on the traditional *trading-across-border* economy. If local traders cannot capitalise on new digital platforms such as *Alibaba*, then the country will become less competitive.

### 7.5 Issues from the East Coast States

Engagement was made with the representatives of the *Dewan Perniagaan Melayu Malaysia (DPMM) Pahang*, Bumiputera Retailers Organization and Malaysia China Chambers of Commerce Pahang to assess the unnecessary regulatory burdens faced by traders in the East Coast of Peninsular Malaysia. The areas of concern of businesses captured here are as follows:

#### 7.5.1 Workforce Issues

We have more than 2 million foreign workers employed legally in the country and an unknown number of illegals estimated to be numbering as many and yet businesses continue to have shortage of workers. The Ministry of Home Affairs has introduced many initiatives to address the situation. One of the initiatives is the 6P Amnesty Program. Through this program, the Government managed to legalise only 379,000 immigrants, including 94,856 who chose to return home.\(^\text{104}\)

**Issue No. 1 - 6P Amnesty Program**\(^\text{105}\): There are the usual claims about the amnesty 6P program being difficult and a long process time for the application to legalise the foreign workers. Once they come forward into the amnesty program they are exposed to all kinds of enforcement activities which otherwise would have remained outside the radar of the enforcement agencies. Since the 6P program has ended, the new program through MyEG is supposed to address this problem for new applications.

**Issue No. 2 – difficulty in getting local workers**: Local workers are not reliable as the turnover is high and they refuse to work long hours. This poses difficulty in managing the retail trade activities. Also the minimum wage of RM1100 with accompanying workers’ benefits is deemed too high for small retailers with low sales margin and turnover. The small traders cannot compete with other sectors for workers on this. Local workforce are also found to be difficult to discipline and difficult to manage. The high turnover of local employees also contribute to excessive administrative regulatory burdens, such as notifying the regulators and registering new employees.

---


\(^{105}\) Under the 6P programme, illegal immigrants get to gain amnesty through “6Ps” which stood for *registering, legalising, pardoning, monitoring, enforcing and deporting* illegal immigrants. The programme was an initiative by the Home Ministry to register legal and illegal immigrants in the country. [http://malaysiansmustknowthetruth.blogspot.my/2011/09/6p-or-not-cops-continue-crack-down.html](http://malaysiansmustknowthetruth.blogspot.my/2011/09/6p-or-not-cops-continue-crack-down.html)
More can be done to introduce automation in many labour intensive situations to complement many manual operations. For example, cashiering activity may be automated. For example, Tesco Putrajaya has started using self-cashiering machines to complement the manual cashiers. The initial costs of automation is usually high and here the Government can provide initial development assistance.

Petrol stations are mostly self-service and Malaysians are now used to this. However, some petrol stations are starting to employ foreign workers to service the pumps, and this should be seriously discouraged. Rather than introducing regulatory controls which have disproportionate impact on small businesses, the development of other non-regulatory solutions would resolve many workforce issues.

### 7.5.2 GST Compliance Issues

There continues to be grouses on GST compliance, particularly by small businesses. Firstly, if they do not register for GST (optional for traders with revenue of less than RM500,000 a year) then they cannot claim for input GST deduction. They have to increase the prices or suffer losses on their sales. Those newly established businesses which have not registered for GST yet will have to absorb the input GST.

Secondly, those who have registered for GST find it extremely burdensome to comply with the GST regime; again this is particular to small traders. They have difficulty understanding and/or keeping track with changes in GST items listing and doing the monthly accounting for GST payments and claims. Since most small businesses do not have supporting staff to do this, GST compliance is outsourced to professional accounting firms, thus adding additional administrative burden to the business.

On GST, Customs has produced many useful guidelines for many kinds of business activities and scenarios since the introduction in 2015. These various GST information and guidelines are easily accessible online on the Official Website Malaysia Goods & Services Tax (GST), Royal Malaysian Customs Department (http://gst.customs.gov.my/en/rg/Pages/rg_ig.aspx).

Unfortunately for small traders, trying to do GST compliance themselves will be a difficult task and penalties for errors in submissions can be heavy. To assist small businesses, training can be provided to complement the guidelines. As training services can be proportionately costly to SME, funding can be made available to assist small businesses, particularly the many who cannot avail themselves to the HRDF services. However, according to Customs, the Government has provisions to assist small businesses to comply with GST requirements (Box 7.10). Small companies ought to contact Customs for any assistance in GST compliance matters.
<table>
<thead>
<tr>
<th>Box 7.10: Feedback from Customs on GST</th>
</tr>
</thead>
<tbody>
<tr>
<td>There are two categorizes of GST registration, namely mandatory and voluntary. Companies with minimum revenue RM500,000 a year are mandatory to register for GST. They are eligible to impose 6% tax on their products and claim the tax. While the companies which have a minimum revenue RM200,000 (or less than RM500,000) and voluntarily want to register GST have to enclose with some evidences or documents to prove that within 12 months’ time they will be able to achieve RM500,000 a year revenue requirement. The relevant GST officer will examine the voluntarily GST registering application and will determine whether the company eligible to register or not. However, the newly established companies or businesses are not compulsory to register for GST since they have not met the mandatory requirement of RM500,000 revenue per year.</td>
</tr>
</tbody>
</table>

Reference:

GST Offences and Penalties in Malaysia;

For SME companies, there are two options for them to adapt with the GST accounting system. First, they may attend a free training and education which is provided by the Government. The Government will also assists SMEs in acquiring the basic software needed for GST implementation. Secondly, SMEs may hire a certified GST tax agents (approved by MOF) from professional individuals or professional accounting body. This tax agent will provide advice and manage the company’s matters pertaining to the GST accounting system. The payment to tax agent is between the agent and the company which RMCD is not involved.

Reference:


On the maintenance of GST application software, businesses may purchase the GST software from a vendor listed in the RMCD website. The cost of the software varies, depending on the business operation (simple or complicated).

For the illegal businesses they will be committing three offences from three different authorities: 1) Immigration (offence: illegal migrant), 2) Local Authorities (Offence: No business license) and 3) RMCD (offence: No GST registration).

Subsidiaries or registered branches of foreign-owned companies in Malaysia are also subject to GST registration.

Reference:


GST Registration:
7.5.3 Halal Requirement Issue

In the East Coast States, foods and beverages outlets are encouraged by JAKIM (Halal Malaysia; http://www.halal.gov.my/v4/) to have Halal certified kitchen as the general population served are mainly Muslims. Unfortunately getting Halal certified is a difficult and long process and the processing and certification fees are proportionately high for small businesses.

7.5.4 Feasible options to address issues

As with the issues raised in other regions small businesses experience disproportionate regulatory burdens as they rarely have the capacity nor the capability to deal with the numerous regulations and regulators. As regulation is a one-size-fits-all regime, they are subject to proportionately the most administrative burdens.

7.5.4.1 Option No. 1: Maintain the status quo

Maintain the status quo means that small businesses will continue to suffer from proportionately high regulatory burdens. Regulatory burdens tend to become an incentive for many to avoid or evade regulation which does not bode well for the economy. It will be also very challenging for new entrepreneurs to start any business activities without contravening existing regulations.

7.5.4.2 Option No. 2: Proportionate implementation of regulation

Small businesses ought to be governed with a proportionately easier way to comply with regulatory regimes. Regulators could find ways to assist these small businesses to comply with requirements without compromising regulatory objectives. In other words, special efforts and a specialised division may be created to oversee needs of small businesses. Regulation may be devised specifically for small businesses.

For example, small business may be given special lanes to employ foreign workers without having to pay exorbitant fees to agents and go through the difficult application process for such employment. This will in the end reduce the tendency to employ illegals thereby stamping the escalating influx of illegals.

7.5.4.3 Option No. 3: Developmental agencies to facilitate start-ups/small businesses

Development agencies can take up a greater role in assisting SMEs with compliance issues. Expertise, financial resources and development opportunities can be established to service businesses in regulatory compliance. As regulators’
capacity and capability evolved, small businesses must keep up with these changes. Knowledge on regulatory compliance need to be continuously updated through knowledge dissemination and training. The trade associations could be recruited to jointly facilitate and implement the continuous development on regulatory compliance.

For Halal certification, development of Standard Halal templates for small trades and businesses, particularly those in the food and beverage (F&B) services would help and special training may be provided to assist them to obtain Halal status. Initial funding by the government through development agencies should be considered.

7.5.4.4 Option No. 4: Stakeholders engagement to resolve issues

To support such initiatives, government agencies can start listening to businesses through public (stakeholders) consultation. Good public consultation practices need to be implemented at all levels of the government – policy making, regulation development, regulation implementation and enforcement and regulatory reviews.

Good consultations between businesses and Government agencies can be used to explore other opportunities of solving problems rather than just looking at regulatory solution. Through the RIA approach, good solutions may be developed which can reduce regulatory intervention and promote self-regulation. Although the National Policy on the Development and Implementation of Regulations has been implemented, more effort is required to develop the culture for RIA and public consultation.

7.6.1 Regulatory Issues from the Southern Region (Johor)

Engagements were made with a representative from the Johor Bahru Chinese Chamber of Commerce and Industry (JBCCCI) and members of Dewan Perniagaan Melayu Malaysia Negeri Johor (DPMMNJ) which was represented by 8 members as part of this study. The purpose is to assess the unnecessary regulatory burdens uniquely faced by businesses in the Southern Region of Peninsular Malaysia. In general, the businesses in Johor state face many common issues experienced by businesses in other parts of the Peninsular Malaysia. In addition, the state issues are exacerbated by the Singapore factor and the extensive investments in Iskandar Regional Development, particularly that from China. These are not specifically regulatory issues, but nevertheless, are decisions made and actions taken by local authorities in their development initiatives. The issues of concern of businesses here are:
7.6.1(a) Iskandar Regional Development – Changes at Jalan Wong Ah Fork

The continuing beautification development of the area is claimed to cause extensive inconvenience and loss of business to the traders in the area due to changes in traffic flow and the removal of the bus stop where commuters come to patronise the outlets. The changes have made it inconvenient for customers to access the outlets causing a drop in daily businesses, claimed to be up to 40%. Whether this issue is temporary in nature due to the current development is left to be seen, but in the meantime traders in the area are experiencing difficulty and may not be able to sustain their losses. If only the authorities had engaged with the traders in the area before making the changes, a better solution would have been implemented for a win-win outcome.

7.6.1(b) Iskandar Regional Development – China Investments

The China development investments in the region have benefitted in bringing in Chinese tourists and property investments to Johor. The large project investments have brought in many China developers which have sped up development in Iskandar region, but the local businesses are claiming that they are not benefitting from these investments.

Firstly, the local businesses claim that it has also brought in China traders and restaurateurs who are in direct competition with the locals. Although these restaurateurs have local partnerships, it is controlled by the China businessmen who run restaurants here. As they are more familiar with China Chinese tastes, these restaurants out-compete the local restaurants. The local traders feel that the Government should ensure that the China investments also benefit local businesses.

Secondly, the local chapter of the Masters Builders Association claim that these China developers employed too many China employees for various trades and also tend to source materials from China instead of using local products. As a result local people and talent are not being used and local suppliers and manufacturers do not benefit much from these developers. The businesses would like the government to ensure that local businesses can benefit from these China development in the region.

7.6.1.1 Option No. 1: Maintain the Status quo

The Government and the authorities can make changes for the good of the state and economy in general and leave the consequences for the local businesses to deal with as problems and issues arises. Although changes may have long-term benefits, frequently they cause serious short and medium-term problems which have serious impact on local traders. As infrastructure developments take months and years to complete, many traders may not be able to sustain their businesses and subsequently wind-up.

7.6.1.2 Option No. 2: Engaging businesses for win-win solution

Before implementing the proposed changes for infrastructure development good public consultation ought to be conducted with local businesses to formulate a win-
win kind of solution or to ensure that proposed changes do not unnecessarily cause negative consequences to traders and their customers.

7.6.1.3 Option No. 3: Ensure benefits to local businesses from China Investments

It is pertinent that conditions that will benefit local businesses and local employment be considered when foreign investments are made, otherwise locals will suffer from the foreign investments, at least during the development period. The Iskandar Regional Development Authority\textsuperscript{106} (IRDA) has the capability and responsibility to look into such issues.

7.6.2 Workforce and employment issues

Just like other regions in Peninsular Malaysia, businesses, particularly the SMEs have serious workforce issues, ranging from difficulty in employing locals, difficulty in getting foreign workers and wages and productivity. These are exacerbated by the \textit{Singapore factor}\textsuperscript{107}. Singapore is a great attraction for Malaysian workforce, particularly the skilled and semi-skilled workers because of the higher wages and high exchange rate. As a result locals from Johor Bharu will opt to work in Singapore whenever possible. Figure 7.4 provides an illustration of the attraction of Singapore for Johor Bharu workforce. If a person resides in Johor Bharu and commutes to work in Singapore daily, her monthly net income would be significantly higher than working in Malaysia.

\begin{footnotesize}
\textsuperscript{106} Iskandar Regional Development Authority (IRDA) is a Malaysian Federal Government statutory body tasked with the objective of regulating and driving various stakeholders in both public and private sector towards realizing the vision of developing Iskandar Malaysia into a strong and sustainable metropolis of international standing.; \url{http://www.irda.com.my/about-us/}
\textsuperscript{107} malaysiadigest.com (29 June 2015), Working In Singapore Vs Malaysia: Is The Grass Always Greener On The Other Side?; \url{http://www.malaysiadigest.com/opinion/559568-working-in-singapore-vs-malaysia-is-the-grass-always-greener-on-the-other-side.html}
\end{footnotesize}
Figure 7.4: Singapore's attraction for Johor Bharu workforce

<table>
<thead>
<tr>
<th>Items</th>
<th>Malaysia (RM)</th>
<th>Singapore (S$)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Miscellaneous</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nutella Hazelnut Spread (375g)</td>
<td>18.50</td>
<td>5.50 (RM 15.40)</td>
</tr>
<tr>
<td>MARIGOLD HL Milk (1l)</td>
<td>6.80</td>
<td>3.20 (RM 8.95)</td>
</tr>
<tr>
<td>Cigarette (Dunhill)</td>
<td>13.80</td>
<td>13.00 (RM 36.00)</td>
</tr>
<tr>
<td>Coca-Cola (1.5l)</td>
<td>3.30</td>
<td>2.30 (RM 6.40)</td>
</tr>
<tr>
<td>Gardenia bread (per loaf)</td>
<td>2.40</td>
<td>1.50 (RM 4.20)</td>
</tr>
<tr>
<td>Electricity tariff (sen/kWh)</td>
<td>36.28 sen (1-200 kWh)</td>
<td>20.87 cents (58.00 sen)</td>
</tr>
<tr>
<td>Foods</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Starbucks latte (Grande)</td>
<td>12.20</td>
<td>6.50 (RM 18.15)</td>
</tr>
<tr>
<td>Domino’s Pizza classic hand tossed (9”)</td>
<td>24.80</td>
<td>22.80 (RM 63.70)</td>
</tr>
<tr>
<td>McDonald’s Big Breakfast</td>
<td>9.15</td>
<td>5.25 (RM 14.70)</td>
</tr>
<tr>
<td>Transportation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Rapidpass vs EZ-link)</td>
<td>150.00</td>
<td>170.00 (RM 474.70)</td>
</tr>
<tr>
<td>Concession card (Touch’n Go vs EZ-link)</td>
<td>10.00</td>
<td>5.00 (RM 14.00)</td>
</tr>
<tr>
<td>Petrol (Ron 95)</td>
<td>2.05</td>
<td>2.19 (RM 6.10)</td>
</tr>
<tr>
<td>Credit card interest rate</td>
<td>16%–18%</td>
<td>Mostly 24%</td>
</tr>
<tr>
<td>Average salary (fresh graduates)</td>
<td>2,600.00</td>
<td>2,900.00 (RM 8,000.00)</td>
</tr>
</tbody>
</table>


7.6.2(a) Foreign workers

The difficult process and conditions for the application for foreign workers are taxing on the local SMEs. It is claimed that the authority continues to introduce new conditions or change existing conditions so frequently that the businesses are finding it difficult keeping up with the changes. The authority also imposes new medical requirements such as more medical examination thereby further burdening the SMEs.

Nevertheless, local businesses still prefer to use foreign workers due to the difficulty in employing and retaining local workforce. In many instances it is difficult to get locals to work on 3D jobs with the kind of wages in the region when compared
with that of Singapore. Also local skilled workers are difficult to find as most are working in Singapore.

**7.6.2(b) Low wages and productivity**

Local businesses prefer foreign workers for various reasons. Firstly, the low wages do not attract local workers, and even if they are employed, they will leave whenever a better opportunity comes by. The locals also will not work long hours and will take leave whenever possible.

Foreign workers are easier to manage as they cannot leave whenever they like and they are prevented from leaving by having their official documents retained by the management. They can be made to work long hours and do not go on leave whenever they like, as they are here to earn as much as possible during their stay. They can be made to work harder and longer thereby increasing the labour productivity.

Secondly, many SMEs are still doing low value-adding businesses and find that the regulated minimum wage is still too high for their production. This also means that it is difficult to employ locals because of their low productivity. The official minimum wage cannot sustain local workers.

There is an acute shortage of skilled workers in the region due to the Singapore factor. The supply of skilled and semiskilled workforce cannot meet the demand of the region. There is even a talent shortage in the region, again due to the Singapore factor. The business community thinks that the government can do more for technical and vocational education in the region.

**7.6.2.1 Option no. 1: Status quo**

Employment continues to have dynamic issues as a consequence of changes in internal and external factors. The Singapore factor cannot be ignored as people will continue to be attracted to better wages for higher income. This is not necessarily bad for the country as employment in Singapore also brings in foreign exchange into the country. Unfortunately, cost of living in the south of Peninsular Malaysia will be affected and local businesses will have to move up the value chain to compete.

**7.6.2.2 Option no. 2: Ease the employment of foreign workers**

There is the need to study the situation adequately and periodically to ease the employment of foreign workers in the region. Certain jobs and certain sectors will continue to need foreign workers and this needs to be studied and considered in policy decisions. Such studies of workforce requirements in the region has to involve inputs from the industries and therefore adequate public consultations are needed. As workforce situation is dynamic, such studies and monitoring need to be carried out periodically, maybe yearly, or whenever new policy decisions are to be considered. Long-term policy decisions need to be considered and made clear
to industries in order for them to make the necessary transformation toward higher value-added activities. There will always be conflicts in interests and needs between policy makers and businesses and as such frequent engagements through public consultations will be crucial.

7.6.3 Transportation costs on travellers between Malaysia and Singapore

Traders are claiming that transportation cost on travellers from and to Singapore has increased tremendously due to increasing toll rates and the Vehicle Entry Permits (VEP) as a result of quid pro quo actions between the countries’ authorities. Unfortunately, the impact on our local traders has been higher due to the high patronage of Singaporeans in Johor Bharu. With the increasing transportation cost, Singaporeans have reduced their shopping visits to Johor Bharu affecting local retailers badly.

Visitors from Singapore bring in a lot of tourist - spending into the country and Singaporeans are a major source of tourism in the country. They come across to Malaysia for food, entertainment, golfing and shopping. Traders and businesses in Johor and way up to Melaka have benefitted from Singaporean tourists, whether on day visits or weekend trips. There are also reports that Singaporeans are beginning to patronise the private medical facilities in the country because of the high value medical care and relatively cheaper services here.

7.6.3.1 Option No. 1: Business as usual

Should the authorities continue to impose new rules and regulations without considering the impact on local businesses, then the country stands to lose out in the GDP contribution coming from these businesses and also potential foreign exchange from the spending of Singaporeans.

7.6.3.2 Option No. 2: Objective implementation of policy and regulation

The country can exploit the potential of local businesses with Singaporeans. Imposition of rules and regulations can be made to support local businesses. This is achievable through better engagement with local traders and businesses through regular public consultations. New regulations and changes in regulatory requirements should undergo impact assessment and cost-benefit analysis before being approved for implementation. This is an objective implementation of policy and regulation.

7.6.4 Unfavourable rules on new entrepreneurs

Many young people want to start their own small trades but are frequently faced with many impossible rules and regulations. They find it difficult to get trading licences and financial assistance because the existing rules do not cater for their trading requirements.
7.6.4(a) Use of Kampong land

Kampong residential plots are frequently large land area. Many Malays would like to use part of their kampong land for commercial purpose, say to start a poultry farming or motor workshop or even a kampong-style restaurant. Unfortunately, under existing rules the local authority will not issue premise licences for such ventures on residential plots. Local authorities are cautious of allowing the use of kampong land for such commercial activities as they have an environmental and health impact on the surrounding environment and may also create public nuisance. For example, poultry farming have discharges that will pollute the surrounding land, water and air if not properly controlled. On the health aspects, such activity attracts disease carrying pests such as rodents, roaches, flies and birds. The problem of bird flu will be a constant worry.

For motor vehicle workshops, the pollution aspect is also critical as the potential discharges such as lubricants and cleaning substances and motor exhausts and noise have serious environmental impact. Restaurants too have discharges such as waste foods, washing and other debris that will have an environmental impact. Restaurants too will attract disease-carrying pests to the surrounding area. There is also the public nuisance aspects from these activities, such as illegal parking affecting traffic flow, noisy activities and unbecoming behaviours of patrons. These concerns are as serious as the kampong infrastructures such as road, drainage and sewerage systems that are not adequate or designed for such activities.

Without the premise licence, owners cannot start their retail trade nor seek any financial assistance from funding institutions such as TEKUN\textsuperscript{108} or MARA\textsuperscript{109}. On funding, Bumiputera entrepreneurs claim that MARA has not been very transparent in their provision of financial assistance. It is claimed that applicants frequently have to wait a long time to know the result of loan applications. Having to wait for months to get the financial assistance would delay the start of the business thereby incurring rental losses. It is also cited that the conditions imposed to secure the loans are not very conducive for the small traders. For example, if the trader uses sub-let premise, the application would be rejected.

7.6.4(b) Non-standardise requirements across local authorities

Getting licences and permits from different authorities continue to be confusing and burdensome because differences in procedures and requirements, for example for the application of food truck licence. Local authorities such as Johor Bharu, Kulai and Senai will operate differently although they are in the same State of Johor. Although the government is promoting such entrepreneurial activities to the locals, it is claimed that some local authorities have yet to formulate a clear guidance for

\textsuperscript{108} TEKUN, Tabung Ekonomi Kumpulan Usahawan Niaga is a funding facility provided by the Government of Malaysia for small Malay entrepreneurs to run or expand their businesses. The purpose of the scheme is to make it easier for small businesses to get loans. \url{https://www.tekun.gov.my/ms/}

\textsuperscript{109} MARA, Majlis Amanah Rakyat (Malay: People’s Trust Council) is a Malaysian government agency. It was formed to aid, train, and guide Bumiputra (Malays and other indigenous Malaysians) in the areas of business and industry; \url{https://en.wikipedia.org/wiki/Majlis_Amanah_Rakyat}
licensing. The DPMMNJ has proposed that local authorities come up with clear and simple guidelines which will make it easy to do such business in the country.

The associations are also concerned about the difficulty in obtaining trading licences and also the long waiting time for obtaining licences by new start-ups. This difficulty has had an impact on their application for financial assistance, such as loans from MARA or TEKUN. The long waiting time means that the traders cannot start their operation and have to bear the unnecessary costs of premise rentals.

7.6.4.1 Option No. 1: Business as usual

To continue with current practices means that the existing issues will continue to stifle new businesses and the development of new business concepts and format in the country. The continuation of poor service delivery by authorities results in unnecessary burdens to small traders particularly the new start-ups.

7.6.4.2 Option No. 2: Continuous improvement on services delivery

Authorities need to institutionalise continuous improvement in their service delivery to cater for the changing needs of businesses in the country. This can be made through engagements with businesses and their associations via programmed public consultations and follow up with improvement initiatives. It is only through regular engagements with businesses that authorities can keep pace with the dynamic changes in the economy.

7.6.5 Dealing with tax authorities

There are two principle tax authorities all businesses have to deal with, the Inland Revenue Board for income tax and the Customs for GST. Small businesses continue to find difficulty in complying with the authorities reporting regime. Small traders tend to have a problem with their book keeping and accounting as they do not have specialist to do these. The wiser ones will outsource to professional accounting services to deal with the tax authorities. Traders who try to do their own tax accounting tend to make mistakes and experience delays in their submissions to the authorities resulting in expensive penalties. Unfortunately, taxation is an obligation on all businesses and income earners and is not something that can be avoided.

The tax authorities have published many good guidelines and continue to improve their processes to make taxation less burdensome. Unfortunately, guidelines are not sufficient to ameliorate submission and reporting burdens of small businesses. Big businesses do not suffer such burdens as they will have their specialist functional departments to handle taxation issues or can afford to employ tax professionals to deal with tax compliance. For example, GST submission is simple and straight forward as explained by Customs in Box 7.11.
Box 7.11: Dealing with GST

According to Customs, there are two taxable periods for submission the tax (GST) documentations, monthly or quarterly.

For monthly submission (Applicable to taxable persons with annual taxable turnover exceeding RM5 million or applicable to other taxable persons on request and subject to approval):

Let say, she registered for GST on 30 July 2017. The following month on date of 30th August 2017 is known as the maturity or effective date where she has to start preparing the documents for GST submission. Then, within 21 days after the effective date, she has to submit GST03 return form by uploading into the RMCD system and the GST payment (output tax exceeds input tax) which may be made through an online payment (banks/internet banking facilities) or via cheque/bank draft/money order within the 21 days.

For quarterly (every 3 months) submission (Applicable to all taxable turnover not exceeding RM5 million):

Let say, she registered for GST on 30 July 2017. The date of 30 October 2017 is known as the maturity or effective date where she has to start preparing the tax documents. Then, within 21 days after the maturity date, they have to submit the GST 03 return form by uploading in the RMCD system. The GST payment has to be submitted to RMCD within the 21 days either by online payment (banks/internet facilities) or via cheque/bank draft/money order.

To summarise, the flow of GST submission is:

1. Preparation of documents.
2. Submission of GST03 return form (within 21 days after the effective date)
3. GST Payment (within 21 days after the effective date)

Reference:

7.6.5.1 Option No. 1: Maintain the Status Quo

If anyone wants to do business, large or small business, deal with it and bear with the administrative burdens of tax compliance. Taxation and other regulatory knowledge is to be treated as necessary knowhow for all entrepreneurs. This will be an unfriendly approach toward developing new entrepreneurs into the economy. On the other hand, keen entrepreneurs would be motivated to find an easy solution by finding means to avoid compliance with existing laws or worse still, breaking the laws intentionally or otherwise.
7.6.5.2 Option No. 2: Assisting compliance on taxation

For small businesses, the administrative burden on compliance with taxation is disproportionately high and compounding this is the high penalty on non-compliance. Authorities tend to use the full force of the law (non-discretionary command regulation action) whenever non-compliance is detected. Small businesses have poor knowledge in many regulatory requirements, particularly by start-ups and on new regulation, such as the GST.

Even though authorities have made excellent efforts in simplifying and establishing many guidelines to help in compliance, much of this guiding information is still beyond understanding for adequate compliance. Authorities may consider giving advisory services through their enforcement activities for specific trades for SMEs. This can be complemented with tailor-made templates and do-it-yourself toolkits.

7.6.5.3 Option No. 3: Application of Responsive Regulation

Command and control regulation\textsuperscript{110} action in a non-discretionary manner that focuses on prosecution will develop game-playing and disengagement with the regulated. When enforcement are focused on intimidation and threats, it promotes defiance and evasion. Respondents claimed that inspections and audits carried out are frequently focused on fault-finding rather than assisting compliance to the tax regimes.

Good regulatory practices call for the use of a responsive regulation approach to the enforcement of regulatory regimes. Responsive regulation is the recommended practice for regulatory enforcement in the OECD\textsuperscript{111} and is the common application in many jurisdictions in Australia\textsuperscript{112} and New Zealand\textsuperscript{113}. Figure 7.5 illustrates the conceptual schematics on responsive regulation. Regulatory approaches would begin at the bottom of the pyramid and escalate in response to compliance failures.

\textsuperscript{110} Command and Control (CAC) Regulation can be defined as “the direct regulation of an industry or activity by legislation that states what is permitted and what is illegal”; https://en.wikipedia.org/wiki/Command_and_control_regulation

\textsuperscript{111} OECD 2014, OECD Best Practice Principles for Regulatory Policy, Regulatory Enforcement and Inspections; http://www.oecd-ilibrary.org/docserver/download/4214031e.pdf?expires=1497045024&id=id&accname=guest&checksum=F9AC821B3CE0C8995BB8C866AAF84A2F5

\textsuperscript{112} Regulatory Institutions Network, College of Asia and the Pacific, Australian National University, Applications Of Responsive Regulatory Theory In Australia And Overseas: Update; 2015 http://regnet.anu.edu.au/sites/default/files/publications/attachments/2015-05/Occasional%2520Paper%252023_Ivec_Braithwaite_0.pdf

\textsuperscript{113} The Department of Internal Affairs, Te Tari Taiwhenua, Building a safe, prosperous and respected nation; https://www.dia.govt.nz/Minimising-Harm-Maximising-Benefit
7.6.6 Export of Halal products and other trade barriers

Local producers find it hard to export their products to Indonesia due to the many non-tariff measures imposed, particularly for Halal products. Respondents claim that the Indonesian authorities do not recognise Malaysia’s Halal certification and products exported to Indonesia cannot use the JAKIM Halal logo. The logo has to be removed and Indonesian Halal certification will be needed to export as Halal products.

To obtain Halal certification from Indonesia, manufacturers have to go to Bogor, Indonesia for training, which then makes it very costly for businesses here.

There may be other NTMs and technical trade barriers for exports to Indonesia and other ASEAN neighbours even with ATIGA and other trade agreements. Such feedbacks from local businesses are important for our trade development agencies to initiate new bilateral trade agreements.

7.6.6.1 Option no. 1: Maintain the Status Quo

Obviously doing nothing is not an acceptable option as export trade is crucial to our continuing economic prosperity. NTMs and TTB will continue to be challenges for exporters and therefore have to be countered on a continuing basis.
7.6.6.2 Option No. 2: Monitoring trade barriers and negotiate new agreements

The Malaysia Productivity Blueprint has recognised the importance of removing trade barriers and improving efficiency of logistics and trading across borders. More effort has to be made to study these issues from the industry’s perspectives so that new strategies can be formulated to address them on an on-going basis. While imported goods enter the country with relative ease, it is pertinent to ensure that our manufactured goods can also flow with ease to our trading partners. Many initiatives are ongoing to improve trading across borders such as the U-Customs application and the new initiatives on improving our NTMs services deliveries of the various regulators.

7.7 Concluding remarks

Although the Malaysian Economy has reached its matured stage of development and in particular the Distributive Trade and Retail Trade Sub-sector, this may not be so in other regions of Malaysia, particularly the east coast region, Sabah and Sarawak. This is partly so because of geographical locations and the lower population intensity of the regions. Nevertheless, these regions have experienced significant changes in the local economy over the last few years resulting in significant economic development.

Sabah and Sarawak have many local regulatory requirements for the retail trade. The special agreement in the formation of Malaysia allows for the local control in some areas, notable immigration control and the control of local resources and environment. As such, traders need to comply with some local rules apart from some applicable Federal regulations.

In the northern region, and in particular, Penang, the local economy is dominated more by one community, unlike that of Klang Valley. This is largely due to the historical development of the local economy since the British founding of Penang. In the east coast region, the population is more homogenously Malay and Muslim and as a result, local authorities are motivated to introduce rules relevant to the local population. In the southern region of Johor, the special development of the Iskandar region has resulted in fast and significant changes that both authorities and local businesses have to cope with. Apart from these unique characteristics, traders generally faced that same kind of issues, such and foreign labour, burdensome compliance requirements, transparency issues and others as those captured form businesses in the Klang Valley.
References


25. MDTCC, 2013, *Panduan Permohonan Lesen Mengilang, Borong dan Runcit, Barang Barang Kawalan dan Berjadual*


27. MPC 2013, Best Practice Regulation Handbook, Malaysia Productivity Corporation


35. The Economist 2016: *Focus - The middle-income trap*; http://www.economist.com/blogs/graphicdetail/2012/03/focus-3


Appendix

A) Foreign Worker Application Form (Services Sector) - BPPA
9. Kemudahan perumahan yang disediakan untuk pekerja asing

<table>
<thead>
<tr>
<th>Jenis Rumah</th>
<th>Bayaran</th>
<th>Lokasi</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Percuma/Sewa RM</td>
<td></td>
</tr>
</tbody>
</table>

10. Maklumat berkaitan perniagaan (silakan ruangan yang berkaitan satalah):

<table>
<thead>
<tr>
<th>Aktiviti Perniagaan</th>
<th>Keluasan Lantai / Kawasan (Mps/Ekari)</th>
<th>Bilangan Pelanggan Penghuni Sehari</th>
<th>Nilai Jualan / Kontrak / Pendapatan Sebulan</th>
<th>Jumlah Dijemas (Ton/Kg/Gram) Sehari</th>
<th>Bilangan Pintu / Tingkat</th>
<th>Bilangan Mesin</th>
<th>Bilangan Tempat Duduk (Kerus)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Restoran</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dobi</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pembersihan &amp; Pencucian</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kargo</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rumah Kebajikan</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Borong &amp; Runcit</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tukang Emas</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tukang Gunting</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Logam/Barang</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lurus &amp; Kitar</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Senura</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tekstil</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Permohonan yang tidak lengkap, tidak teratur dan tidak memepati kriteria yang telah ditetapkan akan DITOLAK.

Dengan ini saya membuat akuan bahawa segala maklumat yang diberikan dan salinan dokumen yang disemakkan adalah benar dan sah. Permohonan akan terbata dengan sendirinya dan tindakan undang-undang boleh dilambat sekitanya maklumat yang diberikan didapati palsu.

**Untuk Kegunaan Penerbit:**

- Dokumen lengkap
- Dokumen tak lengkap

**Catatan:**

- Tandatangan Pegawai Bertugas
  - Nama & Jawatan:
BAHAGIAN PENGURUSAN PEKERJA ASING
KEMENTERIAN DALAM NEGERI

SENARAI SEMAK PERMOHONAN PENGAMBILAN PEKERJA ASING

PERTAMA - Sebagai rujukan semasa urusan temuduga, sila pastikan anda membawa DOKUMEN ASAL bagi setiap salinan dokumen yang diperlukan.

KEDUA - BORANG DAN SALINAN DOKUMEN-DOKUMEN sokongan hendaklah diijinkan menggunakan COVER-BINDING MENGIKUT SUBJAN SEMAK di bawah :

a) Dokumen Wajib

1. Borang yang telah lengkap disi
   - Sijil Pendaftaran Syarikat / Perniagaan - Form 9, 24 & 49 atau Form B & D
   - (Terkini dan disahkan dalam tahun semasa/dicek SSM beserta Resit Bayaran pengesahan berkenaan) atau
   - Sijil Pendaftaran Suruhanjaya Koperasi Malaysia (SKM) dan senarai nama Ahli Lembaga
   - Pengarah (Terkini dan disahkan oleh SKM)

2. Kad Pengenalan Pemilik / Pengarah (Form 49 / Form D)

3. Syarat-Syarat Bagi Wakil Syarikat:
   - Terdiri dari peringkat pengurusan syarikat
   - Nama tersenarai di dalam Penyata Caruman KWSP terkini
   - Kad Pengenalan pemohon
   - Surat Pengenal diri majikan (Dilantatangani oleh Pihak Pengurusan Syarikat)

4. Penyata Caruman KWSP bagi 3 bulan terkini (Borang 'A' Tidak Dibenarkan)

5. Laporan Kewangan Syarikat yang telah diaudit bagi tahun semasa atau setahun sebelumnya
   - (Syarikat Pemilik Tunggal/Perkongsil/Enterprise – Akun Pengurusan (Kunci Kira-Kira dan Penyata Untung Rugi) yang disahkan benar oleh Juruaudit)

6. Penyata Bank bagi syarikat untuk 3 bulan terkini (Berturunan)
   - (Syarikat Pemilik Tunggal/Perkongsil/Enterprise – Akun Simpanan/Semasa Pemilik)

7. *Sijil Perakuan Pengesahan Majikan dari Jabatan Tenaga Kerja (JTK)

8. Insurans Skim Pampasan Pekerja Asing (SPPA) (Foreign Workers Compensation Scheme Insurance (FWCS)) bagi pekerja asing sedia ada (Jika Berkenaan)

9. Memo Perkara Keluar bagi pekerja yang telah pulang atau/atau Laporan Pekerja Lari daripada Jabatan Imigresen Malaysia (Jika Berkenaan)

* Permoohonan pengambilan pekerja asing hendaklah disampaikan secara dalam talian melalui sistem seperti berikut:
(a) Sistem Pengurusan Pekerja Asing Bersepadu (SPPAx) di pautan: https://www.esos.gov.my bagi permoohonan pekerja asing dari negara-negara sumber yang merupakan bagian forum transnasional

b) Dokumen Tambahan Mengikut Sektor

i. Sektor Perkilangan

1. *Lesen MITI (bagi syarikat yang mengikuti modal berbayer melebihi RM2.5 juta atau pekerja melebihi 75 orang)
   - Lesen PBT dan Lesen / Keberkalan Agensi yang berkaitan

2. Risalah / Gambar Pendangan Hadapan & Dalam Berkaitan Premis, Mesin dan Produk

3. Carta Akta Penghasilan Produk dan Jumlah Pekerja Dipertahankan Di Sesuai Tempat
   - Proses untuk mengesahkan terdapat aktiviti pembuatan di kilang

4. Borang K2 (CDF) dan ringkasan penyata jualan ekspor (direct export) sebagai bukti Ekspor
   - (Jika Berkenaan)

ii. Sektor Pembinaan

1. Syarat tambahan bagi wakil syarikat yang hadir untuk temuduga:
   - Pegawai Pengurusan Utama (PPU)
   - Borang Pengesahan PPU

2. Sijil Perakuan Pendaftaran CIDB


166
iii. Sektor Pertanian

1. Sijil Kelahiran (bagi tanah milik ibu bapa) / Sijil Nikah (bagi tanah milik suami / isteri)
2. Geran Tanah bagi pengusaha yang mengusahaan tanah sendiri
3. Perjanjian Sewa Pajak yang melebihi 3 tahun yang telah disetentikan dan Salinan Geran Pemilik Tanah yang disahkan oleh Pejabat Tanah dan Galian / Sijil Caraan Rasmi
4. Pendekatan / Lesen yang berkaitan Sistem Kultur Leu F Tanah Ayam / Ikan / Buah (Unggas) / Tamak Khinzi daripada Negeri / Daerah
5. Surat sokongan dan atau Laporan Penilaian daripada Jabatan Pertanian / Perkhidmatan Veteriner / Perikinan daripada Negeri / Daerah bagi pengusaha yang menjalankan aktiviti tanaman / tanaman / agroskultur di tanah milik Kerajaan / Persempadan
6. Surat Keberkahan daripada Pejabat Tanah dan Galian (Jika Berkahana)

iv. Sektor Pertadangan

1. Sijil Kelahiran (bagi tanah milik ibu bapa) / Sijil Nikah (bagi tanah milik suami / isteri)
2. Geran Tanah bagi pengusaha yang mengusahaan tanah sendiri
3. Perjanjian Sewa Pajak / Kontrak Kerja yang melebihi 3 tahun yang telah disetentikan dan Salinan Geran Pemilik Tanah yang disahkan (Tidak melebihi 1 tahun) oleh Pejabat Tanah dan Galian
4. Surat Keberkahan daripada Pejabat Tanah dan Galian (Jika Berkahana)
5. Sijil Lembaran Masyarakat (WIPAS) / Lembaran Getah Malaysia (LGM) (bagi Kontraktor - sijil yang disahkan oleh Pemilik Ladang)
6. Surat Pengesahan sebagai Kontraktor oleh Pemilik Ladang (Jika Berkahana)

v. Sektor Perkhidmatan

1. Lesen Permai yang diketikahkan oleh Pihak Berwenang Tempatan
   - Akta Rumah Kebajikan (Surat kebenaran berasal jawatan Kebajikan Masyarakat)
2. Lesen Keberkahan Pois (bagi Permai yang daikan Pois / Sukan & Kitaran Sempoi)
3. Letter Of Award / Kontrak Kerja yang masih berkuatkuasa & dimulakan semasa asal mengikut nilai kontrak (bagi Pembersihan & Pencucian)
4. Memoriandum and Articles’ (M&A) syarikat (bagi Pembersihan & Pencuci)
5. Perjanjian Sewa Pajak melebihi 3 tahun yang disetentikan dan Salinan Geran Pemilik Tanah / Bangunan yang disewa
6. Gambar hadapan premis (termasuk papan tanda nama syarikat) & gambar dalam premis

Permohonan yang tidak lengkap, tidak teratur dan tidak mematuhi kriteria yang telah ditetapkan akan DITOLAK.

Urusan Terdeguh bagi Permohonan Pengambilan Pekerja Asing adalah seperti berikut:

Tempat: Pusat Kelulusan Setempat (OSC)
Beheleg Pengurusan Pekerja Asing
Kementerian Dalam Negeri
Aras 5, Bldg D9, Kompleks D
Pusat Pendaftaran Kerosen Persekutuan
62546 PUTRAJAYA
03 – 88852939 / 88852540

Waktu Urusan: 8.30 pagi sehingga 12 tengahari (Isnin-Khamis)
8.30 pagi sehingga 11 pagi (Jumaat)
B) Circular on Rice Retailing Licence - MOA

Semua Pemegang lesen Borong Beras
Semua Pemegang lesen Runcit Beras
Ketua Unit Penguatkuasaan & Pendaftaran KPB Ibu Pejabat
Ketua Unit Pelosokan KPB Ibu Pejabat
Semua Pengarah Negeri / Ketua Cawangan
Kawalselia Padi dan Beras (KPB)

Tuanku / Puan,

PERINTAH TETAP KETUA PENGARAH BAGAI PENGAIRALAN PADI DAN BERAS BIL. 7/2014

— PENETAPAN DASAR PEMILIKAN lesen BORONG BERAS DAN lesen RUNCIT BERAS OLEH WARGANEGARA ASING

Saya ingin menarik perhatian tuanku/puan mengenai perkara tersebut di atas.


a. Lesen Borong Beras

- Permohonan lesen adalah terhad kepada syarikat atau perniagaan yang dimiliki 100% oleh Warganegara Malaysia sahaja.
ii. Bagi syarikat atau perniagaan yang mempunyai pegangan eksklusif oleh warganegara asing dan telah diluluskan Lesen Borong sebelum ini, syarikat atau perniagaan tersebut akan diberi notis untuk memulakan semula syarikat atau perniagaan dalam tempoh 6 bulan dari tarikh notis dikeluarkan. Sekiranya syarikat atau perniagaan tersebut gagal untuk memulakan semula, Lesen Borong syarikat atau perniagaan tersebut, akan dibatalkan tanpa sebarang notis.

b. Lesen Runcit Beras

i. Permohonan lesen adalah terhad kepada perniagaan jenis Syarikat Sdn Bhd / Berhad yang berdaftar dengan Suruhanjaya Syarikat Malaysia;

ii. Jenis perniagaan runcit yang dijalankan adalah terhad kepada jenis hypermarket atau superstore sahaja. Dalam konteks ini, definisi hypermarket atau superstore adalah merujuk kepada Guidelines On Foreign Participation In The Distributive Trade yang dikeluarkan oleh Kementerian Perdagangan Dalam Negeri, Koperasi dan Keperluan (KPDNKKK), iaitu:

- hypermarket adalah kedai pengedaran barang yang mempunyai ruang jualan 5,000 meter persegi atau lebih; dan

- superstore adalah kedai pengedaran barang yang mempunyai ruang jualan antara 3,000 hingga 4,999 meter persegi. Walau bagaimanapun, perniagaan runcit jenis superstore hanya boleh dijalankan oleh syarikat yang menjalankan perniagaan jenis hypermarket sahaja.

iii. Syarikat telah mendapat kelulusan daripada KPDNKK untuk menjalankan perniagaan runcit jenis hypermarket atau superstore;

iv. Sekurang-kurangnya 36% okuhi syarikat dimiliki oleh Bumiputera; dan
v. Bagi syarikat yang mempunyai pegangan ekuiti oleh warganegara asing dan telah diluluskan Lesen Runcit sebelum ini, syarikat tersebut akan diberi tempoh selama 3 bulan dari tarikh notis dikeluarkan untuk mengemukakan surat kelulusan daripada KPDNKK bagi membuktikan bahawa syarikat diberi tempoh pengecualian oleh KPDNKK terhadap pematuhan kepada syarat pemilihan ekuiti sekurang-kurangnya 30% oleh Bumijuta. Sekiranya syarikat gagal mengemukakan surat pengecualian tersebut, syarikat akan diberi notis untuk memenuhi semula syarikat dalam tempoh 6 bulan dari tarikh notis dikeluarkan. Sekiranya syarikat tersebut gagal untuk memenuhi semula dalam tempoh yang ditetapkan, Lesen Runcit syarikat tersebut, akan dibatalkan tanpa sebarang notis.


Sekian, terima kasih.

"BERKHIDMAT UNTUK NEGARA"

Seja yang menurut perintah,

(DATO' NAIMAH BINTI RAMLI)
Ketua Pengarah
Pengawalan Padi dan Beras
Kementerian Pertanian dan Industri Asas Teni, Malaysia

s.K.

KSU
PUU
TSUB (KPB)