

CoST Country Study: Malaysia



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Editors: Bernadine Fernz and Eleanor Morgan

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Executive Summary

CoST is a public infrastructure transparency and accountability initiative. As a multi-stakeholder initiative, CoST works with government, industry and civil society to support the routine disclosure of public infrastructure project information into the public domain. This information is subjected to regular 'spot checks' to assess the accuracy of information disclosed, compliance with transparency requirements and performance or progress of the project. Discrepancies are highlighted in simple language that is easy for citizens to understand and which they can use to demand improvements in public infrastructure procurement and delivery.

This is the first official engagement CoST International has had with Malaysia and it is not yet a member of the programme.

In partnership with the UK Government's Foreign and Commonwealth Office (FCO), CoST has commissioned four country studies in Indonesia, Malaysia, Thailand and Vietnam.

The purpose of this study is to understand the:
- Key characteristics of public infrastructure investment and governance in Malaysia;
- Public infrastructure transparency policy and practice (baseline) in Malaysia; and
- Scope for improving public infrastructure transparency and accountability, specifically the CoST value-add and potential challenges/barriers to implementation, in Malaysia.

Even though the early post-independence decades were characterised by rapid growth, the challenge for Malaysia is to break free from the middle-income trap and attain developed economy status. Presently Malaysia is in the doldrums following drops in oil prices and exports. Modern Malaysia is a multi-racial, multi-religious country but race is often used as a divisive tool for politicians to maintain power. This has a negative effect on social integration and *Bangsa Malaysia* (Malaysian Nation).

There are three main parts to this report; the key points are summarised below:

Public Infrastructure Investment and Delivery
Malaysia's infrastructure needs for 2010 – 2020 is projected at US$188 billion (Kitano, 2015). However, the combined spend of the 10th and 11th Malaysia Plans which cover the same period is only US$109 billion. This is means there could be an infrastructure spending gap of up to US$78 billion. Nonetheless, the construction sector in Malaysia is projected to grow by 10.3% annually between 2016-2020 (EPU, 2015).

In the current five year economic plan i.e. 11th Malaysia Plan (11MP), major infrastructure investments are planned for the period 2016-2020; these span all sectors and include megaprojects such as the Kuala Lumpur-Jurong East High Speed Rail (RM40-45 billion) (US$9-10 billion), Pan Borneo Highway (RM29 billion) (US$6.9 billion) and new power plants (RM28 billion) (US$6.3 billion). Yet the megaproject requiring the most significant investment - the East Coast Rail Line (RM55 billion) (US$12.4 billion), was notably absent from the 11MP documents. Some of the projects previously included under the 10th Malaysia Plan (10MP) are now to be undertaken under the present 11MP period.

It is not clear how 11MP projects will be financed. Public debt is high; accumulated debt (including off-budget deficit) stands at RM687.4 billion (US$155 billion) (2015 figure), which is

2.6 times more than 11MP's entire budget allocation. Although heavy reliance on private sector investment (25% 10MP budget through PPP) is promoted, in reality the government consistently underwrites or guarantees these investments with government-owned pension funds.

There are multiple types of procuring entities across federal, state and local levels in Malaysia. Each level has multiple departments, agencies, government-linked companies, special purpose vehicles and even statutory bodies. Many of the entities involved in public procurement of infrastructure are off-budget agencies such as GLCs, Special Purpose Vehicles (SPVs) and non-financial public enterprises; they are subject to less stringent controls and oversight, and widely considered to be inefficient and lack transparency.

On the supply side, there are also almost 80,000 contractors currently registered with the Construction Industry Development Board (CIDB). They are classified into three categories: *bumiputera* (essentially Malay), non-*bumiputera* and foreign contractors. Affirmative action policies aimed at reducing economic disparities between the *bumiputera* and other races have had an impact on competition, innovation and competence. Scholars have argued that this is one of the reasons Malaysia remains in the middle-income trap.

Governance
Malaysia is a parliamentary democracy with a three tier government structure (federal, state, district/local). There are existing tensions between the federal and state government particularly around the distribution of wealth from the resource rich states. In recent times, several states have increasingly been pressing for greater autonomy.

Malaysia has an elaborate national integrity programme including various legislation and numerous institutions. However, oversight and enforcement agencies lack independence; almost all the oversight institutions come under the purview of the Prime Minister's Department.

Malaysia's governance indicator scores tend to be average. However, recent developments have raised concerns, in particular the 1MDB case. Since the case came to light, Malaysia's ranking on Transparency International's Corruption Perception Index slid down four places (2014 to 2015). Malaysia's performance would have been worse if not for the absence of six countries who were not included in the 2015 assessment.

Civil liberties have also been cast into doubt. Freedom House (2016) ranks Malaysia as 'Not Free' in its Freedom in the World and Freedom of Press categories. The majority of mainstream media outlets are government owned or controlled. Independent news outlets are often censored, suspended or banned. Additionally, Freedom of Assembly and Association are considered 'limited', as evidenced by the periodic detention of various social activists.

Transparency: Policy and Practice
The existing framework for transparency in Malaysia is weak. The country is not a member of any leading international transparency initiatives and scores poorly in global rankings in this field. The lack of commitment to openness and transparency at the international level is mirrored at the national level, where there is also a notable absence of dedicated transparency or access to information legislation.

Current Malaysian legislation only requires disclosure of three out of the 40 CoST Infrastructure Data Standard (IDS) points (7.5%). Yet even with this low mandate, compliance with legal requirements still only reaches an average of 37% and this drops dramatically to

14% when compared with the CoST IDS. Disclosure is also selective, with the overwhelming majority taking place in the contract phase (27.3% compliance on average with the CoST IDS) as opposed to the project phase of (0.7% compliance).

There is certainly a strong case for CoST to help expand and increase existing transparency requirements in Malaysia but questions remain about the appetite for open government. There are examples of transparency efforts emerging at various levels which provide encouragement. For example, the states of Selangor and Penang have introduced access to information laws in their respective states and some public institutions also provide information on a voluntary basis. Oversight is facilitated by the Auditor General's (AG's), whose annual report is at present, the most reliable and most extensive source of information on infrastructure projects. These reports have the potential to highlight discrepancies or problems on projects. CoST can help capitalise on these initiatives and strengthen the overall framework to increase compliance with legal requirements as a minimum.

Recommendations

Chapter 7 outlines 12 key recommendations for CoST implementation in Malaysia. These focus on strengthening transparency requirements including targeting high-value projects for inclusion in CoST disclosure, working with innovative states that have already introduced Freedom of Information Laws, and identifying the right partners to ensure integrity and effectiveness in implementation. The recommendations are tempered though and underline the fact that CoST should not be too ambitious in its early objectives given the limited existing framework for transparency.

CoST Country Study: Malaysia

Acronyms

1MDB	1 Malaysia Development Board
9MP	9th Malaysia Plan
10MP	10th Malaysia Plan
11MP	11th Malaysia Plan
ACA	Anti-Corruption Agency
ASEANAPOL	ASEAN National Police
APEC	Asia Pacific Economic Cooperation
APG	Asia Pacific Group
ADSL	Asymmetric Digital Subscriber Line
AFC	Asian Financial Crisis
AG	Auditor General
BN	Barisan Nasional
CIDB	Construction Industry Development Board
CPI	Corruption Perceptions Index
DOE	Department of Environment
DOW	Department of Works
ECRL	East Coast Rail Line
EPU	Economic Planning Unit
EPF	Employees Provident Fund
EIA	Environmental Impact Assessment
ERL	Express Rail Link
EOT	Extension of time
FCO	Foreign and Commonwealth Office
FLC	Federal Land Commission
FELDA	Federal Land Development Authority
FT	Federal Territory
GFC	Global Financial Crisis
GLC	Government-linked companies
GLIC	Government-linked investment companies
GDP	Gross domestic product
HSBB	High Speed Broadband
ICU	Implementation and Coordination Unit
ICT	Information and communications technology
IACA	International Anti-Corruption Academy
IAACA	International Association of Anti-Corruption Authorities
IAPG	Inter-Agency Planning Group
INTERPOL	International Criminal Police Organisation
IIB	Iskandar Investment Berhad
IDS	Infrastructure Data Standard
UiTM	Universiti Teknologi MARA
KVMRT	Klang Valley Mass Rapid Transit
KLIA	Kuala Lumpur International Airport
KLIA2	Kuala Lumpur International Airport 2
KWAP	Kumpulan Wang Persaraan
LRT	Light rail transit
LNG	Liquefied natural gas
MAMPU	Malaysian Administrative and Modernisation Planning Unit
MACC	Malaysian Anti-Corruption Commission
MCA	Malaysian Chinese Association
MGPIC	Malaysian Government Procurement Information Centre
MIC	Malaysian Indian Congress
MIER	Malaysian Institute of Economic Research
MII	Malaysian Institute of Integrity
MRT	Mass Rapid Transit
MOF	Ministry of Finance
MOW	Ministry of Works
NAC	National Action Council
NDPC	National Development Planning Committee
NPC	National Planning Council
NEP	New Economic Policy
NFPC	Non-financial public corporation
PIC	Pengerang Integrated Complex
PIPC	Pengerang Integrated Petroleum Complex
PE	Procuring Entities

PAC	Public Accounts Committee
PCB	Public Complaints Bureau
PPE	Public procurement entities
PTP	Pelabuhan Tanjung Pelepas
PIPC	Pengerang Integrated Petroleum Complex
PPA1M	Perumahan Penjawat Awam 1 Malaysia
PR1MA	Perumahan Rakyat 1 Malaysia
PE	Population equivalent
PFI	Private Finance Initiative
PBR	Program Bantuan Rumah
PPR	Program Perumahan Rakyat
PPP	Public Private Partnership
PPPU	Public Private Partnership Unit
PKK	Pusat Khidmat Kontraktor
RGT-1	Regasification Terminal 1
RE	Renewable Energy
RMR1M	Rumah Mesra Rakyat 1 Malaysia
RUMAWIP	Rumah Wilayah Persekutuan
SEA-PAC	South East Parties Against Corruption
SPV	Special purpose vehicle
VSAT	Very Small Aperture Terminal
UBBL	Uniform Building By-Law
UKAS	*Unit Kerjasama Awam Swasta*
UMNO	United Malays National Organisation
UNCAC	United Nations Convention against Corruption
WTP	Water Treatment Plant

Introduction

CoST

CoST is a public infrastructure transparency and accountability initiative. As a multi-stakeholder initiative, CoST works with government, industry and civil society to support the routine disclosure of public infrastructure project information into the public domain. This information is subjected to regular 'spot checks' to assess the accuracy of information disclosed, compliance with transparency requirements and performance or progress of the project. Discrepancies are highlighted in simple language that is easy for citizens to understand and which they can use to demand improvements in public infrastructure procurement and delivery.

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For more information, please refer to the CoST Factsheet and Infrastructure Data Standard.

Background to the Malaysia Study

Southeast Asia infrastructure investment has risen sharply in recent years to remedy historical underinvestment and accommodate explosion in demand (McKinsey and Company, 2011). The biggest demand is expected in transport and energy, "the sectors most critical to supporting heightened economic activity". Given the importance and scale of these investments, it is vital to ensure the good governance of all infrastructure projects, and especially those funded through the public purse.

Therefore, CoST is conducting four country studies in Indonesia, Malaysia, Thailand, and Vietnam to determine the current level of public infrastructure transparency and accountability nationally. These studies will feed into an overall Southeast Asia regional study, and assess the extent to which CoST can add value.

The project is funded by the FCO, UK Government, through the Southeast Asia Prosperity Fund.

Objectives of the Malaysia Study

The purpose of this study is to understand the:

- Key characteristics of public infrastructure investment and governance in Malaysia;
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Scope and Structure of this Study

The Malaysian study is based on desk research, including primary and secondary data to determine the transparency baseline. Primary data was collected on 20 sample projects to inform the transparency baseline. Conclusions and recommendations have been drawn from the findings to highlight the value add of CoST. Further information on the research approach can be found in the Methodology section below.

This study begins with some key information about the Malaysian economy as the backdrop, followed by an overview of public infrastructure investment and delivery in Malaysia. Governance and transparency – both policy and practice in public infrastructure – follow next. The report concludes by restating the recommendations.

Methodology

Key Definitions

Bumiputera refers to Malay Muslims and the various indigenous tribes considered to be the *Orang Asli* (Original People).

Development expenditure, according to the Economic Planning Unit, is capital expenditure that is non-repetitive and unrelated to operating expenditure, but instead pertains to investment-related spending.

Disclosure refers to the publication of information relating to public infrastructure projects, with the goal of increasing transparency. *Proactive disclosure* is when information is published routinely as a matter of course without any request for information having been made. *Reactive disclosure* is when information is provided in response to a request for information.

Government-Linked Companies (GLC) are companies that are set up and operate as commercial enterprises but in which the Malaysian government has a direct controlling stake.

Government-Linked Investment Companies (GLIC) are investment companies that are linked to the federal government and which allocate some or all of its funds to GLC investments

Public infrastructure is defined as infrastructure that is either owned by the public or is for public use, with the exception of defence and public security. The reason for this exception is that they relate to national security and are not subject to the same standards of disclosure as other public infrastructure.

Public-Private Partnership (PPP) involves the transfer from government to the private sector, the responsibility to finance and manage a package of capital investment and services including the construction, management, maintenance, refurbishment and replacement of public sector assets such as buildings, infrastructure, equipment and other facilities.

Literature review

Information was triangulated and derived from both government and non-government sources, media and academic publications; resources were both domestic and international. To avoid the risk of misrepresentation or unintentional bias, three independent individuals were approached to validate the report: a practising quantity surveyor; a practising lawyer and, a senior town planning lecturer.

Challenges

Assembling, sifting and connecting information to produce an accurate portrayal of Malaysia consumed a considerable amount of time, energy and patience. Through the course of this research, it was discovered that the relevant government documents conspicuously lack vital information. Ferry et al. (2014) note that post-2009 (i.e Global Financial Crisis (GFC) and the 2008 General Elections), the Prime Minister has been using the annual budget speeches as a tool to regulate public sentiment rather than to manage the economy. The 10th and 11th Malaysia Plans are glossy and polished, but again, revealing as little information as possible particularly on financial matters; it is noted that both plans were prepared by the same international consultant. As with annual budget speeches, it appears that their primary function is to serve as a public relations tool. In similitude, government websites – in particular the Construction Industry Development Board (CIDB) website – also reveal as little information as possible; a prime example is the notable absence of *bumiputera* contractors statistics which is a highly topical issue. While all these factors justify CoST's rationale for seeking to make inroads into Malaysia, it proved to be a significant hurdle in the preparation of the report.

Sample selection

In selecting projects for the transparency baseline assessment, the sample was drawn from recently completed infrastructure projects to capture the current levels of project transparency. If the projects had been completed too long ago, then the analysis and findings would not reflect contemporary government practices. The 10th Malaysia Plan (10MP) served as the initial starting point for project selection (EPU, 2015) (see Table 1). Between 2010 and 2015 inclusively, the government spent RM598 billion (US$134 billion) on public investment (EPU, 2015).

Table 1: Large-scale projects launched during the 10MP (2011-2015)

Type of infrastructure	Public project
Road	Road length increased from 137,200 kilometres (km) in 2010 to an estimated 230,300 km in 2015. Road projects include the Central Spine Road from Kuala Lipis to Bentong. And road maintenance programme continued as usual.
Port	New container wharfs were constructed at Northport and Westport of Port Klang, Pelabuhan Tanjung Pelepas (PTP), Penang Port, and Kuantan Port.
Railway	Electrified double-track railway from Padang Besar, Perlis to Gemas, Negeri Sembilan was completed.
Airport	Kuala Lumpur International Airport 2 (KLIA2) opened in 2014. An additional third runway operationalised at KLIA.
Public transportation	Express Rail Link (ERL) was extended from KLIA's main terminal to KLIA2, Light Rail Transit (LRT) from both Kelana Jaya and Sri Petaling to Putra Heights, and Klang Valley Mass Rapid Transit (KVMRT) Line 1 from Sungai Buloh to Kajang. Terminal Bersepadu Selatan and Pudu Sentral in Kuala Lumpur opened.
Energy	Work on the detailed masterplan for Pengerang Integrated Petroleum Complex (PIPC) started in 2012. PIPC includes the PETRONAS Pengerang Integrated Complex and DIALOGVopak Deepwater Petroleum Terminal. Deep water petroleum terminal started operations in April 2014. Expansion of liquefied natural gas (LNG) plant in Bintulu, Sarawak began in 2013. Regasification Terminal 1 (RGT-1) project in Melaka commenced operations in 2013.
Electricity	10 power plants were commissioned, including Bakun Hydroelectricity in Sarawak as well as Kimanis and SPR gas-fired power plants in Sabah. Electricity coverage for rural areas increased from 92.5% in 2010 to 98.2% in 2015.
Piped water	As of 2014, 95.1% of the population was served with clean and treated water supply, rising from 94.2% in 2010. 24 new water treatment plants were completed and commissioned, while 38 treatment plants were upgraded. Upgrading of the Mengkuang Dam in Penang and distribution networks in the Federal Land Development Authority (FELDA) settlement areas in Pahang commenced.

Sewerage	Capacity of sewerage services by grid and septic tanks was expected to increase from 36.2 million population equivalent (PE) in 2010 to 40.7 million PE by 2015.
Healthcare	New hospitals, including specialised medical institutions such as the National Cancer Institute in Putrajaya and Cheras Rehabilitation Hospital. As of 2014, 307 Klinik 1 Malaysia were established in rural areas and 16 Klinik Bergerak 1 Malaysia delivered services from boats and buses also in rural areas.
Housing	Housing programmes for the poor and low-income hosueholds inclued the Program Bantuan Rumah (PBR), Program Perumahan Rakyat (PPR) and Rumah Mesra Rakyat 1 Malaysia (RMR1M). Affordable housing for the middle-income households was also provided under the Perumahan Rakyat 1 Malaysia (PR1MA), Perumahan Penjawat Awam 1 Malaysia (PPA1M) for civil servants and Rumah Wilayah Persekutuan (RUMAWIP).
Education	Conversion of 72 existing vocational schools and eight existing technical schools into vocational colleges. Eight new vocational colleges were also set up.
Television transmission	Free-to-Air Digital Terrestrial Television (DTT), offering digital television and radio services, was scheduled to be launched by end of 2015.
Digital connectivity	High Speed Broadband (HSBB) and Broadband for General Population (BBGP) were rolled out in several states, thereby raising national broadband penetration from 55.6% in 2010 to 70.2% in 2014. Cities that benefitted included Bintulu, Kuching and Miri in Sarawak, and Kota Kinabalu and Menggatal in Sabah. ICT infrastructure in the public sector, previously managed by individual ministries, was consolidated into 1Gov*Net in 2012. Under the 1BestariNet programme, connectivity to schools to support teaching and learning was through fibre, WiMAX, Asymmetric Digital Subscriber Line (ADSL), Very Small Aperture Terminal (VSAT), and wireless links.

Source: EPU (2015)

Some projects in the 10MP were excluded from the sample selection due to their extended project life cycles. A case in point is the controversial Bakun Hydroelectricity project, which stretched from the undertaking of initial studies including socio-economic impact in the early 1980s to its first operation in 2011[1] – over 30 years after it was first proposed. To ensure projects were comparable and to mitigate the risk of outliers skewing results, these types of extended life-cycle projects were not included in the sample.

Selecting the 20 sample projects proved somewhat challenging; it would be logical to select the sample based on the proportion of investment against each sector (infrastructure type e.g. transport/health/etc). However, the lack of transparency in public infrastructure procurement has made it difficult to accurately assess public infrastructure investment either by sector or by Procuring Entity (PE). There are hundreds of PEs in Malaysia, from government to government-linked companies (GLCs) to public-private partnerships (PPPs) (CIDB, 2015); the details of these PEs and their corresponding budgets/investments are rarely disclosed to the

[1] Transparency International include Bakun Dam as one of the 'Monuments of Corruption' in its Global Corruption Report 2005. See http://www.transparency.org/news/pressrelease/a_world_built_on_bribes_corruption_in_construction_bankrupts_countries and https://www.internationalrivers.org/campaigns/bakun-dam

public. This makes it difficult to provide a comprehensive overview of infrastructure investment.

Table 2 shows the federal government's expenditure during the 10MP. The classification of investment is poorly defined, with many overlaps across ministries, sectors and activities. Trade and industry sub-sectors for example, include upgrading of infrastructure facilities in industrial areas and regional growth corridors, as well as upgrading of tourism-related facilities. New road construction, which should logically come under the transport sector, in fact is classified under trade and industry if it serves an industrial or regional growth corridor.

Thus, even though this approach is suboptimal, the sample selected in this study follows the distribution of expenditure across the sectors as listed in the 10MP. The proportional breakdown of the sample projects are as follows: 6 from transport, 4 from trade and industry, 4 from education and training, 3 from public utilities, 2 from agriculture and rural development, and 1 from health. Given the small proportion covered by housing investment, housing projects were excluded from the sample. As mentioned above, defense and security projects were also excluded from this study.

Table 2: Federal government's development expenditure during the 10MP (2011-2015)

Sector	2011	2012	2013	2014	2015	Total (RM million)	Total development expenditure (%)
Transport	10,140	10,065	8,152	7,271	6,693	42,321	28
Trade & industry	8,364	5,043	6,244	4,688	5,638	29,977	20
Public utilities & energy	6,013	5,519	3,332	3,485	3,637	21,986	15
Agriculture & rural development	1,128	1,906	2,692	2,875	3,105	11,706	8
Education & training	7,735	7,550	6,438	4,928	4,758	31,409	20
Health	2,207	1,864	1,738	1,385	1,442	8,636	6
Housing	762	524	852	618	2,008	4,764	3
Sub-total	40,918	36,880	34,097	29,582	32,035	173,512	100
Security	4,569	4,409	4,649	4,332	4,754	22,713	
Others[2]	5,498	10,052	8,113	9,921	8,733	42,317	
Total	46,416	46,932	42,210	39,503	40,768	215,829	

Source: Ministry of Finance[3]

Obtaining project information proved to be extremely difficult due to the severe lack of transparency. However, for the purposes of this paper, a constructive approach was adopted; although it would be easy to simply record that information was not provided, it is more useful

2 Others include general administration, subsidies, communications, see http://library.fes.de/pdf-files/iez/01443005.pdf, Table 4.

3 http://www.treasury.gov.my/index.php/en/economy/economic-data.html

to analyse projects where information is actually available in the public domain. For this reason, the annual Auditor General's reports from 2011 to 2015 (inclusive) became the most appropriate first point of reference for extracting suitable sample study projects[4]. From this exercise, 14 sample projects were extracted. Six more sample projects had to be sourced from elsewhere, such as relevant ministries' and PEs websites, and online government documents (in particular the 10MP). Information was also gleaned from non-official sources such as mainstream and alternative news portals; whilst this provided useful colour and narrative on the projects, information derived through these channels was not considered sufficient as CoST promotes disclosure by PEs or government agencies, and not third party sources. As detailed later, the Auditor General has the legislative power to audit the accounts of the government but there is no other transparency legislation that requires information on public infrastructure projects to be divulged. The depth of information obtained on the 14 projects from the Auditor General's reports contrasts sharply with those of the six projects where transparency levels are much lower.

[4] All reports are publicly available in the Auditor General's website (https://www.audit.gov.my/index.php/en/?lang=en).

Malaysia in Context

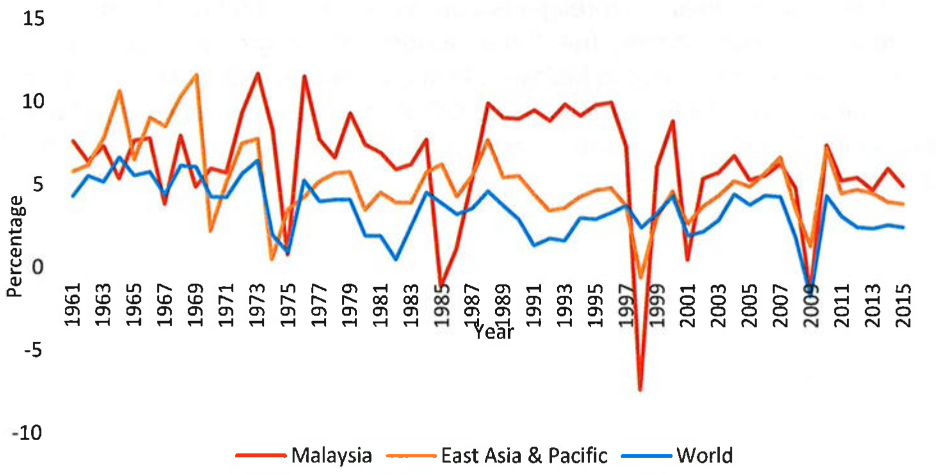
Malaysia in Context

Stuck in the middle-income trap

Malaya (as Malaysia was known before independence) was one of Britain's richest colonies (Harper, 1999). The early decades of post-independence Malaysia were marked by rapid growth on the back of commodity exports, primarily in rubber and tin. Malaysia is recognised by the World Bank's Commission on Growth and Development (2008) as one of only 13 countries that enjoyed sustained high growth (defined as an average rate of at least 7% for 25 years or longer). From being mainly dependent on agriculture and minerals, the economy became more diversified by the 1990s with activities such as manufacturing (and later services) picking up pace.

However, Malaysia could not match the even more phenomenal growth of the Four Dragons of Hong Kong, South Korea, Taiwan and Singapore (Easterly, 1995). For a time, Malaysia was at a similar level of development as Korea and Taiwan. Whilst the latter countries elevated from a middle-income to high-income status, questions began to emerge by the end of the 1990s with regards to whether Malaysia was trapped in the middle-income bracket – squeezed between low wage economies on the one side and more innovative advanced economies on the other (Flaaen et al., 2013). Modernising the services sector was offered as a possible source of growth. In 1991, Tun Mahathir Mohamed, the Prime Minister at the time unveiled Vision 2020, a catchy policy statement which envisaged Malaysia achieving developed country status by 2020. In his 2017 Budget speech last month, Dato' Sri Mohd Najib Tun Abdul Razak, the current Prime Minister, mentioned – for the first time ever –the National Transformation 2050 (TN50) initiative, which for some, is an admission of Vision 2020's impending unattainability (Malaysiakini, 2016).

Figure 1. GDP Growth (annual percentage)



Source: World Bank website.

Malaysia has experienced a few bouts of economic downturns, including the Asian Financial Crisis (AFC) of 1997 and the Global Financial Crisis (GFC) of 2008 (see Figure 1). The AFC impacted the financial industry with the ensuing collapse of the Malaysian Ringgit (Khoon et al., 2012), whilst the GFC led to Malaysia's worst export slumps in its economic history (World Bank, 2009). In response, the government shifted focus to domestic consumption as the engine of growth (Khoon et al., 2012). At the time of writing, the outlook for Malaysia looks ominous. Export earnings from crude oil, Malaysia's main export, is likely to remain lacklustre due to low prices (MIER, 2016). Furthermore, Malaysia's major trading nations are also experiencing a slowdown. The severity of the situation is reflected in spending cuts announced by the government for the last two annual budgets (beginning 2016). Medical care services suffered a drop in allocation in the 2017 Budget of 12.9% from RM4.576 billion (US$1.03 billion) to RM3.987 billion (US$900 million), and public health allocation cutback of 16.0% from RM1.483 billion (US$330 million) to RM1.245 billion[5] (US$280 million). Similarly, public universities saw their operating budgets slashed by 19.2% from RM7.57 billion (US$1.71 billion) to RM6.12 billion[6] (US$1.38 billion). The projection for 2017 is that the economy will expand 'moderately' between 4.5-5.5%. Hence, even though Table 3 puts Malaysia ahead of the other countries in this regional study for selected measures, in reality Malaysia faces a less rosy near- and possibly even middle-term future.

Table 3. Comparison of Malaysia with other study countries using key economic data

DATA: Economy	Thailand	Malaysia	Indonesia	Vietnam
OECD Status (2016)	Non-OECD	Non-OECD	Non-OECD	Non-OECD
Economy (2016)	Upper-middle income	Upper-middle income	Lower-middle income	Lower-middle income
GNI per capita Atlas method (2015)	$5,620.00	$10,570.00	$3,440.00	$1,980.00
Net ODA received (% of GNI) (2014)	0.1	0	0	2.4
GDP Growth (annual %) (2015)	2.8	5	4.8	6.7
Global Competitiveness (1: Best, 140: Worst) (2015-2016)	32	18	37	56

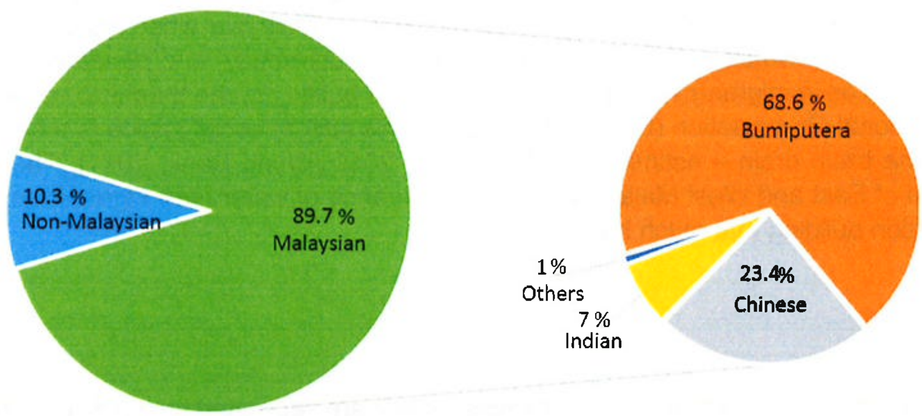
Source: World Bank, Transparency International

Demography

Modern Malaysia is a multi-racial multi-religious country, with the Malays (68.6%), Chinese (23.4%) and Indians (7.0%) forming the three largest ethnic groups[7] (see Figure 2). Historically, migration is deeply rooted in Malay civilisation (Harper, 1999). Therefore, contrary to public opinion, the British colonial rule merely contributed to the emergence of today's plural society by introducing Chinese labourers to work in tin mines and South Indians in rubber plantations at the turn of the 20th century.

[5] http://www.malaysiakini.com/news/361633
[6] http://www.universityworldnews.com/article.php?story=20161025140953510
[7] Percentages are estimates by the Department of Statistics (2016).

Figure 2. Estimated breakdown of population by nationality and ethnicity, 2016



Source: Department of Statistics 2016

The racial riots of 1969 brought to the fore the tensions that had been simmering between the different ethnic groups. The government devised an affirmative action policy aimed at reducing economic disparities between the different races. Woo (2009) argues the New Economic Policy (NEP) – as this affirmative policy came to be called – is the root cause why Malaysia is caught in the middle income trap. It enshrines mediocrity at best and incompetence overall. The race-based preferences under NEP also perpetuate the perception of the Chinese and Indians as immigrants, even though they are now into their second and even third generations.

Migration still persists in modern Malaysia, particularly since the 1970s with foreign labour inflows, mainly from Indonesia and Bangladesh, to work in labour-intensive sectors such as plantations and construction (Kassim, 1993). The World Bank (2015b) estimates over a million undocumented immigrants are working in Malaysia, despite government attempts to control in-migration (Kaur, 2014). Many immigrants have somehow managed to settle down in Malaysia, further enriching the country's tapestry of races though concurrently exacerbating the racial tinderbox. For 2016, Malaysia's Department of Statistics estimate that 10.3% of the population are non-Malaysians (see Figure 2). Combined with Malaysian citizens, the population is estimated to be 31.7 million, 24.5% of them are estimated to be in the 0-14 years age group, 69.4% in the 15-64 years age bracket and 6.0% in the 65 years and above age band.

Figure 3. Malaysia's development policies since independence.

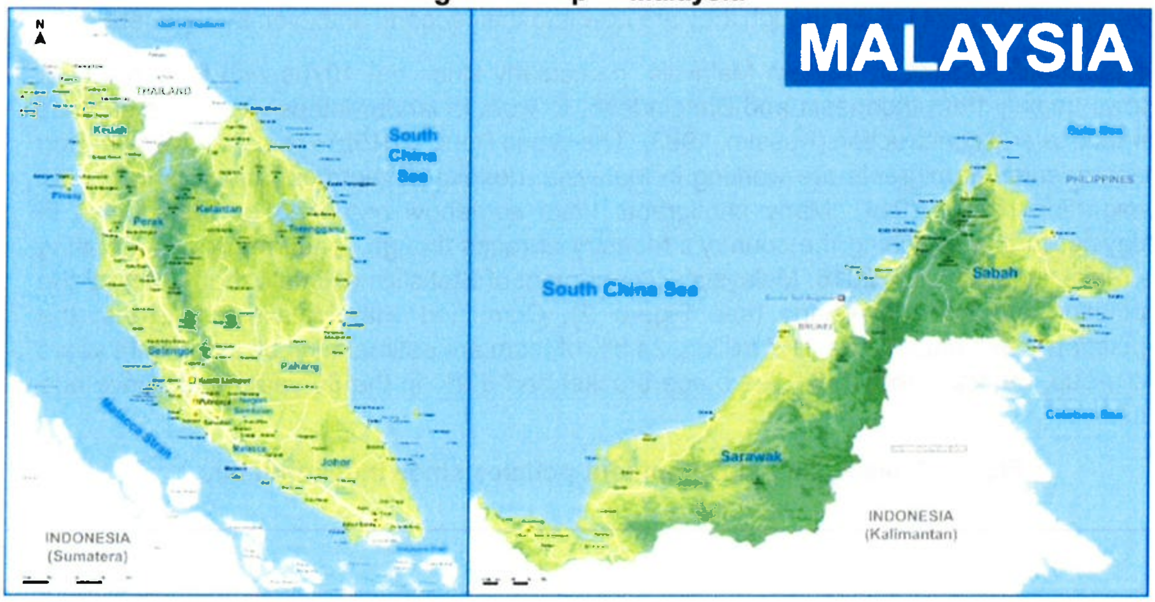
Source: EPU (2016) p. 1-5.

In recent months, inter-ethnic relations have deteriorated as the 1 Malaysia Development Berhad (1MDB) issue (see later) takes on a racial undertone as pro-government supporters spew racial aspersions with impunity (Murdoch, 2015). Even though the NEP technically ended in 1990, affirmative action – which promotes the different treatment of the populace – still persists in subsequent development policies (Suryadinata, 2015) (see Figure 3). This does not bode well for social integration and the concept of 'Bangsa Malaysia' (Malaysian Nation[8]) (Welsh, 2013). It is a sad reflection of race relations in Malaysia when six decades after independence, the words *ketuanan* (referring to Malay supremacy) and *pendatang* (referring to non-Malays as immigrants) still remain entrenched in public psyche thanks to certain United Malays National Organisation (UMNO) politicians. This lack of social justice is a contributory factor to the brain drain – estimated at 335,000 in 2010 (World Bank, 2011). The physical separation of East and West Malaysia by a large expanse of water (see Figure 4 below) also makes nation building that much harder.

Geography

Malaysia is made up of East and West Malaysia, which are separated by the South China Sea (see Figure 4). West Malaysia, located south of Thailand, is 132,090 sq. km. Running along its length are several mountain ranges, the most prominent is the Titiwangsa range. East Malaysia's land area is 198,847 sq. km. There, the mountain ranges broadly follow a northeast-southwest axis, the highest is the Crocker Range in the state of Sabah. Located just above the Equator, Malaysia's climate is equatorial – that is to say, it is hot and humid all year round with average annual rainfall of 250 centimetres (cm) and average temperature of 27^0 Celsius.

Figure 4. Map of Malaysia



Source: http://www.seacitymaps.com/malaysia/malaysia_map.htm

[8] A concept introduced by the ex-Prime Minister of Malaysia, Tun Mahathir Mohamed, that projects an inclusive national identity – regardless of race – for everyone in Malaysia.

The most common natural disaster afflicting Malaysia is flooding. Between December 2014 and January 2015, large swathes of the northern and eastern Peninsular Malaysia were submerged under water due to incessant rain. It was described as the worst flooding in decades (Floodlist 2015). Damage to infrastructure was estimated to be RM2.9 billion (US$650 million), whilst the flood victims numbered approximately 400,000 (CIDB, 2015).

Recommendation 1

Although the administrative capital is in Putrajaya (host to many government agencies), CoST should be based in Kuala Lumpur, to ensure accessibility to civil society and industry. CoST must also take into account Malaysia's topography and ensure sufficient resources for travel to rural areas, regions and East Malaysia.

Public Infrastructure Investment and Delivery in Malaysia

Public Infrastructure Investment and Delivery in Malaysia

Table 4 below shows the overall quality ranking of Malaysia's public infrastructure, in both the global and regional context. Overall, it can be seen that Malaysia maintains a fairly high score across all infrastructure types except with regards to fixed telephony. It can be inferred that this is due to technology leapfrogging, especially given the high score for mobile telephony.

Malaysia's strong quality ranking is perhaps unsurprising given the government's desire to improve its competitiveness and position itself as a major trading nation and destination for foreign investments. Total trade for 2015 was estimated at RM1.46 trillion (US$330 billion) (EPU, 2016b), whilst foreign direct investment amounted to RM43.4 billion (US$9.71 billion). By expanding connectivity and infrastructure, building efficient public transportation systems and enhancing technology and telecommunications, the government hopes that the productive capacity of the economy will increase (BNM, 2016). Furthermore, the 11th Malaysia Plan (11MP) is intended as the final push for achieving developed country status by 2020 (CIDB, 2015). As a result, infrastructure investment has always been a priority and it is expected that project implementation will be accelerated.

Table 4: Key Public Infrastructure Quality Ranking for 2016/2017

Type of infrastructure	Score (1 = low; 7 = high)	Global Rank (1 = high; 140 = low)	East Asia & Pacific* (1 = high; 18 = low)
Overall	5.5	19	5
Road	5.5	20	6
Railroad	5.1	15	6
Port	5.4	17	4
Air *transport*	5.7	20	3
Electricity	5.8	39	8
Fixed telephone line	14.3/100 pop.	72	12
Mobile telephone	143.9/100 pop.	27	3

Source: Global Competitiveness Report for 2016-2017 WEF (2016).

* Apart from Malaysia, these countries are Australia, Brunei Darussalam, Cambodia, China, Japan, Hong Kong, Indonesia, Korea Republic, Laos PDR, Mongolia, Myanmar, New Zealand, Philippines, Singapore, Taiwan, Thailand and Vietnam,

Public infrastructure investment (2016-2020)

Since 1966, the Malaysian government has been preparing five-year economic plans. Under the 10MP, infrastructure investment primarily focused on transport, education and energy.

The most reliable indicator for future public infrastructure projects comes from the 11th Malaysia Plan (11MP) which covers the period 2016 to 2020. The government has allocated RM260 billion (US$58.57 billion) for development expenditure[9] under the 11MP, half of which is for infrastructure (EPU, 2015). The projects planned under the 11MP are shown in Table 5.

RM130 billion
expected to be invested in infrastructure between 2016 and 2020 under 11MP
Tuoi Tre (2014)

Table 5: Construction projects planned for 11MP (2016-2020)

Type of infrastructure	Comments
Road	Major new road projects including Pan Borneo Highway, further development of the Central Spine Road* connecting Kuala Krai to Simpang Pelangai in Pahang, Kota Bahru-Kuala Krai Highway, East Coast Highway, and the West Coast Expressway. 3,000 km of paved roads in rural areas. Continuing road maintenance programme*.
Port	The last-mile connectivity to Port Klang, Selangor via road and rail. Kuantan Port expansion*.
Railway	High Speed Rail linking KL to Jurung East, Singapore, and Gemas-Johor Bahru Double Track Project. The Padang Besar Terminal in Perlis upgrade.
Airport	New short take-off and landing airstrips (STOLports) in Mukah and Lawas, both in Sarawak. New Kuala Lumpur Air Traffic Control Centre at KLIA. Upgrading of the Langkawi International Airport, Kedah and the Sultan Ismail Petra Airport, Kelantan, and the cargo handling facilities and freighter service at Kota Kinabalu International Airport. Conversion of the former low-cost carrier terminal at KLIA into a regional cargo hub.
Public transportation	LRT 3 extension from Bandar Utama to Klang, and MRT extension from Sungai Buluh to Kajang Line, Sungai Buluh-Serdang-Putrajaya Line.The KVMRT Line 1 set to operate in 2017. KVMRT Line 2 is expected to start in 2016 and will become operational by 2022. Light Rail Transit (LRT) Line 3 connecting Bandar Utama to Klang is also expected to start in 2016 with completion date in 2020.
Energy	New gas pipelines from the Malaysia-Thailand Joint Development Area to Kerteh, Terengganu, Regasification Terminal 2 (RGT-2) in Pengerang, Johor, two floating LNG units offshore Sabah and Sarawak with a capacity of 2.7 mtpa, additional pipeline connections from offshore fields to demand centres in FT Labuan, as well as Kota Kinabalu and Kimanis in Sabah, and pipeline connection between the Sabah-Sarawak Gas Pipeline and FT Labuan. The Government will provide support to construct essential infrastructure such as roads, drainage, and utilities for the Pengerang Integrated Petroleum Complex. The expansion of the liquefied natural gas (LNG) plant in Bintulu, Sarawak, will continue from 10MP*.
Electricity	Pursuance of biomass and biogas power plants, as well as other renewable energy (RE) sources such as wind, geothermal, and ocean,as well as off-grid RE facilities, in addition to nuclear power. Enhancement of rural electrification

[9] According to the Economic Planning Unit, development expenditure is capital expenditure that is non-repetitive and unrelated to operating expenditure, but instead pertains to investment-related spending. See http://www.epu.gov.my/en/faq/development-budget

	programmes, especially in Sabah and Sarawak, to improve national coverage to 99% by 2020 through off-grid generation such as solar hybrid, mini and pico hydro. New power plants to produce 7,626 MW to replace retiring plants and meet the growing peak demand including 3 coal-fired power plants in Johor, Perak and Negeri Sembilan, as well as 2 gas-fired power plants in Penang and Johor. A number of new 500 kV and 275 kV transmission projects to reinforce the grid systems.
Piped water	New and upgrade treatment plants, especially in states which have water supply reserve margins of less than 10% such as Kedah, Selangor and Negeri Sembilan. The Langat 2 Water Treatment Plant (WTP) in Selangor will be completed*. Upgrade Kulim High Tech WTP in Kedah and Batu Kitang WTP in Sarawak. Expansion of rainwater harvesting, tube wells, and gravity feed systems in rural areas – particularly in Kelantan, Pahang, Sabah and Sarawak. 99% of the population to have by clean and treated water by 2020.
Sewerage	Connected sewerage services expansion to rural areas and major cities. New regional and centralised plants with larger capacities and efficient technologies to replace 3,000 small and inefficient sewage treatment plants, including the Regional Treatment Plant Project and the Sewerage Pipe Network in Kinta Barat, Papan, Perak.
Healthcare	Expansion of mobile healthcare, developing new facilities and upgrading existing facilities.
Housing	Housing programmes for the low- and middle-income households will be continued*. In addition, financing schemes such as My First Home Scheme, Youth Housing Scheme adn MyHome will be enhanced.
Education	Improving vocational colleges rather than investing in new ones
Television transmission	The Analogue Switch Off (ASO) is scheduled to start in 2016. The second phase of the Digital Terrestrial Television (DTT) service will be implemented in 2016-2017, covering 46 areas nationwide including 24 areas in Sabah and Sarawak.
Digital connectivity	High-Speed Broadband 2 (HSBB 2) and Suburban Broadband (SUBB) in all state capitals and selected high-impact growth areas.

Source: EPU (2015), Abdul Razak (2016)

According to CIDB (2015, p. 135), a year before the end of the 10MP (i.e. end of 2014), 30% of the planned projects had yet to be implemented. Some of the unfulfilled projects under 10MP are now being undertaken under the 11MP, possibly using the latter's allocations (see Table 5). These projects are marked with asterisks (*) in the table. If the 11MP pans out as intended, one source predicts that construction will be the fastest growing sector during that period (Maybank IB Research, 2015).

11MP expects the construction sector to expand by

10.3% annually

between 2016-2020

EPU (2015)

There are a number of megaprojects earmarked for implementation during the 11MP; these include the Kuala Lumpur-Jurong East High Speed Rail (RM40-45 billion) (US$9-10 billion), Pan Borneo Highway (RM29 billion) (US$6.53 billion) and new power plants (RM28 billion) (US$6.31 billion) (Abd Karib, 2016, Abdul Razak, 2016). During the recent official visit to China, the Prime Minister, Dato' Sri Mohd Najib Tun Abdul Razak announced that China will build the East Coast Rail Line (ECRL) linking Port Klang in Selangor to Tumpat in Kelantan via Kuantan in Pahang, Kuala Terengganu in Terengganu, Kota Bahru in Kelantan for RM55 billion[10] (US$12.39 billion). At RM55 billion, this megaproject will top the others by value. However, this project was not mentioned in the 11MP. The high costs of the project has provoked public and opposition party outcry[11].

The differences in emphasis for infrastructure between the 10MP and 11MP are shown in Table 6.

Table 6: Major difference in infrastructure projects between 10MP and 11MP

10MP	11MP
Upgrading physical infrastructure to enhance access and connectivity	-
Developing a people-centric public transport system	Building an integrated need-based transport system
Growing logistics and trade facilitation	Unleashing growth of logistics and enhancing trade facilitation
Increasing broadband coverage and initiating migration to Digital Terrestrial Television	Improving coverage, quality, and affordability of digital infrastructure
Continuing efforts to restructure the water services industry	Continuing the transition to a new water services industry framework
Ensuring effective sourcing and delivery of energy	Encouraging sustainable energy use to support growth

Source: EPU (2015, p. 7-0)

Public infrastructure spending gap

Due to the opaqueness of sector investment and involvement of multiple PEs, it is not possible to ascertain the infrastructure spending gap from government documents. However, according to Nomura Institute of Capital Markets Research (Kitano, 2015), Malaysia requires infrastructure investment to the tune of US$188.1 billion between 2010 and 2020 but the specific sectors which require priority investment are not mentioned. The combined allocation for development expenditure for the 10MP and 11MP stretching from 2011 to 2020 is RM490 billion (US$110 billion). From the perspective of Nomura Institute of Capital Markets Research (Ibid.), the Malaysian government is therefore not investing enough in public infrastructure.

US$78.3 billion

infrastructure spending gap

The government has not revealed how the 11MP public infrastructure projects will be funded. One thing is for sure, the government is already mired in debt, either directly or indirectly. Most government development expenditure has been primarily financed by government borrowings (Tan, 2008). The Ministry of Finance recently revealed that government debt for the year ending 31 December 2015 was at RM630.5 billion

[10] The Star Online (2016) China to pour in billions for rail project, 1 November, [Online], Available: http://www.thestar.com.my/news/nation/2016/11/01/china-to-pour-in-billions-for-rail-project-engineeringandconstruction-contract-will-also-be-signed/ [14 November 2016].

[11] Miderjeet Kaur (2016) Liow explains price rationale for RM55b east Coast Rail Link, FMT News, 15 November, [Online], Available: http://www.freemalaysiatoday.com/category/nation/2016/11/15/liow-explains-price-rationale-for-rm55b-east-coast-rail-link/ [14 January 2016].

(US$142 billion), which is equivalent to 54.5% of GDP – very close to the government's self-imposed 55% limit (Palansamy, 2016)[12]. While there has been a global trend toward higher public debt, Malaysia's situation is still relatively high (Lean and Smyth, 2016).

It has been claimed that a large proportion of the government's borrowings for public projects have been made through off-budget agencies[13] such as GLCs, Special Purpose Vehicles (SPVs) and non-financial public enterprises, thereby concealing the true debt from the official budget. Off-budget operations fall outside the consolidated fiscal accounts of the public sector (Liu, 2001). The government uses off-budget activities to reinforce fiscal impetus, for example for privatisation initiatives. However, off-budget operations lead to a lack of transparency in accounting and fiscal forecasting, as well as difficulty in gauging the total impact of fiscal policy and in estimating future government debt obligations.

The government's penchant for off-budget mechanism has caught the attention of foreign scholars (Welsh, 2013). Suprisingly, the government revealed the magnitude of the deficit of these non-financial public corporations[14] (NFPC) in their very own Economic Report 2016/2017 (EPU, 2016b). The Report shows an escalating borrowing trend: RM10.6 billion (US$2.39 billion) in 2012, to RM52.3 billion (US$11.78 billion) in 2014, and RM56.9 billion (US$12.82) in 2015[15]. Rajan et al. (2015) echo the concerns of the World Bank (2000) that if inadequately managed, off-budget liabilities would raise fiscal risk for Malaysia. The combined government debt and off-budget deficit for 2015 was RM687.4 billion (US$154.85). Considering that this figure is 2.6 times the allocation of RM260 billion (US$58.57) for the 11MP, confidence in the timely delivery of the planned public infrastructure investment over the next five years is limited.

Private investment in public infrastructure

One possible means of financing public infrastructure projects in the midst of limited budget is through privatisation. This section shows that its application has been controversional.

Prompted by a sharp economic downturn in the 1980s (see Figure 1) and worsening public sector finance due to excessive spending and borrowing, the then Prime Minister, Tun Mahathir Mohammad, rolled out the privatisation programme in 1983 (See Figure 5). Over a 20-year period from 1983 to 2013, 474 projects were privatised (EPU, 2016a). Of these projects, 15.2% were related to construction, 13.2% to transport, storage and communication, and 8.4% electricity, gas and water[16].

[12] A debt-to-GDP ratio of 60% is often noted as a prudent limit for developed countries and 40% for developing and emerging economies. Breaching these ratios will threaten fiscal sustainability. The European Union (EU) requires any European countries wanting to join the EU to have debt-to-GDP that does not exceed 60% as this is the median. See http://voxeu.org/debates/commentaries/there-optimal-debt-gdp-ratio.

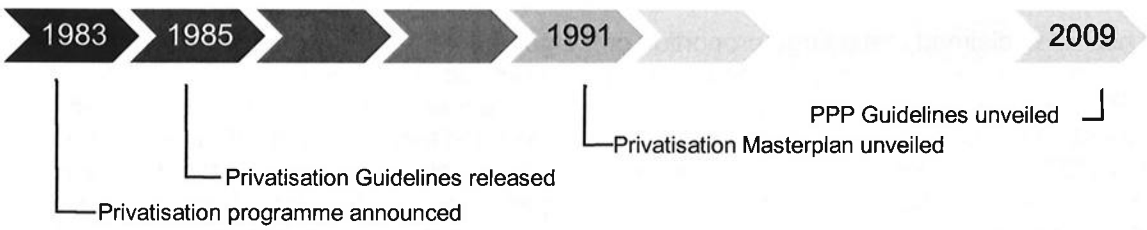
[13] The World Bank (2000) traced the large and ever increasing off-budget liabilities to the mid-1980s, when the privatisation programme began.

[14] NFPCs are public corporations that are not involved in the financial sector such as banking and insurance.

[15] Table 6.13, p. 161, EPU (2016b).

[16] The rest are as follows: manufacturing (14.0%), wholesale and retail trade, hotel and restaurant (11.2%), finance, real estate and business service (11.0%), government services (7.4%), agriculture and forestry (6.4%), mining and quarrying (4%), other services (9.2%).

Figure 5. Privatisation progression in Malaysia



Unveiled in 2006, the 9th Malaysia Plan (9MP) (2006-2010) introduced the concept of Private Finance Initiative (PFI) (EPU, 2006). Then the Public Private Partnership Unit (PPPU) (or *Unit Kerjasama Awam Swasta*, UKAS in Malay) within the Prime Minister's Department was established in 2009 as a dedicated focal point to oversee development and execution of all PPP projects. That same year, the PPPU produced the Public Private Partnership Guidelines (PPPU, 2009) which explain that the PFI is a subset of the Public Private Partnership (PPP)[17]. The distinction between PFI and PPP is tenuous (see for example Abdul Rashid et al., 2016), so much so that some Malaysian observers such as Abdullah et al. (2014) lump them together. Even the Public Private Partnership Guidelines (PPPU, 2009) fail to provide clarity between PPP and PFI. A key feature of PPP arrangement is the special purpose vehicle (SPV), which will be referred to later.

Under the 10MP (2011-2015), RM62.7 billion (US$14.12 billion) worth of PPP initiatives were earmarked[18] (EPU, 2010); in monetary terms, this is equivalent to just over a quarter of the allocated budget for 10MP. A facilitation fund of RM20 billion (US$4.51 billion) was created as a catalyst for private investments in nationally strategic areas. The 11MP mentions future PPP projects such as public housing, at least 90 'trust schools', social financing model and integrated logistics. However, the likely total cost of these projects is not indicated. One analyst anticipates a rise in private investment between 2016 and 2020 following the government's continued proclivity for the PPP procurement route (Lee, 2016).

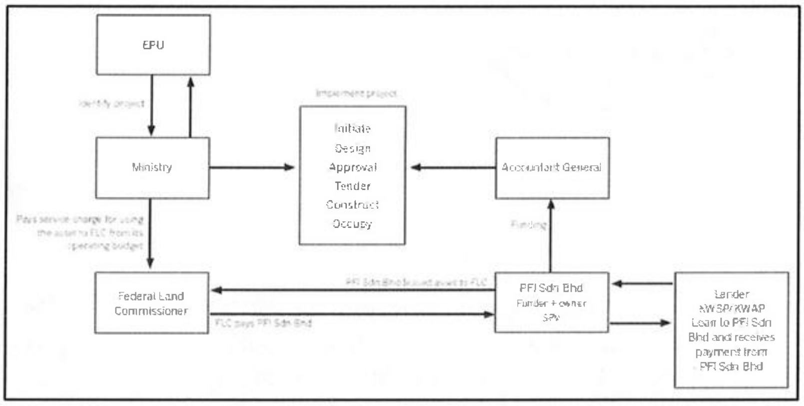
Malaysia's privatisation programme has been shrouded in controversy from the very beginning. Questions have been raised regarding the heavy discounting of asset sale prices, with certain companies enjoying special influence and receiving privileged information during pre-bidding, and contract award to politically-connected companies (Jomo, 1995). Projects are still awarded based on private discussions between top politicians, their allies and select businesses, despite many attempted reforms (Siddique, 2010), a point also highlighted by the U.S. State Department's Office of Investment Affairs (2016). These concession recipients, often *bumiputera*, are keen to make quick returns as opposed to long-term performance gains (Tan, 2008).

[17] PPP involves the transfer from government to the private sector, the responsibility to finance and manage a package of capital investment and services including the construction, management, maintenance, refurbishment and replacement of public sector assets such as buildings, infrastructure, equipment and other facilities. PFI is also said to transfer significant responsibilities relating to the management of the public sector's capital investments and services to the private sector (Ismail and Asuhaimi, 2013).

[18] These initiatives include including seven toll highways, five Universiti Teknologi MARA (UiTM) branch campuses, redevelopment of Angakasapuri Complex Kuala Lumpur as Media City, Integrated Transport Terminal in Gombak and the privatisation of Penang Port Sdn Bhd.

The more recent controversies relate to PPP derivatives. For example, though official PPP guidelines state that funding should be via private financial resources without the public sector's explicit guarantee (PPPU, 2009, p. 7), the reality is that there is lack of involvement of private sector's banking and other financial institutions under both the PFI and PPP variants (Abdul Rashid, 2009). Instead there is heavy reliance on government-owned pension funds – the Employees Provident Fund (EPF) and the Pensions Trust Fund (PTF) – to provide funding, thereby putting workers' retirement savings at risk. Furthermore, 'private' participation in these PPPs are often through government-owned companies; it is the government that is ultimately taking all the financial risks in PFI arrangements and not the private sector.

Figure 6. Funding arrangements for Pembinaan PFI Sdn Bhd

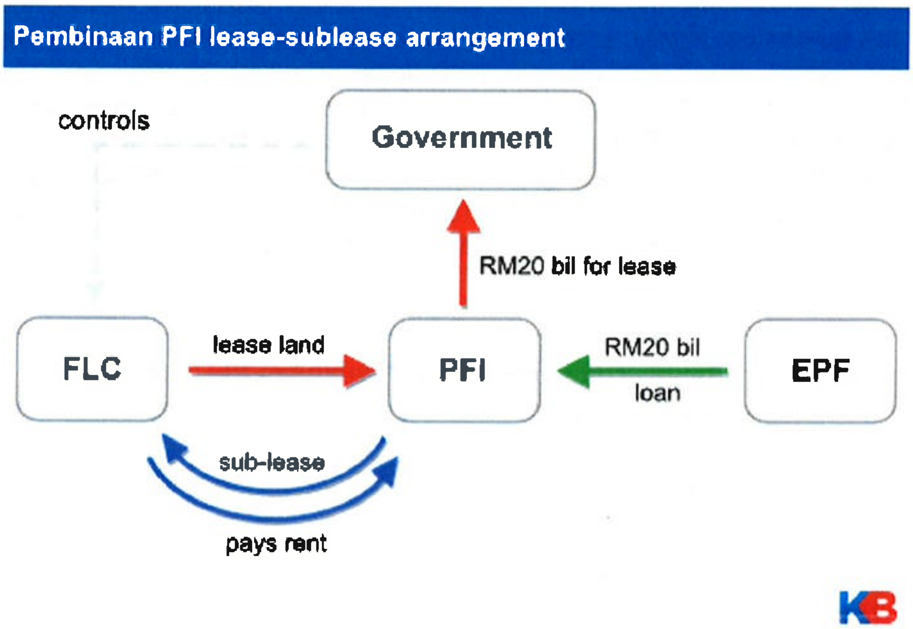


Source: Abd Rashid (2012) p. 87.

A good example of this is Pembinaan PFI Sdn Bhd. Pembinaan PFI Sdn Bhd, an SPV, was established in 2006 to raise funds for government projects (Ee, 2015). Through this SPV, 425 projects worth RM20 billion (US$4.51 billion) would be implemented (Abdul Rashid, 2013). Pembinaan PFI Sdn Bhd. is one example of an off-budget agency. It is 99.9% owned by the Ministry of Finance Incorporated (a government owned investment company), whilst the Federal Land Commission (FLC) holds the remaining 1%. Pembinaan PFI Sdn Bhd obtained loans from the Employees Provident Fund (EPF) – amounting to RM20 billion in 2006 – and civil servants' pension fund, Kumpulan Wang Persaraan (KWAP) – amounting to RM10 billion in 2012 (Bernama, 2015).

In addition to the government underwriting this SPV through the ownership structure and EPF/KWAP loans, there has been added controversy: the FLC loaned federal land to Pembinaan PFI Sdn Bhd. Then Pembinaan PFI Sdn Bhd leased the same land back to FLC, for a sum of more than RM29 billion (US$6.53 billion) (Ong, 2015). Apparently, the money from this transaction was for loan repayment (see Figure 6 above and 7 below).

Figure 7. Pembinaan PFI lease-sublease arrangement



(Kinibiz, 2015)

Furthermore, according to the Auditor General report for 2013 (3rd Series), Pembinaan PFI Sdn Bhd had the third highest liabilities (i.e. RM27.9 billion) (US$6.29) among all government-owned entities (TheStar Online, 2015). In spite of this, the Deputy Finance Minister Chua Tee Yong assured Parliament that the process of acquisition, implementation and monitoring of projects – including the appointment of contractors – was fully handled in accordance with government procedures. However, the details of these government projects, such as type, contract sum and names of contractors have not been disclosed (Ong, 2015); the company does not even have a website.

The Parliament's Public Accounts Committee (PAC) has proposed that the allocation and expenditure of projects under Pembinaan PFI Sdn Bhd be presented and passed in Parliament in advance, including details regarding project allocations (Amin, 2015). In fact, PAC recommends that all 'off-budget' expenditures should be reported in a transparent manner. PAC's advice seems to go unheeded – the last available Annual Return for Pembinaan PFI Sdn Bhd is for the financial year 2012.

Citizens have a right to know, in addition to Pembinaan PFI Sdn Bhd, what other off-budget expenditure items have not been disclosed (Fernandez, 2015). The alternative media has begun speculating that the Pembinaan PFI Sdn Bhd is another 1MDB in the making[19]. In response to a question posed in Parliament, the Prime Minister indicated that there are nine companies under the Ministry of Finance, including Pembinaan PFI Sdn Bhd (Palansamy, 2015). The names of the other eight companies were not released, except Pembinaan BLT Sdn Bhd. The Prime Minister added that the government will have to spend between RM4.76 billion (US$1.07 billion) and RM11.62 billion (US$2.62 billion) annually of its balance sheet for

[19] Fuentes. S. (2015) Pembinaan, PFI another 1MDB in the making, FMT News, 11 March. See http://www.freemalaysiatoday.com/category/nation/2015/03/11/pembinaan-pfi-another-1mdb-in-the-making/

these nine companies between 2015 and 2020. This is a concern given the convoluted and opaque manner in which other privatisation projects have been managed.

Government-Linked Companies (GLCs)

The third source of public infrastructure investments comes from GLCs – the other two being government budget and PPPs (CIDB, 2015). As this section shows, funding for these investments by GLCs is equally controversial.

Essentially, GLCs are engaged in economic activities but controlled by the government. They are owned by the federal government through government-linked investment companies[20] (GLICs), these are Khazanah Nasional, Permodalan Nasional Berhad, Kumpulan Wang Simpanan Pekerja, Kumpulan Wang Persaraan, Ministry of Finance Incorporated, Lembaga Tabung Angkatan Tentera and Lembaga Tabung Haji (Khazanah, 2015).

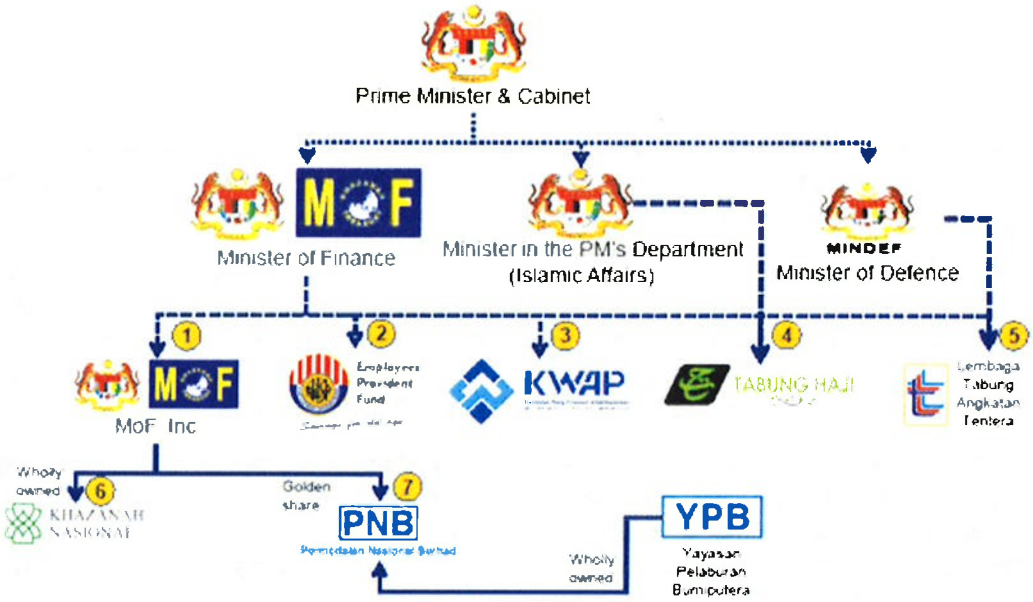
According to Professor Terrence Gomez of University Malaya, the seven GLICs (see Figure 8) control 35 of the top 100 listed companies in Malaysia, which together control 42% of the market capitalisation of all listed companies in Bursa Malaysia (Chua, 2016). Many of these companies operate in key sectors of the economy such as utilities, infrastructure, property and telecommunications.

The seven GLICs have interests in 427 high-value companies, either via subsidiary, associate or minority stakes. The Ministry of Finance Incorporated alone oversees 63 GLCs, 19 of them categorised as SPVs (National Audit Department, 2016b). Gomez's research led him to discover that these GLICs have reach of up to ten levels down from their primary affiliation; as a result, the GLICs have influence over 6,342 companies.

The Finance Minister, who is also the Prime Minister, has ultimate control of these GLCs via the GLICs. Concerns have been expressed on the pervasiveness of GLCs and their ability to exercise not only significant market power but also to use their special access to government and regulatory agencies to their favour; this has resulted in the crowding out of private investment, both domestic and foreign (Menon and Thiam 2013).

[20] GLCs are companies that that have a primary commercial objective and in which the Malaysian government has a direct controlling stake. GLICs are investment companies that are related to the federal government and which allocate some or all of its funds to GLC investments. See http://www.pcg.gov.my/faq.asp

Figure 8. 7 GLICs



Source: (Chua, 2016).

It is not possible to describe all the GLCs that are involved in infrastructure development. Here, two are highlighted to illustrate that the mega-projects they commission rival those directly funded by the federal government's development budget in terms of size.

Petroleum National Berhad (Petronas), which is wholly owned by the government, is making its largest domestic investment in the form of the US$27 billion Pengerang Integrated Complex (PIC) in Pengerang, Johor. This part of the ambitious Pengerang Integrated Petroleum Complex (PIPC). PIPC is due to be a world-class integrated downstream oil and gas hub, which when completed will be equivalent to 10% of Singapore's land mass.

The largest transportation investment by any GLC is the **Mass Rapid Transit (MRT)** project. The MRT Project is a three-line MRT system in the KL-Klang Valley that was launched in December 2010. The first two lines (KL MRT Lines 1 and 2) are under construction and projected to cost between RM35 billion (US$7.88 billion) and RM40 billion (US$9.01 billion):

- Line 1 (Sungai Buloh to Kajang spanning 51 km) partially opened under 10MP; and
- Line 2 (Sungai Buloh to Putrajaya spanning 55 km) which started work in 2016.

These two lines come under MRT Corporation Berhad, an SPV set up by the government to manage construction. Once completed, the lines are due to be handed over to Syarikat Prasarana Negara Berhad, another GLC. DanaInfra National Berhad (2015) is the Infrastructure Financing Entity (IFE) responsible for raising funds for the MRT project[21].

It is important to note that enabling GLCs to deliver major public infrastructure does not liberate the federal government of liabilities. Government guarantees by the end of 2014 stood at

[21] In June 2015, DanaInfra National Berhad was mandated to raise funds for the Pan Borneo Sarawak Highway Project (Phase 1), another mega-project to be constructed under the 11MP.

RM172 billion (US$38.75 billion), which was equivalent to 14.7% of GDP (The Rakyat Post, 2015)[22]. These guarantees were mainly for GLCs, such as DanaInfra National Berhad and Syarikat Prasarana Negara Berhad; both are involved in infrastructure construction and public transport operations.

The privatisation bandwagon was initiated in 1983 to roll back public sector involvement in the economy. Yet now, more than three decades later, the government's dominance in the economy is perhaps stronger than ever before with the proliferation of SPVs, GLCs and NFPCs. Even from the brief explanation given above, it is clear that government debt and liabilities emanating from these PEs are huge and diffused. Trying to grasp a real sense of the government's financial vulnerability is not easy given the many PEs involved.

Fiscal constraints

Malaysia is already facing severe fiscal constraints. The economy has slowed down and export earnings have dropped. Hence, budget for public infrastructure investment is severely affected. As mentioned above, government debt is very close to the self-imposed 55% limit. NFPC's deficit is projected to reach RM50.5 billion (US$11.38 billion) in 2016, which is equivalent to approximately 8% of official government debt. Government guarantees for loans made by GLCs stand at 14.7% of GDP. Government debt and liabilities have reached alarming proportions. The serious question to ask is: how will the planned infrastructure projects under the 11MP be funded?

In absence of official communication, snippets of information fed by government sources to mainstream media reveal how future projects will be funded – more of the same, i.e. relying on the development budget[23], seeking further borrowings and digging deeper into the local capital market but backed by government guarantees. It seems that foreign loans are key to launching projects. For example, the government has revealed that construction of the ECRL will be funded by soft loans[24] amounting to the entire RM55 billion (US$12.39 billion) project cost (The Star Online, 2016). The fact that Malaysia will not have to pay anything for the first seven years is only a small consolation as the debt will eventually have to be settled.

Another alternative is to dig even deeper into the private capital market. For the Pan Borneo Highway, the Works Minister, Fadillah Yusof, was reported as saying that 60% of the construction costs will be funded through the issuance of sukuk[25] by DanaInfra National Berhad on the capital market and only RM15 billion (US$3.38 billion) will be funded through development budget expenditure (FMT News, 2016). It would seem that the 11MP will trigger another cycle of debt.

In the face of mounting financial distress, the World Bank (2015b) recommends containment of operational expenditures, improving the quality of public expenditure and further tax measures to achieve a balanced budget by 2020. The severity of fiscal constraints tell us that measures for maximising value for money on public infrastructure investments are greatly

[22] The information was given by Prime Minister, Datuk Seri Najib Razak when replying to a question in Parliament.

[23] Development budget is the allocation approved for various development programmes or projects under the plan period. See http://www.epu.gov.my/en/faq/development-budget

[24] A loan with very favourable terms.

[25] Sukuk are Islamic bonds, i.e. bonds that do not infringe Islamic laws which forbid the charging of interest.

needed. The deficiencies of Malaysia's institutions are also harming its international standing and its economic prospects alike as foreign investors are increasingly nervous in the aftermath of the 1MDB financial scandal (The Economist, 2016). As such, transparency intiatives such as CoST, if implemented effectively, could be a useful tool for increasing investor confidence and attracting additional investments.

Priority public infrastructure investment needs

The government has not revealed the budget allocation for each ministry under the 11MP. As in the recent past, some projects may come under SPVs, GLCs and even NFPCs. SPVs may be parked under the Ministry of Finance Incorporated and not under the relevant ministries. Hence the allocation for the 2016 to 2020 period for the various ministries, even if made available, may not actually be useful in determining whether the planned public infrastructure expenditure matches the need.

However, some preliminary conclusions can be drawn:

The 11MP aims to build an integrated needs-based transport system which includes enhancing connectivity across transport modes and regions. This is in line with the World Bank's 2015c recommendation for better connectivity within cities with well-integrated road networks and mass transit systems. This would contribute towards creating more productivity, and socially inclusive, resilient, cleaner cities.

The Kitano survey (2015) of Nomura Institute of Capital Markets Research (2015) on Japanese companies in 10 Asian countries found that Malaysia (and Thailand) has sufficient electricity infrastructure[26]. An earlier report by the International Energy Agency (2013) points to the same conclusion. Given the strong conventional energy infrastructure, it is appropriate that Malaysia focuses on renewable energy, rural electrification and replacement of old power plants (see Table 5).

PriceWaterhouseCoopers (2014), in their report on South East Asian infrastructure spending, expects Malaysia's infrastructure spending to grow around 9% annually between 2013 and 2025, which is consistent with other countries in the region but substantially faster than the global infrastructure market. An important point to note is that the report expects growth in infrastructure investment across all sectors[27]. This is in line with the distribution of projects earmarked for 11MP (see Table 5).

In summary, the infrastructure projects planned under the 11MP broadly cohere with the expectations of external observers. As mentioned previously, there is possible under-investment; with the present economic headwinds and mountain of debt, the prospect of the government increasing infrastructure investment allocation is bleak. If at all, projects might be shelved or postponed.

[26] Apart from Thailand and Malaysia, the 10 countries are the Philippines, China, Indonesia, Vietnam, Laos, India, Myanmar and Cambodia.

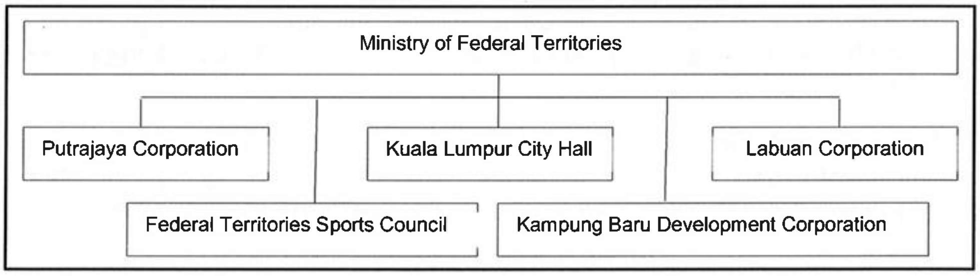
[27] These sectors are social, transportation and communication, manufacturing, other utility, power and extraction.

Procurement Entities (PE)

Procurement Entities (PE) can be divided into two categories: federal and state. There are 24 federal ministries, in addition to the Prime Minister's Department. Furthermore, each of these federal entities may have departments and agencies, GLCs, SPVs and even statutory bodies of their own which may procure construction projects[28]. As an example, following the great flood of December 2014 to January 2015 (mentioned in Chapter 3), the National Disaster Management Agency (which resides within the Prime Minister's Department) was allocated RM500 million (US$112 million) to repair damaged homes and build new ones for those affected (National Audit Department, 2016a).

The shapes and sizes of these ministries can vary drastically. For example, the Ministry of Federal Territories has five agencies under its wings (see Figure 9). As a point of comparison, it was previously mentioned that the Ministry of Finance, through its Ministry of Finance Inc. GLIC, owns 45 companies[29].

Figure 9. Agencies under the Ministry of Federal Territories

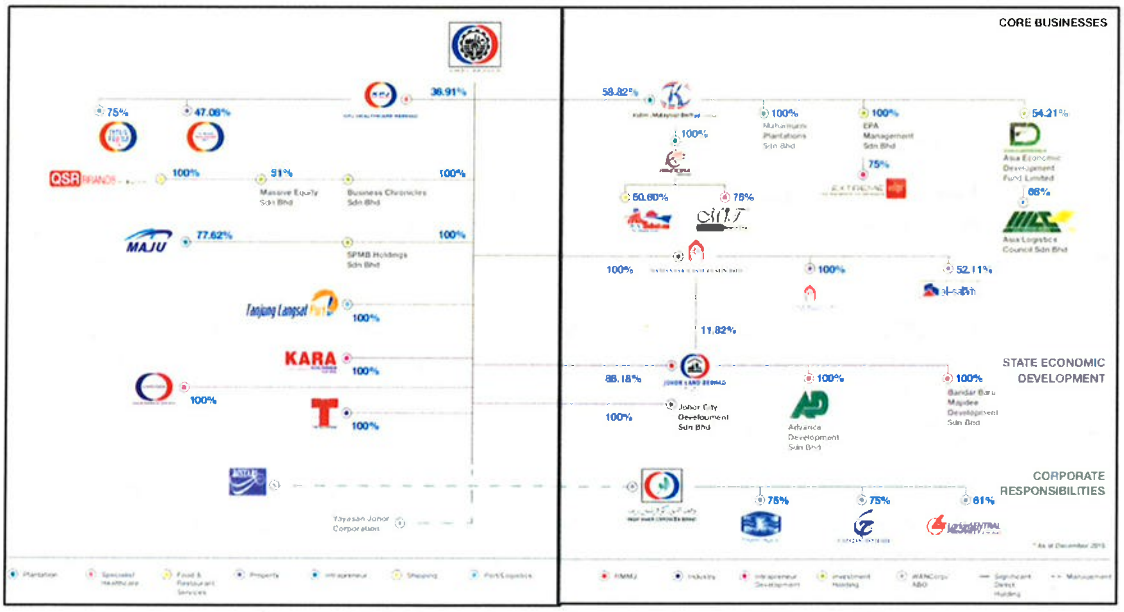


There are 13 states, each with its own set of departments, agencies and state companies. Johor Corporation, a state corporation owned by the Johor state, is probably the most active commercially with subsidiaries involved in agro-business, industrial development, real estate development and healthcare (see Figure 10).

[28] A statutory body is incorporated under Federal law and not the Companies Act 1965. Every federal statutory body comes under the purview of a minister.

[29] FMT (2016) MoF to review all 45 companies it owns, 15 July. See http://www.freemalaysiatoday.com/category/nation/2016/07/15/mof-to-review-all-45-companies-it-owns/

Figure 10. Corporate structure of Johor Corporation



Source: Johor Corporation (2015) Annual Report 2015, pp. 8-9.

State governments must get the consent of the Federal Government for major infrastructure projects, even when state funds are to be used. Such is the case with the present Penang State Government's plan to construct a third bridge – at its own cost – to link the island to the mainland (Lokman, 2016).

To add further complexity, in situations where the ministry or department as the project sponsor lacks construction technical expertise, the Department of Works (DOW) or Department of Irrigation and Drainage takes over as the implementing agency[30].

Procurement process

Section 6.1 of the Financial Procedure Act 1957 (Act 61) gives power to the Minister of Finance to supervise, control and direct all financial matters including public procurement. All information regarding the procurement process for all public works is available for the Ministry of Finance's website[31]. The following are essential government rules and regulations pertaining to public works:

1. Treasury Instructions, especially Number 166 until 300, which relate to work procurement.
2. Treasury Circular Letter No 8 1995 on general guidelines on government procurement.
3. Treasury Circular Letter No. 2 Year 1995 (including Treasury Circular Letter No 2 1999 and Additional Treasury Circular Letter No 2 Year 2001) relates to procedures regarding the preparation, evaluation and acceptance of tenders for government procurement by all Ministries/ Departments/ Statutory Bodies. They also spell out the procurement value, power and responsibilities of the Procurement Board and Quotation Committee.

[30] Treasury Instruction, Article No 182.1
[31] http://myprocurement.treasury.gov.my/?page_id=820.

4. Public Private Partnership (PPP) Guideline issued by the Public-Private Partnership Unit in 2009. In theory privatisation is executed through open bidding.

Generally, public work tenders exceeding RM100 million (US$22.53 million) fall under the jurisdiction of the Ministry of Finance. However, for statutory bodies and companies incorporated by the Minister of Finance, a higher threshold of RM300 million (US$67.58) applies. All work tenders between RM20million (US$4.51 million) and RM100 million fall under the jurisdiction of the Acquisition Board 'A' of the Ministry/Department of Public Works. All work tenders up to RM20 million in value fall under the jurisdiction of the Acquisition Board 'B' of the Ministry/Department of Public Works. All contractors seeking to participate in public works must register with the CIDB, under the relevant class and grades.

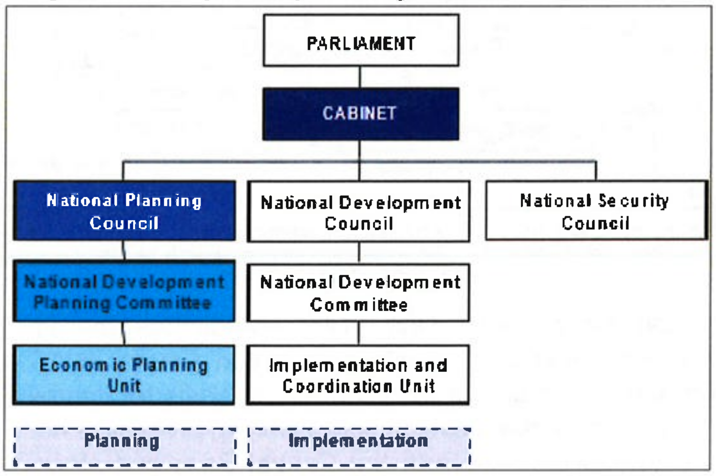
Development planning

To understand allocation and disbursement of public funds for public investments, it is necessary to outline development planning in Malaysia. The booklet prepared by the Economic Planning Unit (2004) provides a very good reference point and is therefore referred to here.

Development planning has a three-tiered cascading time span, i.e. the long-, medium- and short-term. The five-year Malaysia plans, are an example of medium-term planning, whereas annual budgets typify short-term planning.

The highest decision-making power for economic matters is the National Planning Council (NPC) located in the Cabinet (see Figure 11). Members of NPC include the ministers of key ministries. The National Development Planning Committee (NDPC) is the highest technical policy-making forum for development planning. It is made up of senior government officials, such as heads of all economic development ministries including the Governor of the Central Bank. The NDPC is tasked with formulating and reviewing all plans for national development and making recommendations on all allocation of resources, as well as overseeing the implementation of the plans.

Figure 11. Machinery for development planning within the Prime Minister's Department

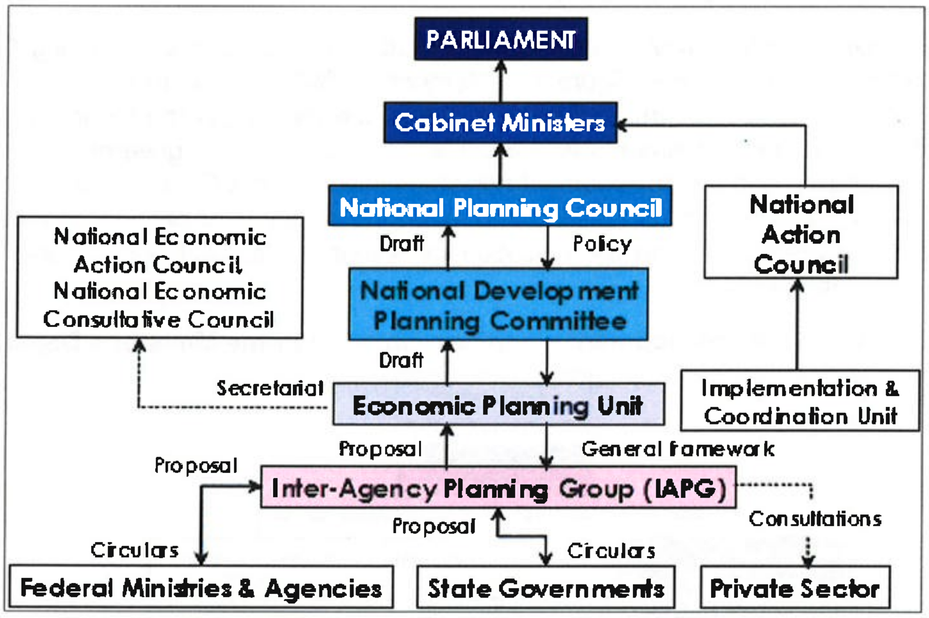


Source: EPU (2004) p. 5.

Development planning at the federal level is undertaken by the Economic Planning Unit (EPU), Ministry of Finance and the Central Bank, as well as the planning cells of the various ministries and agencies. EPU is aided by two other agencies under the Prime Minister's Department, i.e. the Implementation and Coordination Unit (ICU) and the Malaysian Administrative and Modernisation Planning Unit (MAMPU). Consultation with businesses and civil society are regularly held during the planning process, which helps resolve bottlenecks and problems as well as source feedback on a wide range of issues. At the state and district levels, a similar planning set-up is replicated. The State Economic Planning Units and the State Development Offices formulate state development strategies and coordinate state development programmes and projects.

Planning is a two-way interactive process between the EPU on the one side and the line ministries and agencies on the other (see Figure 12). The line ministries, agencies and state governments put forward their submissions for candidate programmes and projects. The EPU has to harmonise the micro-level project requests with macro level factors, such as national policies, urgency of projects, financial viability and implementation capacity. After agreement by the Inter-Agency Planning Groups (IAPGs), the requests are presented to the NDPC for consideration. Upon its recommendation, the development proposals are submitted to the NPC. Following approval, the plan is then presented to the Cabinet before being tabled in Parliament. At the commencement and review of every Plan, Call Circulars go out to ministries, departments, statutory authorities, state governments and the NFPC to obtain bids for development allocation.

Figure 12. Development planning and implementation at the national level



Source: EPU (2004) p. 5.

The Implementation and Coordination Unit (ICU) coordinates the implementation of development plans, in connection with the National Action Council (NAC). The feedback obtained helps EPU in the next round of planning as the basis for improving the planning approaches and strategies. The entire development planning process is not as rigid as what is presented. The EPU, in collaboration with the Central Bank and other economic-based ministries, continuously monitor the planned targets and actual results as well as unexpected challenges such as current account deficit. Policy response are made during the yearly budget, mid-term Malaysian Plan reviews or when a new plan is being prepared.

For CoST, Malaysia's structured development planning approach fosters predictability in terms of what processes and outcomes can be expected along a specific timeline. This can aid CoST implementation especially in the early stages of implementation. For example, to determine which projects should be included in the first phase of CoST application, CoST consult with the EPU (at the federal level) or State Economic Planning Units (at the state level) for information regarding planned or pipeline development projects. For projects under implementation, the ICU (at the federal level) and State Development Offices (at the state level) are the appropriate parties to approach.

Oversight

Article 106 of the Federal Constitution gives power to the Auditor General to audit the accounts of the Federation and the states. The Auditor General is appointed by the King (*Yang di Pertuan Agung*, in Malay) on the advice of the Prime Minister and after consultation with the Conference of Rulers.

Every year, the Auditor General publishes reports which are submitted to the King before they are laid before Parliament. There are three types of reports which focus on different government bodies:

- Federal Ministries/Departments and Government Companies
- State Departments/Agencies and State Companies
- Federal Statutory Bodies

The registering system of contractors with Ministry of Works (MOW)/CIDB enables disciplinary action to be taken against errant contractors. The penalties imposed depend on the severity of the misconduct. These include:

- Warning
- suspension of registration (for a maximum period of five years)
- Blacklisting Companies/Board of Directors from conducting further business with any government ministry, department or agency (Government of Malaysia, 2016).

The CIDB is a regulated body tasked with ensuring that the construction industry develops in a proper manner. It charts the direction of the industry, addresses pertinent problems and helps in policy formulation. It derives its power from the CIDB Act 1994.

These penalties are imposed on contractors with consistent or serious deviations from the contract conditions, and where enforcement of the contract conditions alone would not resolve the seriousness of the issue or resulting complications. As of 3 November 2016, 111 *bumiputera* (see below for explanation) contractors were subjected to disciplinary action by MOW for non-payment, sub-letting entire projects etc. (MOW, 2016).

Construction firms

Construction firms in Malaysia can be broadly split into two groups: *bumiputera* and non-*bumiputera* contractors. There are also foreign contractors operating in Malaysia. The number of contractors in Malaysia is shown in Table 7[32]. All contractors, whether *bumiputera*[33] or otherwise, must be registered[34] with CIDB.

Table 7: Number of contractors registered with CIDB

Tendering Limit	Grade	Number of contractor
< RM200,000	G1	35,502
< RM500,000	G2	15,264
< RM1 million	G3	10,555
< RM3 million	G4	3,782
< RM 5 million	G5	5,147
< RM10 million	G6	1,697
No limit	G7	6,872
No limit	Foreign	427

Source: Abd. Karib (2016)
Note: Data as of August 2016

Local Contractors

As alluded to earlier, Malaysia adopts an affirmative action policy to reduce economic disparity amongst the different races. This policy manifests in *bumiputera* (essentially Malay) being given privileged access to government construction contracts. At least 30% of the value of every local public construction job must be given to bumiputera contractors[35]. At the same time, there are non-*bumiputera* contractors thriving on private (as well as public) projects.

Sadly, despite years of privileged treatment, non-*bumiputera* contractors still dominate the large scale, and technically sophisticated, construction works, whilst the *bumiputera* contracts concentrate on small and technically simple contracts (Koon, 2009). Many so-called *bumiputera* contractors squander the opportunity to upskill and build capacity by 'selling off' their contracts in toto to non-*bumiputera* contractors for quick returns, thus giving rise to the derogatory 'Ali-Baba'[36] phrase.

Following years of inaction by the authorities to clampdown on system abusers, the practice is rampant. The consequence of such practices is that tender figures are inflated and the learning-by-doing that the government hopes *bumiputera* contractors will undergo rarely materialises. One cynic rhetorically poses this question in his blog[37]:

[32] The breakdown of *bumiputera* and non-*bumiputera* contractors is not made available, possibly because of backlash in the past. In 2005, one critic of the government's affirmative action policy pointed to Malaysia having one contractor for every 614 persons. According to him, this ratio was among the highest in the world. See Koo Yew Yin (2005) Why are there so few successful *bumiputera* contractors?, Aliran Month Vol 24: Issue 5. (http://aliran.com/archives/monthly/2005a/5k.html)

[33] The Contractor and Entrepreneurship Development Division, MOW, issues *Bumiputera* Status Recognition to eligible contractors.

[34] In addition to CIDB, *Bumiputera* contractors were once required to register with the Contractors Services Centre (Pusat Khidmat Kontraktor in Malay, or PKK), but the duplication in registration has now been removed.

[35] Treasury Circular Letter No 2 Year 1995, Clause 3.4.

[36] 'Ali' (i.e. the *bumiputera* partner) secures the contract which is then carried out by the 'Baba' (i.e. the non-*bumiputera* partner). 'Ali' could be a sleeping partner or a *bumiputera*-owned shell company.

[37] Koon Yew Yin (2015) A wasteful national mission – Koo Yew Yin. See http://klse.i3investor.com/blogs/koonyewyinblog/74696.jsp

Out of hundreds of high-rise buildings in Kuala Lumpur, does anyone know of any Bumiputera contractor who has won any of the building contracts through an open competitive tender process? Out of hundreds of km of highway in Malaysia, can any Bumiputera contractor who won any part of the highway contracts through open tender be identified? The answer to the above questions unfortunately is in the negative. The evidence is that all the government's well-intentioned efforts in trying to produce competitive Bumiputera contractors since 1957 have failed.

Undoubtedly there are competent *bumiputera* contractors. However, it is unfortunate that the affirmative action policy has opened up enormous opportunities for corruption and political patronage (Crouch, 2001). Often enough, *bumiputera* contractors win contracts not on a technical basis, but on the basis of good political connections with the ruling UMNO party. Those technically competent but without any connection run the risk of being sidelined. Gomez (2008) argues that a new form of inter-ethnic business relationship has emerged which involves equal competency of partners. However, in construction, this narrative is difficult to validate.

Foreign Contractors

Although foreign contractors can participate in Malaysia, they must first register with the Ministry of Works. In the case of *bumiputera*-foreign joint ventures, the setup must conform to the 51:49 structure which means that 51% shareholding must be held by *bumiputera* and the remaining 49% can be held by foreign contractors. In the case of *bumiputera*-non-*bumiputera*-foreign joint ventures, foreign shareholding cannot exceed 30%. Tenders may be offered to international contractors in cases where local contractors lack the expertise or capability and a joint venture basis is not possible[38]. As for privatised projects, foreign equity is limited to 25% (Office of Investment Affairs, 2016), and the *bumiputera* share of works cannot be less than 30% of the value for contracts awarded to international contractors.

Between 2001 and 2015 inclusively, foreign contractors secured RM182 billion (US$41 billion), which was equivalent to 13.6% of all contracts (Abd Karib, 2016). Between 2010 and 2016 (June), the nationality groups of foreign contractors that secured the most contracts by value were Chinese contractors from China (RM32.4 billion) (US$7.3 billion), Japanese (RM30.0 billion) (US$6.76 billion) and South Koreans (RM27.6 billion) (US$6.22). East Asian contractors dominate the construction scene in Malaysia.

Recommendation 2

Given the significant investments in megaprojects, CoST should target these high-value projects for inclusion in CoST. In doing so, CoST must take into account the specific characteristics of these projects, for example the complex procurement structures and long delivery periods, to ensure effective application. CoST must also be vigilant in monitoring when such projects are implemented without due process.

[38] Treasury Circular Letter No 2 Year 1995, Clauses 4.1.2 and 4.1.3

Recommendation 3

Given the complex, multi-level and opaque procurement structures in Malaysia, CoST implementation must include off-budget agencies and privatised projects in its application. This is especially important as many of these agencies/projects are underwritten by public money.

Recommendation 4

Although additional indicators to monitor the effectiveness of the affirmative action policy would be interesting and useful (e.g. distribution of contracts, knowledge sharing, upskilling or capacity built), this is a sensitive issue. In Malaysia, at least for the first phase of implementation, it may be prudent for CoST to avoid addressing this head-on.

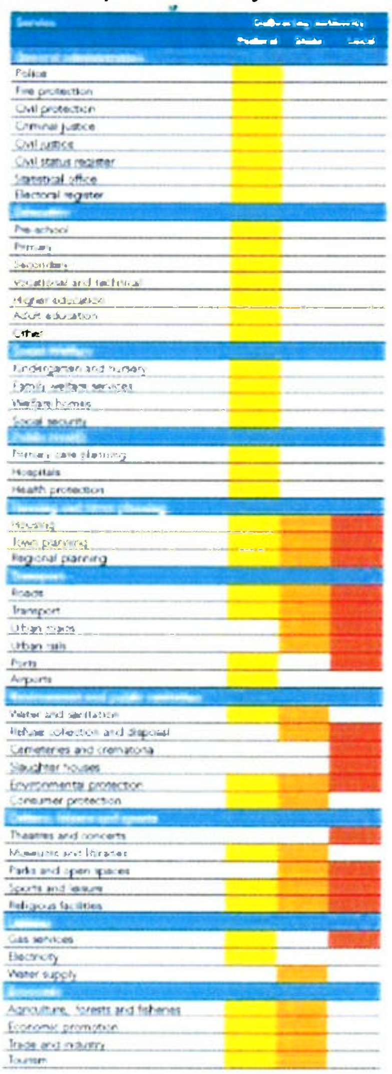
Governance In Malaysia

Governance in Malaysia

Malaysia is a federation of 13 states operating within a constitutional monarchy. The *Yang di-Pertuan Agong* or King heads the country. The sultans of the nine states – Perlis, Kedah, Perak, Selangor, Negeri Sembilan, Johor, Pahang, Terengganu and Kelantan – become king on a rotational basis for five-year terms. Malaysia has a parliamentary democracy system of government, with a three-tier government structure – federal, state and district or local.

The Federal Constitution of Malaysia is the supreme law. It gives the federal government the ultimate authority. The Prime Minister is the head of government, leading the cabinet where executive power is vested. State governments are created by their respective state constitutions. Led by chief ministers, state governments have their respective executive and legislative bodies.

Figure 13: Summary of services provisions by three different levels of government



Source: Penang Monthly (2014)

The local government or local authority is the lowest level of government in Malaysia. They carry out urban management functions but unlike the federal and state governments, local governments are not elected. Instead, their officials are appointed by the state government. Local government's weaknesses in sources of finance, service delivery and community participation have given them a negative reputation (Phang, 2008). However, devolution of powers by federal and state governments remains remote.

Tensions exist between the federal and state governments. States that fall into opposition control invariably get less funding from the federal government. The distribution of wealth or investments across the states are often considered to be unequal. State governments, including those led by the ruling Barisan National (BN) coalition, are increasingly demanding greater control of certain revenues, notably petroleum royalties; this is especially true for the states of Sabah, Sarawak and Terengganu – historically resource-rich states (Jomo and Hui, 2003) but those who have benefitted the least from investments. To make matters worse, the federal government financing model for state government has shifted from grants to loans, further reinforcing federal control over the states which is increasingly viewed less favourably. In recent months, Sabah and Sarawak have been pressing for greater autonomy as the benefits promised to them when they joined the new Malaysian federation in 1963 have not materialised.

Legislature

Malaysia inherited the legal system from its British colonial master. Parliament enacts federal laws that are applicable throughout Malaysia. State Legislative Assemblies enact state laws. Apart from secular laws, the Constitution also provides for sharia laws (Islamic laws). In recent months, the Kelantan state government has revived efforts to introduce a Parlimentary bill for stricter forms of sharia law. UMNO, the hegemonic member of the ruling coalition, supports the effort even though the other two ruling coalition parties do not. Kelantan has been pressing for the Hudud bill[39] since the 1990s (Kamali, 1998). UMNO's unexpected support is seen as politically motivated to raise support in Kelantan ahead of the 2018 general election (Sawlani, 2016). *Corruption in Malaysia*

Executive

The BN coalition, comprising mainly of UMNO, Malaysian Chinese Association (MCA) and Malaysian Indian Congress (MIC), has been governing Malaysia since independence. Public discontent over various issues, including mounting corruption, led to a landmark general election result in 2008 in which BN lost the popular vote in Peninsular Malaysia and five states to the Opposition (Gomez, 2016). In the 13th general election in 2013, public disquiet was still rife (Chin, 2012). With escalating corruption and other social ills, many now hope that the next election will see a shift in federal power.

Judiciary

The judicial system is a federalised court system operating uniformly throughout the country. The judiciary system underwent a crisis when Tun Mahathir Mohamed, the then Prime Minister, instigated a constitutional change in 1988 which downgraded the position of the Lord President to below that of the Executive (Tajuddin, 2012). The courts source of power, which

[39] The portion of shari'a law concerning the trial and punishment of the most serious crimes, including adultery, theft, and murder, prescribing penalties such as flagellation, amputation, and beheading.

had previously been drawn from the Constitution, was transferred to Parliament. This diminished the status of the judiciary, subjecting it to the legislature – ultimately violating the *separation of powers* concept. In 1994, the Executive urged parliament to amend the Constitution and rename the Supreme Court as the Federal Court, further diminishing the prestige of the judiciary. The Lord President's title was also changed to Chief Justice of the Federal Court. The overall effect is that the independence of the judiciary system has been compromised.

Presently, the highest court in the judicial system is the Federal Court, followed by the Court of Appeal, and High Courts.

National Integrity Initiatives

Malaysia has put in place elaborate anti-corruption programmes, legislations and institutions which might suggest that corruption is no longer a major issue in the country. However, once this anti-corruption eco-system is scrutinised, an alternate perspective emerges.

In 2004, the government established a National Integrity Plan aimed at fostering an ethical Malaysian society (Siddiquee, 2010). The Malaysian Institute of Integrity (MII) was established for the effective coordination and implementation of the Plan. The Plan can be attributed to the previous Prime Minister, Tun Abdullah Ahmad Badawi, who made anti-corruption his grand reform (Gomez, 2016). His successor, Dato' Sri Mohd Najib Tun Abdul Razak, unveiled the Government Transformation Plan in January 2010. One of its seven National Key Result Areas is combating corruption.

In January 2009, the Malaysian Anti-Corruption Commission Act 2009 was gazetted. Sections 16, 17 and 21 of the Act criminalise active and passive bribery. The penalty for corruption is imprisonment for up to 20 years and a fine, as spelt out in Section 24 of the Act. Other legislation that deal with bribery include the Penal Code (Sections 214 and 161-165) and Customs Act 1967 (Section 137).

In 2010, the Whistleblower Protection Act 2010 was passed by Parliament in 2010. The Act provides protection to whistleblowers who voluntary come forward to report or reveal information on corruption activities. Their identities are kept confidential.

Relevant institutions to combat corruption are the Malaysian Anti-Corruption Commission (MACC), Attorney General's Chamber, the Royal Malaysian Police, the Royal Customs and Excise Department, the Financial Intelligence Unit (FIU) of the Central Bank of Malaysia, the Ministry of Foreign Affairs, the Public Services Department and the Judiciary (UNODC, 2013). Of these, perhaps MACC requires elaboration. The MACC is a key institution that deals with corruption. With the enactment of the Malaysian Anti-Corruption Act 2009 mentioned above, the MACC was established on the 1st January 2009, thus replacing the Anti-Corruption Agency (ACA). The MACC is empowered to eradicate corruption, abuse of power and malpractices in an independent, transparent and professional way. However, MACC is not entirely independent since it sits under the Prime Minister's Department.

The Public Complaints Bureau (PCB), like MACC, is located in the Prime Minister's Department (Siddiquee, 2010). It is responsible for receiving and investigating complaints about government administration. However, it lacks executive powers and suffers from insufficient authority to take action against errant officials. It can only forward its report to the Permanent Committee on Public Complaints, which is chaired by the Chief Secretary to the

Government. The powers of this Committee is derived from Development Administration Circular No 4 of 1992. The Malaysian Administrative Modernisation and Management Planning Unit (MAMPU) forms part of the anti-corruption machinery. At various levels of the government, there is the Integrity Management Committee (IMCs). At the highest level is the Special Cabinet Committee on Management of Public integrity (SCCMPI), chaired by the Prime Minister, which oversees the overall management of public integrity.

International Alliances

At the international level, Malaysia is a party to the United Nations Convention against Corruption (UNCAC). Malaysian signed the Convention on 9th December 2003 and ratified it on 24th September 2008. The Convention became enforceable for Malaysia on 24th October 2008. All UNCAC parties are required to implement several anti-corruption measures in the form of laws, institutions and practices.

Malaysia is also a member (UNODC, 2013) of the

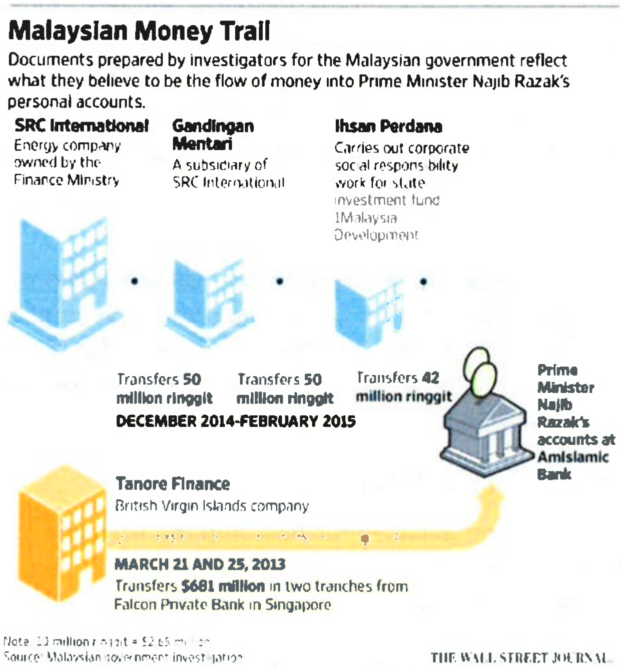
- ADB/OECD Anti-Corruption Initiative for Asia and the Pacific;
- South East Parties Against Corruption (SEA-PAC);
- Asia Pacific Economic Cooperation (APEC) Anti-Corruption and Transparency Working Group;
- Asia Pacific Group (APG) on Money Laundering;
- Offshore Group of Banking Supervisors;
- Egmont Group of Financial Intelligence Units;
- International Association of Anti-Corruption Authorities (IAACA);
- International Anti-Corruption Academy (IACA);
- International Criminal Police Organisation (INTERPOL); and
- ASEAN National Police (ASEANAPOL).

On first impressions, the Malaysian government appears resolute in stamping out corruption. However, several incidents over recent years suggest otherwise.

Grand corruption in Malaysia

1MDB is a state-owned investment fund created in 2009 soon after Dato' Sri Mohd Najib Tun Abdul Razak became the prime minister. He led the 1MDB's advisory board until mid-2015. The prime minister is alleged to be the recipient of RM2.67 billion (US$681 million) from 1MDB. The tale of 1MDB is convoluted, involving a London-based oil services company, an Abu Dhabi state fund, a US political fundraiser, among others (Sarawak Report, 2015; Ramesh 2016).

Figure 14. Infographic by Wall Street Journal showing the money trail.



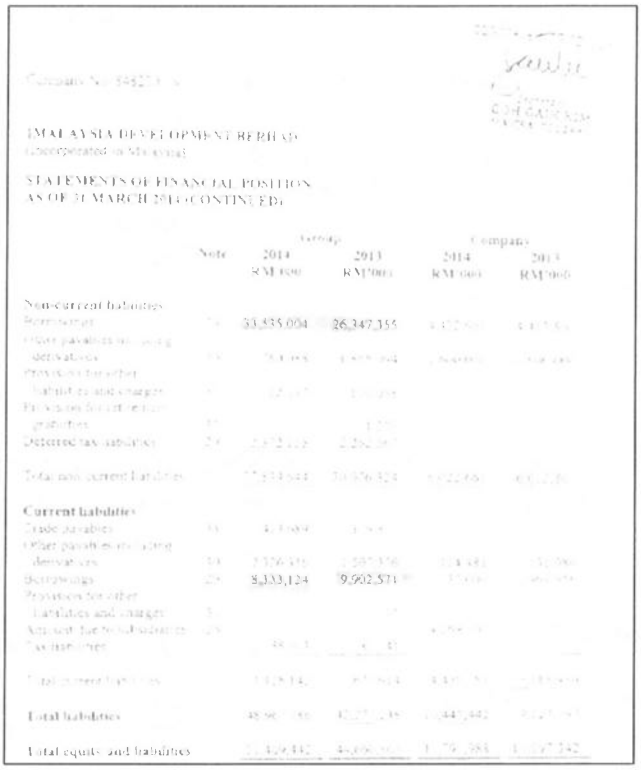
Source: Wall Street Journal (2015)[40]

In the international arena, Singapore, US and Swiss authorities are investigating 1MDB as the money trail had passed through or into banks located within their jurisdictions. In May 2016 and October 2016 respectively, the Monetary Authority of Singapore (MAS) ordered the Swiss-based BSI and Falcon Bank to cease their operations in the city state. MAS also fined DBS bank S$1 million and UBS S$1.3 million for money laundering violations (France-Presse, 2016). Five people have so far been indicted by Singapore courts, the latest was Jens Sturzenegger of Falcon Bank. The others include three former employees of Swiss private bank BSI, Yeo Jiawei, Yak Yew Chee and Yvonne Seah Yew Foong. In July 2016, the US Justice Department moved to seize more than US$1 billion in assets allegedly tied to 1MDB in the form of luxury properties, valuable paintings and a private jet [41].

[40] Wall Street Journal (2015) Investigators believe money flowed to Malaysian leader Najib accounts amid 1MDB Probe, 2 July [Online], Available: http://www.wsj.com/articles/SB10130211234592774869404581083700187014570 [10 December 2016].

[41] http://www.abc.net.au/news/2016-07-21/us-moves-to-seize-1-billion-in-assets-of-malaysian-1mdb-fund/7647256

Figure 15. Debt burden of 1MDB



1MALAYSIA DEVELOPMENT BERHAD
(Incorporated in Malaysia)

STATEMENTS OF FINANCIAL POSITION
AS OF 31 MARCH 2014 (CONTINUED)

		Group		Company	
	Note	2014 RM'000	2013 RM'000	2014 RM'000	2013 RM'000
Non-current liabilities					
Borrowings	[illegible]	33,535,004	26,347,355	[illegible]	[illegible]
Other payables including derivatives	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Provisions for other liabilities and charges	[illegible]	[illegible]	[illegible]		
Provision for retirement gratuities	[illegible]		[illegible]		
Deferred tax liabilities	[illegible]	[illegible]	[illegible]		
Total non-current liabilities		[illegible]	[illegible]	[illegible]	[illegible]
Current liabilities					
Trade payables	[illegible]	[illegible]	[illegible]		
Other payables including derivatives	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Borrowings	[illegible]	8,333,124	9,902,571	[illegible]	[illegible]
Provisions for other liabilities and charges	[illegible]		[illegible]		
Amount due to subsidiaries	[illegible]			[illegible]	
Tax liabilities		[illegible]	[illegible]		
Total current liabilities		[illegible]	[illegible]	[illegible]	[illegible]
Total liabilities		[illegible]	[illegible]	[illegible]	[illegible]
Total equity and liabilities		[illegible]	[illegible]	[illegible]	[illegible]

Source: Anilnetto (2015)[42]

In relation to the Malaysian response; despite mounting evidence abroad, it was concluded that the Prime Minister had no case to answer, and the US$681 million was a gift to the prime minister from a mysterious Saudi royal family member. Later, it was discovered that more than US$1 billion, and not US$681 million (RM2.67 billion) (US$600 million) was deposited into the Prime Minister's account between 2011 and 2013[43]. At this juncture, 1MDB had accumulated RM42 billion (US$9.46 billion) in debt which remains outstanding (MalayMail Online, 2016). (See Figure 15).

Those investigating the case have either been transferred or removed. For example, Attorney General Tan Sri Abdul Gani Patail, was replaced in July 2015 allegedly over his plan to bring criminal charges of misappropriation against the Prime Minister during a scheduled cabinet meeting[44]. There were also repercussions at MACC; the Chief Commissioner, Tan Sri Abu Kassim Mohamed, stepped down in July 2016. There is speculation that he was pressured to

[42] Anilnetto (2015) US attorney general: corrupt officials treated 1MDB as 'personal bank account' 21 July [Online], Available: http://anilnetto.com/governance/accountability/us-attorney-general-corrupt-officials-treated-1mdb-personal -bank-account/ [10 December 2016].

[43] http://www.reuters.com/article/us-malaysia-politics-idUSKCN0W33A4

[44] Australian Broadcasting Corporation's Four Corners aired its investigation into 1MDB in March 2016, in which it claimed a high-level source with direct knowledge of the affair provided them with this piece of information. The Australian investigation team were arrested in Malaysia by the Royal Malaysian Police while conducting the investigation. See http://www.abc.net.au/news/2016-03-28/former-malaysian-attorney-general-planned-to-confront-pm/7278226

resign following his investigations into the 1MDB affair[45]. The MACC Special Operations Division, which examines serious cases, was subsequently downsized[46].

Of late, there have been some notable MACC arrests, involving high profile public figures including a ministry Secretary-General in January 2017. From social media, it appears that a segment of the Malaysian public believe these arrests were made to deflect attention away from 1MDB. In August 2016, the Cabinet placed limits on the police's remit to investigate 1MDB[47]. All these incidences contradict Malaysia's purported commitments to international anti-graft agencies and domestic integrity initiatives. They also highlight the lack of independence of oversight institutions.

Governance Indicators

Although Malaysia achieves average scores on most key governance indicators (see Table 8), recent developments have raised concerns both nationally and internationally.

Table 8: Study country comparison of key governance indicators

DATA: Governance	Thailand	Malaysia	Indonesia	Vietnam
TI CPI South East Asia (2015) (1= Best, 10 = Worst)	3	2	4	6
TI CPI (2015) (1= Best, 168 = Worst)	76	54	88	112
Freedom in the World (2016)	Not Free	Partly Free	Partly Free	Not Free
Political Rights (2016) (1 = most free and 7 = least free)	6	4	2	7
Civil Liberties (2016) (1 = most free and 7 = least free)	6	4	4	5
Freedom Rating (2016) (1 = most free and 7 = least free)	5.5	4	3	6
Freedom of Press (2016)	Not Free	Not Free	Partly Free	Not Free
Freedom of Press (2016) (0 = Best, 100 = Worst)	77	67	49	85
WB Average Governance Score (2014) (1: Low, 100: High)	44	67	40	37
Voice and Accountability	26	37	53	10
Political Stability & Absence of Violence/Terrorism	17	59	4	46
Government Effectiveness	66	84	55	52
Regulatory Quality	62	76	49	30
Rule of Law	51	75	42	45
Control of Corruption	42	68	34	38

Source: Transparency International, Freedom House, World Bank

According to Transparency International's Corruption Perceptions Index (CPI), Malaysia's global ranking slid from 50 in 2014 to 54 in 2015, following the 1MDB financial scandal

[45] https://www.ft.com/content/30424d3a-555a-11e6-befd-2fc0c26b3c60
[46] http://www.malaysianbar.org.my/legal/general_news/bar_council_downsizing_in_macc_worrying.html
[47] http://www.malaysiakini.com/news/353038

(Transparency International Malaysia, 2016). It would have slid even further to 59, if not for the absence of six countries which were surveyed the year before.

Civil liberties have been cast into doubt. Article 10 of the Malaysian Federal Constitution provides the right for every citizen to assemble peacefully and without arms. However, Freedom House opines that freedoms of assembly and association in Malaysia are limited, rating it only 6/12 (Freedom House, 2016). In November 2016, Maria Chin Abdullah, the Chair of pro-democracy group Bersih, was detained under Malaysia's Security Offences (Special Measures) Act 2012 (SOSMA)[48], a day before a peaceful demonstration calling for the Prime Minister to step down over alleged 1MDB corruption. This caught the attention of the US Government, who stated officially: "We are troubled by the ongoing detention and solitary confinement of Maria Chin Abdullah" (Reuters, 2016). Eleven days later, Maria Chin Abdullah was released. Unsurprisingly, many refrain from participating in the annual Bersih Rally for fear of reprisal. Furthermore, there appears to be double standards in the application of the rule of law. In September 2015, the pro-government group, the Red Shirts, turned unruly during a rally whilst spewing racial slurs against the ethnic Chinese; this action did not result in any arrest (Murdoch, 2015).

Freedom of press is still limited in Malaysia (Whiting and Majoribanks, 2013). According to Freedom House, Malaysia is ranked 'Not Free' on Freedom of Press (2016). Much of the media, such as the Utusan Malaysia and the New Straits Times newspapers, are government controlled. The Printing Presses and Publications Act 1984 makes it mandatory for all printing presses to obtain an annual licence from the Minister of Home Affairs.

Temporary bans are not unusual. In March 2016, a prominent independent Malaysian news website, the Malaysian Insider, ceased operations after it had been blocked by the government the previous month over its reporting of alleged official corruption. Putrajaya's response to US concern over the ban was that the government has "a responsibility to maintain peace, stability and harmony in the country" (BBC News, 2016). In July 2015, the government blocked Sarawak Report[49], the London-based news website, for its coverage on the same financial scandal. In 2013, its Founder, Claire Rewcastle Brown, was barred from entering Sarawak. A warrant for her arrest was also issued in August 2015, in connection with a series of exposés by Sarawak Report regarding 1MDB. Clare is not the first to be banned; Cynthia Gabriel of the Centre to Combat Corruption and Cronyism (C4) was previously barred from entering Sarawak in 2005 for her involvement in protests against the Bakun Dam project.

Dozens of journalists and government critics were arrested in 2015 under the colonial-era Sedition Act, which the Federal Court upheld as constitutional in October (Freedom House, 2016). This trend continued into 2016, with the arrest and detention of the political cartoonist Zunar, under sedition law for allegedly insulting the Prime Minister. Josef Benedict, Amnesty International's Deputy Director for Southeast Asia and the Pacific said, *"The arrest of Zunar is an outrage.[50]"* Zunar has been arrested several times over the years; He has nine previous

[48] SOSMA was introduced to fight security and extremist threats. It replaced the draconian Internal Security Act (ISA). Superficially, Sosma is better than ISA. But in reality, critics say it is the new ISA. See Kua K. S. (2016) Sosma is the new ISA, FMT News, 21 November (http://www.freemalaysiatoday.com/category/opinion/2016/11/21/sosma-is-the-new-isa/)

[49] The Sarawak Report was founded in 2010 to highlight abuse of power at the highest levels in the East Malaysian state of Sarawak.

[50] See http://www.glassgraden.com/news/Arrest-of-famed-cartoonist-Zunar-in-Malaysia-is-an-outrage

charges under the sedition act which are still pending trial (Guardian, 2016). Another cartoonist, Fahme Reza, was also charged twice with violating multimedia laws by caricaturing the Prime Minister as a clown. The musician Namewee was arrested in August 2016 following his controversial song which was deemed by the Authorities to be insulting to Islam.

Control of corruption has been compromised; the World Bank scores Malaysia only 68/100 on the control of corruption (see Table 8). Anyone who raise concerns over 1MDB has had to face grave repercussions. In July 2015, the Prime Minister removed the Deputy Prime Minister, Tan Sri Muhyiddin Yassin, who had raised questions about the 1MDB fracas. The Attorney General, Tan Sri Abdul Ghani Patail, was also replaced. An Australian television programme alleged that he was on the verge of confronting the Prime Minister when he was removed (Holmes, 2016). The opposition politician Rafizi Ramli was convicted in November 2016 under the Official Secrets Act of 1972 for disclosing part of the Auditor General's report into the 1MDB scandal. London-based Amnesty International has called for his 18-month jail sentence to be quashed (Hunt, 2016).

Despite strenuous efforts to quell public disquiet over 1MDB, the government still has aspirations for Malaysia to be in the top 30 countries of Transparency International's CPI by 2020[51]. However, Zunar's cartoon which features the Prime Minister as a billionaire, was recently highlited by one speaker at the 2017 World Economic Forum (WEF) in Davos, Switzerland,[52] which provides some indication of current international perceptions.

The Political Economy of Corruption

A combination of hegemonic rule by UMNO, weak opposition and inadequate checks and balances have helped forge a culture of corruption, cronyism and patronage (Gomez and Jomo, 1999). This political culture of corruption, cronyism and patronage remains unaltered even following landmark general elections of 2008 and 2013 which saw the Opposition garnering wider public support (Siddiquee, 2010). Even Tun Abdullah Ahmad Badawi's administration which mounted a serious campaign against corruption failed to make any impact on the culture.

Limited freedoms of speech and press, are contributory factors which foster corruption in Malaysia; for example, the Official Secrets Act 1972 which restricts access to information, and enables the government to conduct its activities in a non-transparent manner (Siddiquee, 2010). The repressive Printing Presses and Publications Act 1984 inculcates an atmosphere of self-censorship in printed media circles (Whiting and Majoribanks, 2013). Civil servants have been warned not to divulge government secrets (Kaos Jr, 2016). Furthermore, senior government bureaucrats who are almost exclusively drawn from the ethnic Malays may forsake political neutrality to support of the goals, ideologies and policies of the UMNO out of racial solidarity.

The affirmative action policy becomes a convenient subterfuge to advance private gain. The opposition convincingly argues that a small group of Malay elites have become millionaires while their poor brethren remain marginalised (Chin, 2012). Non-*bumiputera* businesses are

[51] For 2016, Malaysia is ranked 55 out of the 176 nations.

[52] http://www.malaysiakini.com/news/370033

not entirely left out. Faced with the inability to complete construction contracts on their own, the *bumiputera* recipients co-opt their Chinese friends to provide the necessary skills and know-how to deliver projects. This 'Ali-Baba' alliance consigns the former to perpetual ineptitude as the latter continues to build up their technical capacity on increasingly challenging jobs.

For some, especially those in rural communities who have enjoyed limited material comforts and development, apathy stems from the rationale that the absence of 1MDB would have made no difference at all to their lives. And as mentioned above, there is often a reluctance to challenge abuses of power when it is perpetrated by someone from their own race.

Professor Jones' (2013) solution to Malaysia's public procurement failings is greater transparency. However, if we accept that corruption is deeply ingrained in government, then transparency alone is unlikely to solve Malaysia's public procurement ills. In years gone by, corrupt political leaders have tried to conceal their ill-gotten gains[53], but in the present day, luxury cars and lavish lifestyles are brazenly displayed.

Recommendation 5

Given the existing government structure and competing interests between federal and state governments, CoST should not pursue universal application of CoST across federal, state, local governments as this may be too ambitious at this time.

Recommendation 6

The Malaysian government is at present, hyper-sensitive to perceived criticisms relating to 1MDB. CoST should distance itself from any suggestion that its introduction is related to 1MD. Diplomacy is of utmost importance if CoST aspires to make long-term impact in Malaysia.

[53] One of many boggers have lamented the about this situation. See https://dinmerican.wordpress.com/2013/03/24 /has-corruption -become-so-brazen/; http://foreignaffairs.co.nz/2016/10/12/investigate-more-high-profile-corrupt-politicians-in-malaysia/

Recommendation 7

CoST must be mindful of the existing limitations on transparency, integrity, and anti-corruption agencies and initiatives in Malaysia. Some initiatives are merely public relations exercises whilst others lack the autonomy or authority to effect real change. Great care should be taken in selecting partner agencies or institutions to mitigate so far as possible, the risk of being used as a tool to 'white-wash' or 'CoST-wash' bad behaviour.

Recommendation 8

Expanding civic space is vital to CoST success in Malaysia. CoST must create safe platforms for dialogue and collaboration between government and citizens so that over time, citizen participation becomes the norm. The MSG would be an obvious entry point.

Recommendation 9

CoST implementation must include a programme for building the capacity of the local press and media, focusing on integrity and objectivity in journalism.

Public infrastructure transparency, in policy and in practice

Public infrastructure transparency, in policy and in practice

Existing Framework for Transparency

Malaysia is not party to leading governance initiatives such as the Open Government Partnership (OGP), the Extractives Industry Transparency Initiative (EITI), the Open Contracting Partnership (OCP), or CoST. The Open Budget Survey 2015 (International Budget Partnership, 2015) also scores Malaysia 46/100 on the Open Budget Index; overall the Malaysian government provides the public with limited budget information. The survey examines the three pillars for budget accountability, i.e. budget transparency, public participation in the budget process, oversight (by legislation and by supreme audit institution). In particular, Malaysia scored very poorly on public participation (12/100) and oversight by legislation (15/100).

The lack of commitment to openness and transparency at the international level is mirrored at the national level, where there is also a notable absence of dedicated transparency or access to information legislation. Around the world, many countries have enacted specific laws granting citizens access to information held by their respective governments, but the Malaysian federal government has repeatedly turned down requests by the opposition to do likewise.

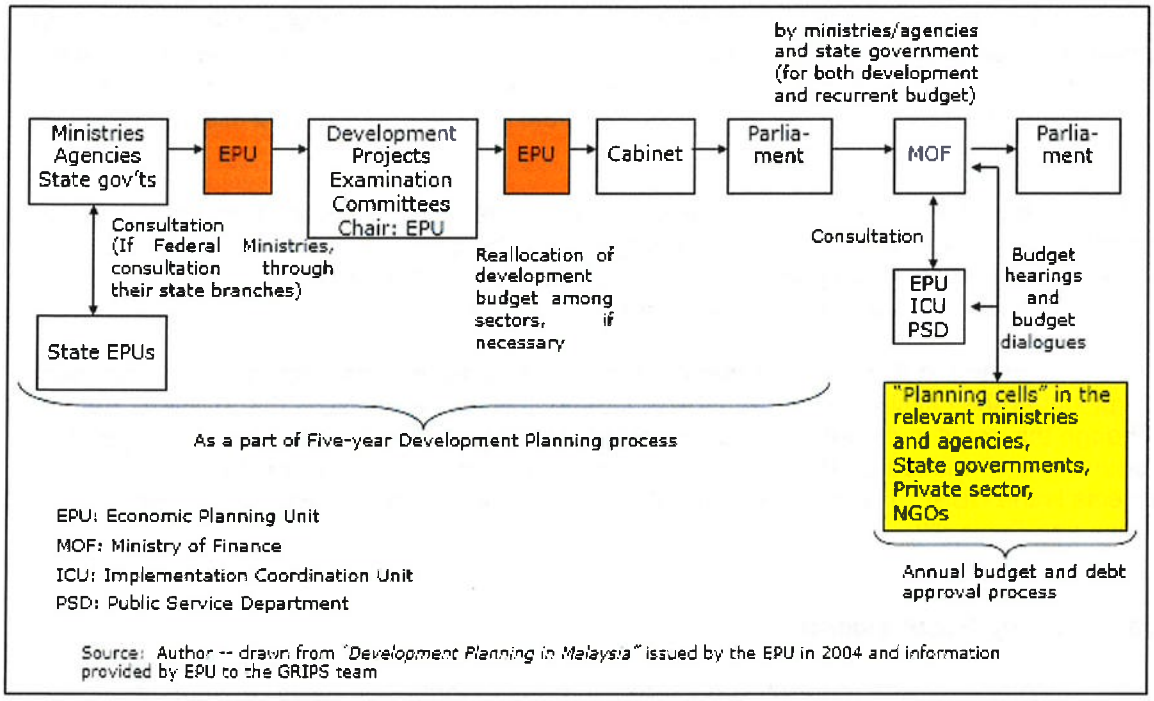
In spite of the federal government's reticence, or perhaps because of it, two states have introduced access to information laws. The Selangor State Legislative Assembly passed the Freedom of Information (FOI) Enactment (Selangor) 2010 in April 2011. Subsequently, the Penang Government implemented the Freedom of Information Act (2012) in July 2014 (though with certain restrictions[54], including limiting the use of information for personal reference and research only, and prohibiting modifications to any documents for purposes of smearing the state government[55]. Nonetheless, this is a good first step towards transparency.

Despite the vacuum of over-arching transparency legislation, some public institutions provide information on a voluntary basis. Under Section 34A of the Environmental Quality Act 1974, all proposed construction projects must obtain approval from the Director General of Environmental Quality based on submitted environmental impact assessment (EIA) reports. Some of these reports are publicly available on the website of the Department of Environment (DOE)[56], but publication of these reports is not mandatory.

There are also government practices that provide the public with shreds of information on public infrastructure projects on an ad hoc basis. For example, as mentioned in the 'Development Planning' subsection, consultations are carried out with businesses and civil society during the planning stage (See Figure 16). However, these consultations, especially those under the present leadership, have been criticised for being 'check-box exercises' where government officials were disinterested or aloof - simply going through the motions of consultation to satisfy procedural requirements. The public is first alerted to planned infrastructure projects during the prime minister's annual budget speech which is usually presented around November. However, this only provides basic information and citizens are unable to access any additional information beyond what is mentioned in this speech

[54] https://www.penang.gov.my/en/data-terbuka#terma-data-terbuka
[55] http://www.freedominfo.org/2016/07/malaysian-ngo-objects-to-penang-foi-restrictions/
[56] www.doe.gov.my

Figure 16. Project Approval Process for the Malaysia Plans



Source: www.grips.ac.jp/teacher/oono/hp/course/lec08_invtprog/invtprog4.pp

Disclosure Channels

Online disclosure mechanisms are available, although the requirements to disclose are at present minimal. The Ministry of Finance (MOF) has maintained the Malaysian Government Procurement Information Centre (MGPIC) website[57] since the 1st April 2010; the MGPIC discloses government procurement information, though not out of any legislative requirement. For construction works, the website derives the information from the DOW. The information that is available includes tender advertisement and tender results. The Central Bank[58] also advertises tenders and requests for proposal. Such information provides a glimpse into the construction works that are about to commence. This channel of disclosure is also important as internet penetration in Malaysia is high (68.6% population) (Internet Live Stats, 2017).

In addition, the Uniform Building By-Law (UBBL) (1984) requires project signboards to be erected at construction sites; the information required to be disclosed include the name, address and telephone number of the party that submitted the development plans to the authorities for approval, as well as the name of the contractor. State governments have the power to modify the UBBL (1984), and demand for additional information to be included on the project signboards. This is important because over 30% of the population are unable to access information through online channels. However, disclosure via billboards is limited in its reach as itis only accessible to passers-by. In the days when the UBBL was formulated, the internet was non-existent. Therefore, to ensure information equity, CoST should lobby the state governments to revise this piece of legislation to ensure a multi-channel approach so that project information not only appears on project signboards but also online.

[57] http://myprocurement.treasury.gov.my/
[58] www.bnm.gov.my

Oversight and monitoring
As mentioned previously, the Federal Constitution (Article 106) allows for the Auditor General (AG) to audit the accounts of the federal ministries and government companies, state departments and state companies as well as federal statutory bodies. The Auditor General's (AG's) annual reports is at present, the most reliable and most extensive source of information on infrastructure projects. These reports have the potential to highlight discrepancies or problems on projects[59].

However, one of the drawbacks is that the AG reports only scrutinise a select number of projects in any given year. Furthermore, reporting is historical (on past/completed projects) not on real-time basis (live/planned projects). This means that issues are only discovered after the fact when it is often too late for constructive redress.

It is also worrying that Parliament has the authority to classify these reports as 'government secret' under the Official Secrets Act 1972; indeed, this was the case with the 1MDB Report. Although this remit is currently being contested, as things currently stand the only legislative instrument that mandates the public disclosure of project information on live infrastructure projects is the UBBL. The rest are at the discretion of the authorities. For further information, please see Table 9[60].

Transparency Requirements

Table 9 compares the current transparency requirements (primarily enshrined in two legislative instruments) with the recommended disclosure requirements of the CoST IDS.

[59] The MOW details the corrective actions it has taken for projects that come under the Auditor General's attention. See http://www.kkr.gov.my/ms/status_isu_kkr
[60] As mentioned in the Methodology section, the write-up was validated by three experts: a practising quantity surveyor, a practicing lawyer and a senior town planning lecturer.

Table 9: Malaysian legal requirements vs CoST IDS

[illegible]	[illegible]	[illegible]
Date	Last updated	✗
Project Identification	Reference number	✗
	Project owner	✗
	Sector, Subsector	✗
	Project name	✗
	Project Location	✗
	Purpose	✗
	Project description	✗
Project Preparation	Project Scope (main output)	✗
	Environmental impact	✗
	Land and settlement impact	✗
	Contact details	✗
	Funding sources	✗
	Project Budget	✗
	Project budget approval date	✗
Project Completion	Project status (current)	✗
	Completion cost (projected)	✗
	Completion date (projected)	✗
	Project Scope at completion (projected)	✗
	Reasons for project changes	✗
	Reference to audit and evaluation reports	✗
[illegible]	[illegible]	[illegible]
Date	Last updated	✗
Procurement	Procuring entity	✓
	Procuring entity contact details	✓
	Procurement process	✗
	Contract type	✗
	Contract status (current)	✗
	Number of firms tendering	✗
	Cost estimate	✗
	Contract administrative entity	✗
	Contract title	✗
	Contract firm(s)	✓
	Contract price	✗
	Contract scope of work	✗
	Contract start date and contract period (duration)	✗
Implementation	Variation to contract price	✗
	Escalation of contract price	✗
	Variation to contract duration	✗
	Variation to contract scope	✗
	Reasons for price changes	✗
	Reasons for scope and duration changes	✗
[illegible]	[illegible]	
[illegible]	[illegible]	

Data points required according to UBBL

Overall, the existing legal requirements for transparency is exceedingly low; only three out of the 40 IDS data points (7.5%) are legally required to be disclosed. Therefore, there is a strong case for CoST to help expand and increase existing transparency requirements in Malaysia. In the context of legislation, it could mean the revision of existing laws, or the enactment of new ones.

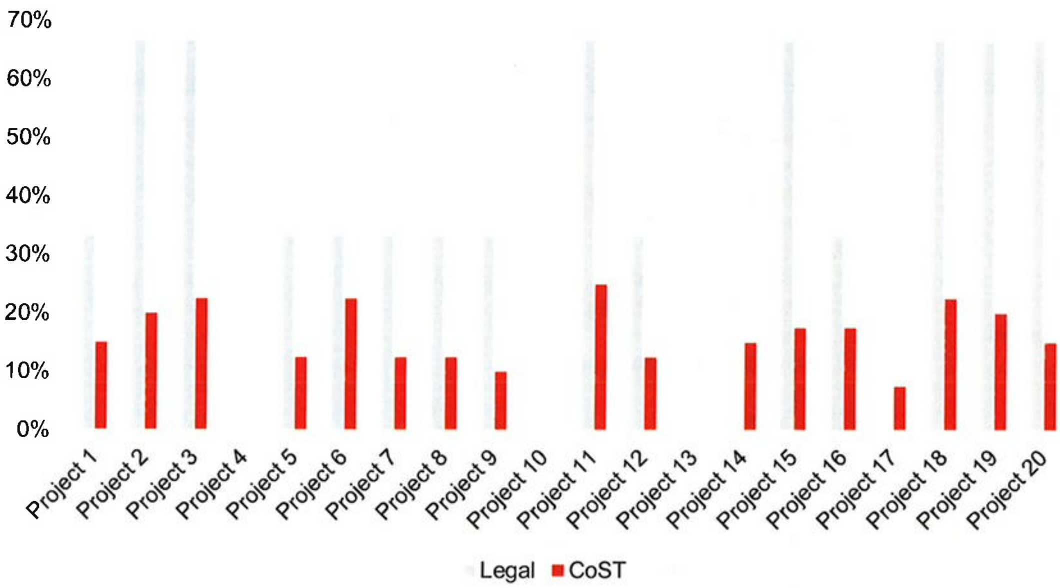
Compliance with transparency requirements

In the final section of this study, 20 public infrastructure projects were assessed to measure their compliance with both national requirements and the CoST IDS. The details of these projects are contained in Appendix A. For the process of project selection, please refer to the Methodology section.

Only information available from official sources were used to determine the extent of compliance with the 40 CoST IDS data points. Additional information sourced from non-official sources is inserted in the Appendix to enhance the narrative of these projects, but were not used for the computation of the IDS compliance.

Disclosure Compliance
From Figure 17 it can be seen that the average compliance rate with legal requirements across all twenty projects was 37% and compliance with the CoST IDS was 14%. Greater compliance with legal requirements as opposed to CoST requirements is due to the fact that legal requirements only account for 8% of the CoST IDS.

Figure 17: Project compliance with legal and IDS requirements



The Pantai 2 Regional Sewage Treatment (Project 11) had the greatest level of compliance, accounting for 25% of the CoST IDS data points. Nonetheless, despite limited legal requirements, some of the projects sampled still had rates of 0% disclosure.

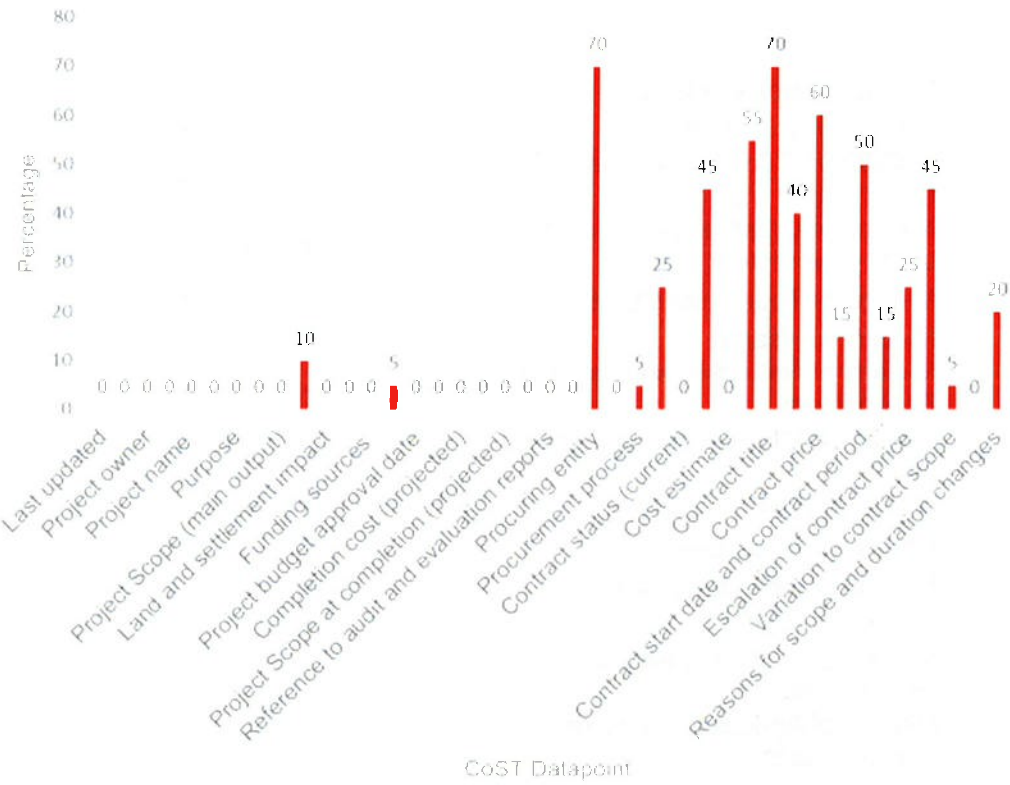
As mentioned above, information on live and past projects is almost non-existent. Without the General Auditor's reports, there would have been virtually no information disclosed for the 20 sample projects. It could be inferred that the ministries do the very minimum and intentionally avoid disclosing information, most likely to avoid political backlash. At best, the websites reveal only five pieces of information – all available at the point in time when the contracts are awarded (see Table 10). Table 10 provides an overview of the projects details which were available on the websites of the various ministries at the time of this assessment.

Table 10. Degree of transparency of the various ministry and department websites

Ministry/ Department	Tender description	Tender number	Winning tenderer	Tender value	Period of contract
Ministry of Home Affairs	•	•	•	•	•
Ministry of Transport	•	•	•	•	•
Ministry of Communications and Multimedia	•	•	•	•	•
Ministry of Urban and Wellbeing and Local Government	•	•	•	•	•
Ministry of Tourism and Culture	•	•	•	•	•
Ministry of Health	•	•	•	•	•
Ministry of Natural Resources and Environment	•	•	•	•	•
Ministry of International Trade and Industry	•	•	•	•	•
Prime Minister's Department	•	•	•	•	•
Ministry of Education	•		•	•	•
Ministry of Finance (MGPIC)	•	•	•		
Ministry of Works	•	•	•		
Ministry of Rural and Regional Development					
Ministry of Agriculture and Agro-Based Industry					
Ministry of Youth and Sports					
Ministry of Women, Family and Community Development					
Ministry of Plantation Industries and Commodities					
Ministry of Energy, Green Technology and Water					
Ministry of Science, Technology and Innovation					
Ministry of Domestic Trade, Cooperatives and Consumerism					
Ministry of Human Resources					
Ministry of Foreign Affairs					
Ministry of Defense					

Figure 19 shows how poorly the 20 sample projects score against the 40 data points in the CoST IDS. Compliance with the project phase of the CoST IDS was abysmal with an average of 0.7% as opposed to the contractphase average of 27.3%. Had it not been for the discharge of the Auditor General's responsibilities, compliance with the contract phase of the CoST IDS would have been equally poor. Even basic information such as the contractor's name is not always made available online.

Figure 18: Average compliance rate according to each of the 40 CoST data points



One striking observation is the sheer number of negotiated contracts that appear in the randomly selected projects (i.e. 10 projects, or 50% of the sample). Information on negotiated contracts are rarely divulged. As the 20 case projects show (see Appendix A), negotiated contracts have a high risk of cost and time overruns, and poor quality, especially when they are awarded to inexperienced contractors. For those who are resolute, snippets of information about live projects may be found but only through extensive trawling on the internet, especially non-governmental websites. But these snippets invariably do not add up to make complete stories about the projects.

As for the sample projects where the contracts were awarded on competitive basis, the number of competitors was not always disclosed.

Through this initial scrutiny, issues of potential concern are already emerging. For example, the public were not made aware that a social impact assessment had been conducted or alerted to its findings (see Project 12). There was also an instance where even Parliamentarians were unaware that EIAs were required (see Project 13). On one project, the federal government tried to embargo investigation by the Auditor General (Project 4).

From these early results, it is clear that CoST has a role to play in increasing public infrastructure project scrutiny to identify and highlight potential issues of concern for the public.

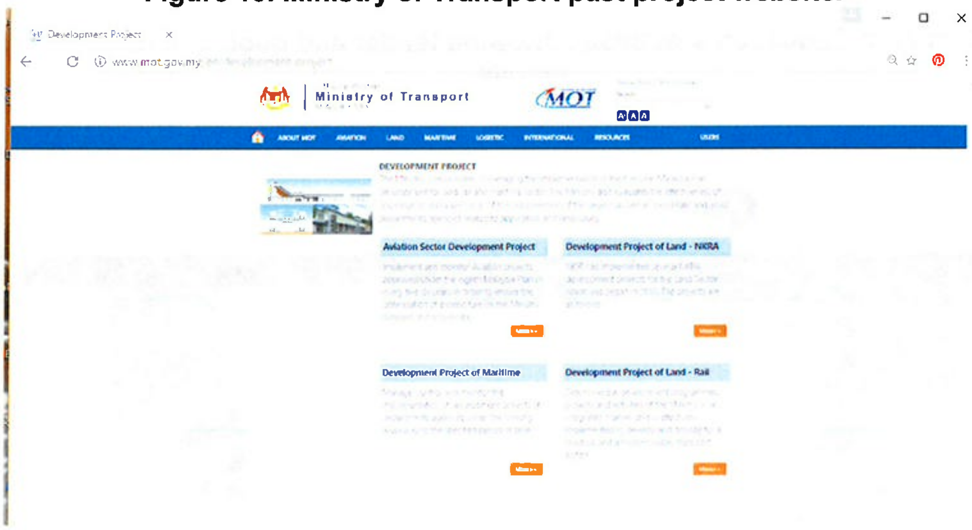
Overall usability of the ministry project pages

Generally, ministry websites including MGPIC, DOW and Central Bank contain very little information. Information on projects are limited to tender advertisements and tender awards. There is no live feed for ongoing projects. As a matter of fact, it is virtually impossible to find project profiles for any of the 20 sample projects on these websites. If not for the Auditor General Reports, this exercise would have been meaningless as there is virtually no information publicly available on the first 14 sample projects selected for this baseline assessment.

Below are some examples of ministry websites:

The Ministry of Transport has a web page that shows tender results (but only for the current and past year) complete with tender number, description, contractor/ consultant, price offer and period of contract (see Figure 19). The website also advertises new projects. Additionally, the website highlights past projects which include a number of photos but conspicuously lacks project information, especially financial data. At worst, only the project description is provided (e.g. the Ipoh-Padang Besar Electrified Double Track project). Some of the projects that were completed under the 10MP (2022-2015) such as the new Kuala Lumpur International Airport 2, all port construction works in Penang, Kuantan, Port Klang and Tanjung Pelepas, and all major road projects including the Kuala Lipis-Bentong Spine Road (see Table 1) are unavailable.

Figure 19. Ministry of Transport past project website.



The Ministry of Rural and Regional Development has a webpage that briefly mentions the budget allocations for the various programmes, but does not provide the specifics of individual projects (see Figure 20).

Figure 20. Ministry of Rural and Regional Development webpage

The Ministry Education has a webpage which provides tender notice, tender results, tender corrections, tender cancellations, quotation and quotation results (see Figure 21). For construction projects, only the tender description, winning tenderer, tender value and contract period are revealed.

21. Ministry of Education's webpage showing tender and quotation notices and results

The Ministry of Communications and Multimedia Malaysia[61]; Ministry of Urban, Wellbeing and Local Government[62]; Ministry of Tourism and Culture[63]; Ministry of Health[64]; Ministry of Natural Resources and Environment[65]; Ministry of International Trade and Industry[66]; Ministry of Home Affairs[67] and Prime Minister's Department[68] all have procurement pages on their websites. If information about recently awarded projects are released, they are limited to, yet again, tender reference number, project title, winning contractor, contracts sum and contract period.

The following ministries however do not have procurement pages on their websites: Ministry of Agriculture and Agro-Based Industry; Ministry of Youth and Sports, Ministry of Women, Family and Community Development, Ministry of Plantation Industries and Commodities, Ministry of Energy, Green Technology and Water; Ministry of Science, Technology and Innovation; Ministry of Domestic Trade, Cooperatives and Consumerism; Ministry of Human Resources; Ministry of Foreign Affairs; and Ministry of Defense[69].

In general, as mentioned above, the information available on these websites is limited. What limited information was available, can be difficult to find. Navigating the websites was not always intuitive, with multiple clicks required. The average citizen would not have found it easy to access the limited information available.

Incentives and barriers affecting compliance

There are number of emerging incentives and barriers to improving transparency in public infrastructure in Malaysia. Malaysia is in a haste to become a developed nation which means there is a minimum threshold of good governance and integrity to be met. It was also mentioned earlier that due to recent events, investor confidence in Malaysia is wavering. Compliance with an internationally recognized standard such as CoST could help calm anxieties and boost confidence. Also, ICT systems are well developed and public sector personnel tend to be generally well educated; as such, there is existing capacity within government institutions to apply CoST and comply with its requirements

However, institutional corruption is so deeply rooted that political will to adopt CoST is likely to be weak. There is a pervading sense of fear among public servants; they are reluctant to release information which may be incriminating to the government as this may result in punitive action. Table 11 summarises the incentives and barriers affecting compliance.

[61] http://www.kkmm.gov.my/
[62] http://www.kpkt.gov.my/
[63] http://www.motac.gov.my/
[64] http://www.moh.gov.my/
[65] http://www.nre.gov.my/
[66] http://www.miti.gov.my/
[67] http://www.moha.gov.my/
[68] http://www.pmo.gov.my/
[69] http://www.moa.gov.my/; http://www.kbs.gov.my/; http://www.kpwkm.gov.my/; http://www.kppk.gov.my/; http://www.kppk.gov.my/; http://www.kettha.gov.my/; http://www.mosti.gov.my/; http://www.kpdnkk.gov.my/; http://www.mohr.gov.my/; http://www.kln.gov.my/; http://www.mod.gov.my

Table 11: Incentives and barriers affecting compliance

Incentive	Barrier
1. Developed country ambition	1. Political corruption
2. Foreign investors' anxieties	2. Fear of reprisal among public servants
3. Mature systems and civil service	

Recommendation 10

CoST should target states such as Penang and Selangor who have already introduced Freedom of Information Laws, to pilot CoST. This could include integrating the CoST IDS into these laws. Once the model is proven, CoST can scale up to other states, and eventually to the federal level.

Recommendation 11

- CoST should work with the Ministry of Finance to integrate the CoST Infrastructure Data Standard (IDS) in the MGPIC website.
- CoST could also consider working with Ministry's that have advanced websites, to enhance their website functions to support CoST IDS disclosure.
- At the same time, CoST must implement training programmes to build PE capacity and change the culture of secrecy.

However, voluntary disclosure on MGPIC or Ministry websites is insufficient. In order to succeed CoST needs a mandate at the highest political levels. Therefore, CoST should also lobby for a stronger, explicit legal mandate, potentially as part of the UBBL, to require PEs to proactively provide information on public infrastructure projects via MGPIC and other channels.

Recommendation 12

Given the close alignment of the Auditor General's existing remit and on-going efforts to scrutinize and monitor public projects, the AG could possibly be one of CoST's strongest allies. CoST should partner with the AG to streamline and complement transparency and accountability efforts. For example, the CoST IDS could be a key component assessed in AG Reports. CIDB and MII are also important partners for CoST.

Conclusions and Recommendations

Conclusions and Recommendations

Applicability and viability of CoST in Malaysia

The findings of this research, through the literature review and baseline assessment of transparency demonstrate the relevance of CoST for Malaysia. The country aspires to high-income country status by 2020, requires substantial infrastructure investment that is unlikely to be fully met and as a result is looking to the private sector to fill the infrastructure spending gap. This means that Malaysia needs to shore up governance systems and create a stable investment environment to attract project finance and at the same time maximise the spending efficiency of existing funds. These aims are mirrored in the principles of CoST.

Furthermore, transparency levels in Malaysia are extremely low; this coupled with the convoluted procurement structures and mechanisms e.g. the thousands of procuring entities at federal, state and local level and including off-budget agencies such as GLCs and GLICs is a significant concern. CoST can help improve both transparency requirements as well as compliance with said requirements. In addition, civic space is limited, with severe restrictions on the freedoms of expression and press. CoST has a role to play in providing safe, participatory platforms for citizens and industry to be heard. Capacity building is also key to this effort.

It is apt to conclude with a quote from the Auditor General, Tan Sri Ambrin Buang, in his keynote address at the Combating Procurement Fraud in the Public and Private Sectors Forum 2017 on the 24th January 2017[70]:

> *"Right now, we are being exposed to seemingly endless cases of fraud and corruption in the public sector….*
> *Many of these cases are related to government procurement at various levels of government – federal, state and local as well as statutory bodies, despite measures to prevent it."*

He added that an estimated 20%-30% of project value is lost through corruption. International studies and CoST experience corroborate this figure. Public infrastructure transparency in Malaysia is long overdue. Complaints about over-priced government projects, leakages and cronyism are increasingly being reported in alternative news conduits and social media. Thus CoST is certainly relevant and applicable in Malaysia.

In terms of viability however, there are many countervailing forces which might malign any push for CoST adoption (see below for full SWOT analysis). The timing is especially poor given the recent 1MDB scandal. Although 1MDB further affirms the need for CoST, there is likely to be strong resistance from those who have supported the decades-old modus operandi for public-private collusion and corruption, as well as maintaining political office through discriminatory policies.

[70] See http://www.themalaymailonline.com/malaysia/article/public-procurement-most-vulnerable-to-corruption-says-auditor-general

There are three possible government reactions to CoST overtures:

- Outright rejection of CoST;
- 'Lip service' partial adoption of CoST;
- Full adoption of CoST.

The final possibility, although unlikely and would certainly surprise many in Malaysia and beyond, is something to aspire to.

SWOT Analysis of CoST in Malaysia

This section presents a SWOT (strengths, weaknesses, opportunities and threats) analysis for CoST in Malaysia (see Figure 22). In doing so, it draws from the write-up thus far and beyond.

Strengths
Malaysia has a fairly well developed public sector, with a reasonably well educated workforce. The public sector has also successfully carried out public sector reforms in the past. This means that if CoST is adopted, implementation is feasible.

The existence of the eProcurement portal (MGPIC) and various ministry or PE websites, is also a strong factor that will influence CoST success. Advanced ICT systems are vital for information disclosure; given the high internet penetration rate (almost 70%), CoST can reach the majority of the population with relative ease.

There is also a growing appetite for greater transparency and accountability in Malaysia; despite restrictions, civil society organisations are interested and well organised. Demand for information and participation in accountability processes is key to CoST success.

Figure 22. Summary of SWOT analysis

Weakness

The government procurement structures which involve multiple departments, agencies, GLCs, SPVs etc. at federal, state and local levels will hinder uniformed application of CoST. Different laws and regulations apply at each level and for each different vehicle. This is likely to result in fragmented or uneven application of CoST.

Data collection and storage is also decentralised; there is no one central source of information. Instead, information is dispersed across thousands of entities across multiple levels. Locating, compiling and administering project data will be an enormous and highly challenging task.

The ruling coalition led by UMNO has been governing the country since independence. The lack of separation of powers and overlaps between oversight or enforcement functions with the executive weakens the checks and balances required for upholding integrity. Furthermore, political motivations to stay in power are a deterrent for implementing greater transparency.

Opportunities

Economically, Malaysia has achieved much since independence, and aspires to developed country status by 2010. This means that certain standards have to be met, including good governance and transparency. CoST could be a tool to help Malaysia achieve this goal.

1MDB has cast international spotlight on Malaysia and along with it significant pressure to address corruption and implement reforms. There is an apparent desire by the Malaysian government to develop a reputation for 'clean' government – manifested in the target for Malaysia to rank in the top 30 cleanest countries of Transparency International's Corruption Perception Index by 2020. As above, CoST is a ready-made tool that, if implemented correctly, could help Malaysia achieve its ambitions.

At the state level, two states have begun to introduce Freedom of Information Laws; this is an obvious entry-point for CoST. Especially given the complex and convoluted government procurement structures mentioned above, it would be more expedient for CoST to adopt a targeted approach, and work to leverage existing efforts to improve transparency and accountability. By piloting CoST at the state level, these states can cement their reputation as 'first-movers' for transparency.

Threats

In the present economic climate where government debt is high and expenditure constrained, securing public resources needed for CoST implementation may prove challenging. Commodity prices, especially oil, is likely to remain low in years to come.The indications are that Malaysia will be in the doldrums for quite some time. Public budgets have been slashed and additional cuts may be required; if significant planned public infrastructure investments under the 11MP are shelved, the rationale for adopting CoST would be weakened.

The government has been furiously trying to contain the fallout from 1MDB. The increased scrutiny by foreign governments and courts might drive the Malaysian government to greater secrecy, and a subsequent outright rejection of CoST.

Supporters of CoST could also be at risk of personal harm. The government has consistently used an array of legislation such as the Official Secrets Act 1972, Printing Presses and Publications Act 1984, the Sedition Act 1948, Communications and Multimedia Act 1998, SOSMA 2012 – to quash public dissent. Also, in an attempt to sway public opinion against CoST, the initiative might be perversely twisted by those with vested interests and unjustly portrayed as an attempt to abolish the special privileges *bumiputera* have erstwhile enjoyed.

In conclusion, if CoST were to pursue implementation in Malaysia, it must be pragmatic. A targeted approach is required; CoST should begin by working with 'pockets of integrity' i.e. those reformers who have a genuine interest in and commitment to implementing greater transparency and accountability. CoST should seek a pilot project to demonstrate its viability and also potential benefits.

Recommendations

For ease of reference, this section compiles all the recommendations made throughout this paper:

Recommendation 1
Although the administrative capital is in Putrajaya (host to many government agencies), CoST should be based in Kuala Lumpur, to ensure accessibility to civil society and industry. CoST must also take into account Malaysia's topography and ensure sufficient resources for travel to rural areas, regions and East Malaysia.

Recommendation 2
Given the significant investments in megaprojects, CoST should target these high-value projects for inclusion in CoST. In doing so, CoST must take into account the specific characteristics of these projects, for example the complex procurement structures and long delivery periods, to ensure effective application. CoST must also be vigilant in monitoring when such projects are implemented without due process.

Recommendation 3
Given the complex, multi-level and opaque procurement structures in Malaysia, CoST implementation must include off-budget agencies and privatised projects in its application. This is especially important as many of these agencies/projects are underwritten by public money.

Recommendation 4
Although additional indicators to monitor the effectiveness of the affirmative action policy would be interesting and useful (e.g. distribution of contracts, knowledge sharing, upskilling or capacity built), this is a sensitive issue. In Malaysia, at least for the first phase of implementation, it may be prudent for CoST to avoid addressing this head-on

Recommendation 5
Given the existing government structure and competing interests between federal and state governments, CoST should not pursue universal application of CoST across federal, state, local governments as this may be too ambitious at this time.

Recommendation 6
The Malaysian government is at present, hyper-sensitive to perceived criticisms relating to 1MDB. CoST should distance itself from any suggestion that its introduction is related to 1MD. Diplomacy is of utmost importance if CoST aspires to make long-term impact in Malaysia.

Recommendation 7
CoST must be mindful of the existing limitations on transparency, integrity, and anti-corruption agencies and intiatives in Malaysia. Some initiatives are merely public relations exercises whilst others lack the autonomy or authority to effect real change. Great care should be taken in selecting partner agencies or institutions to mitigate so far as possible, the risk of being used as a tool to 'white-wash' or 'CoST-wash' bad behaviour.

Recommendation 8
Expanding civic space is vital to CoST success in Malaysia. CoST must create safe platforms for dialogue and collaboration between government and citizens so that over time, citizen participation becomes the norm. The MSG would be an obvious entry point.

Recommendation 9
CoST implementation must include a programme for building the capacity of the local press and media, focusing on integrity and objectivity in journalism.

Recommendation 10
CoST should target states such as Penang and Selangor who have already introduced Freedom of Information Laws, to pilot CoST. This could include integrating the CoST IDS into these laws. Once the model is proven, CoST can scale up to other states, and eventually to the federal level.

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Appendix

Public Infrastructure Project Information from the Sample

Following the explanation in the Methodology section, the 20 projects are chosen according to the expenditure across the various sectors (see Table 12).

Table 12. Case projects selected according to the various sectors

Sector	Project title
Transport	1. Sandakan Airport 2. Restoration and upgrading the Alor Setar-Kuala Nerang-Durian Burung Road in Kedah 3. Padang Besar-Ipoh Electrified Double Track Project 4. Kuala Lumpur International Airport 2 (KLIA2) 5. Express Rail Link (ERL) Extension project 6. Sultan Yahya Petra Second Bridge, Kota Bahru, Kelantan
Trade & industry	7. Upgrading of Penang Hill Railway Project, Penang 8. Samalaju Water Supply, Sarawak 9. Main infrastructure at Muara Selatan, Kuala Terengganu City Centre, Terengganu 10. Pengerang Raw Water Supply, Johor
Public utilities	11. Pantai 2 Regional Sewage Treatment Plant 12. Murum Hydroelectric Power Project, Sarawak 13. Langat 2 Water Treatment Plant, Selangor
Agriculture & rural development	14. Upgrading and improving Teng Bukap/ Kampung Sira/ Kampung Nyabet/ Kampung Taiee Road, Kuching Division, Sarawak 15.Paya Peda Dam, Terengganu
Education & training	16. Banting Polytechnic, Selangor 17. Institute Aminuddin Baki, Negeri Sembilan 18. Kelantan Matriculation College 19. Subang UniKL Malaysian Institute Of Aviation Technology (MIAT) Campus, Selangor
Health	20. Kluang Hospital, Johor

Transport projects

1. Sandakan Airport

Government website:
http://www.mot.gov.my/SiteCollectionDocuments/Udara/upgrading%20sandakan%20airport.pdf
https://www.pmo.gov.my/dokumrenattached/RMK/RMK10_Eds.pdf

The EIA report for the project is not available on the Department of Environment website. Neither is there any information about the tender for the project on the websites of the Department of Public Works, Treasury and Ministry of Transport. Expansion of airports is broadly mentioned in the 10MP document (EPU, 2010). Sandakan Airport is situated 13 km from Sandakan. Project owner was the Ministry of Transport. It was let using the design and build approach. The scope of work included the expansion of floor area by 50%, new façade, modern roof and modern finishing, and upgrading of electrical and mechanical system. Construction started on 13th April 2011 and was completed on 29th November 2014 at a total cost of RM70 million.

Other websites:
http://www.theborneopost.com/2014/09/14/rm70-mln-sandakan-airport-upgrade-90-completed/
https://forum.lowyat.net/topic/3397471/all
http://www.theborneopost.com/2013/05/05/additional-rm10-mln-for-sandakan-airport-upgrade/

The design and build contractor was Musyati Sdn Bhd. Original contract value was RM60 million. Subsequently the project received an additional cash injection of RM10 million to construct additional parking bays, enhance the landscape of the terminal building and replacing two unit of 'aerobridge' and the visual docking guidance system

2. Restoration and upgrading the Alor Setar-Kuala Nerang-Durian Burung Road in Kedah

Government websites:
http://www.intosaiitaudit.org/LKAN2013_SIRI1/FEDERAL/LKAN%202013%20Series%201-%20Synopsis.pdf
http://www.kkr.gov.my/public/12013%20Jalan%20Alor%20Setar-Kuala%20Nerang-Durian%20Burung%2C%20Kedah.pdf

The EIA report for the project is not available in the Department of Environment website.. The 48 km project involved upgrading and widening of existing road. The project owner was Ministry of Transport, but it was managed by the Department of Works. The project was awarded to HCM-Molek JV on direct negotiation basis at a cost of RM246.2 million. Hence there any information about the tender for the project on the website of the Department of Public Works. As such there was no call for tender for this project. It suffered from serious delay problem which came to the notice of the Auditor General. It was planned under the 9MP (2006-2010), but was only completed under the 10MP (2011-2015). Four extensions of time (EOTs) totalling 3 years were given to the contractor for delay in land acquisition and diversion of utilities. Land acquisition took 4 years 4 months to complete. Local Land Administrator was also extremely slow in getting premise owners to vacate even though compensation had been paid. Utility diversion which was originally planned for completion between May and June 2007 was completed on 30 September 2011. The entire process took 4 years 3 months due to financial constraint of the utility companies. Letter of Intent to the contractor was issued on the 24th November 2003. The original time allocated to complete price negotiation was 6 months. However, price negotiation meeting between PWD and contractor only began on 26th May 2006 and was completed on 25th May 2006. Approval from the MOW was obtained on the 2nd August 2006. Construction took place between 2008 and 2012. The audit team found the quality of construction work to be unsatisfactory. Project was fully completed on 28th October 2012.

Other website:
http://www.hcme.com.my/index.php?option=com_content&view=article&id=178&Itemid=218

HCM Molek JV Sdn Bhd was set up in 2006 to undertake the project.

3. Padang Besar-Ipoh Electrified Double Track Project

Government website:
https://www.audit.gov.my/docs/BI/LKAN2011/Federal/LKAN%202011%20-%20Synopsis%20(ENGLISH).pdf

The project was briefly mentioned in the 10MP document. The 329 km project was a continuation of the Rawang-Ipoh Electrified Double Track. The MMC Gamuda Joint Venture Sdn Bhd was appointed on 13 December 2007 through direct negotiation. Hence there was no call for tender for this project. The cost of the project (including infrastructure and system packages) was valued at RM12.485 billion and contract period was 60 months, i.e. from 8 January 2008 until 7 January 2013. The national train operator, *Keretapi Tanah Melayu Berhad* was appointed as the Superintending Officer's Representative and Konsortium Kinta Samudera-Emenea-Techart (KSET) was appointed as the Project Management Consultant (PMC) on 24 February 2009 with a ceiling cost of RM256.96 million. The Audit investigated and found several weaknesses:

b. Two extensions of time of 669 days had increased the consultant fees,
c. The financial advisory fee of RM1.06 million for CIMB Investment Bank Bhd and Maybank Investment Berhad which was awarded without competition from other banks,
d. Delay in land acquisition between 82 to 1,227 days,
e. Appointment of contractor that was not done through competitive bidding,
f. Contract terms that did not protect the Government's interest, and
g. Construction work that did not comply with specifications or of low quality.

Other websites:
http://www.2t.com.my/EN/project/index.html
http://library.opusbhd.com/data/MEDIAS/AR/6661.pdf
http://gamuda.com.my/wp-content/uploads/2016/01/ar2011.pdf
http://gamuda.com.my/wp-content/uploads/2016/01/ar2012.pdf
http://gamuda.com.my/wp-content/uploads/2016/01/ar2013.pdf
http://gamuda.com.my/wp-content/uploads/2016/01/ar2014.pdf
http://www.investlah.com/forum/index.php?topic=43794.0

MMC Gamuda Joint Venture Sdn Bhd submitted Technical and Financial Proposals to the Government in March 2007. The negotiations led by the Economic Planning Unit concluded in October 2007. Two months later, the company was awarded the Letter of Acceptance. Site possession was given to the contractor on the 18th January 2008. The design and build contract was formally signed on the 25th July 2008. The client was the Ministry of Transport. The first extension of time (EOT) pushed the date of completion from January 2013 to December 2013. The second EOT pushed the date of completion further to November 2014. The contractor adopted the Environmental Management System which was in compliance with ISO 14001: 2004 for the project. It was reported in the press that the contractor was making a claim of RM1.5 billion for loss and expense, though there is no news about this claim since then.

4. Kuala Lumpur International Airport 2 (KLIA2)

Government website.
https://www.pmo.gov.my/dokumenattached/RMK/RMK10_Eds.pdf

The EIA report for the project is not available in the Department of Environment website. The 10MP document mentions about the plan to construction the airport (EPU, 2010).

Other sources of information:
http://www.malaysiaairports.com.my/?m=media_centre&c=news&id=333
http://www.malaysiaairports.com.my/?m=media_centre&c=news&id=412
http://www.malaysiaairports.com.my/?m=media_centre&c=news&id=440
http://www.themalaymailonline.com/malaysia/article/auditor-general-says-will-seek-govt-light-to-audit-mahb-over-klia2
http://www.thestar.com.my/news/nation/2016/03/22/liow-ag-still-carrying-out-klia2-cost-overrun-audit/
http://www.themalaymailonline.com/malaysia/article/pac-member-independent-klia2-audit-inadequate-will-not-uncover-cost-overrun
http://www.freemalaysiatoday.com/category/nation/2015/05/22/a-g-to-audit-klia2-says-transport-minister/
http://www.malaysiaairports.com.my/?m=media_centre&c=news&id=329

The Airport for budget airlines with an initial cost tag of RM1.7 billion shot up to RM4 billion, apparently because of design changes made during the construction phase. Failure to consult stakeholders by the project owner, Malaysia Airports Holdings Berhad, at the preliminary stage was blamed for the cost escalation. In fact the client came out with the statement that the 'cost overrun' is not due to increase in cost but to increase in scope. Repair of defects since project completion including for ground subsidence came to RM76.5 million. Ground breaking took place on the 30th August 2010. The terminal took 45 months to complete. Certificate of Completion and Compliance was obtained on the 2nd May 2014. The project was privately funded through Malaysia Airports' 5-tranche Senior Sukuk Programme.
In November 2014, the Auditor General said that he would seek government approval to audit the project. A month later, instead of giving approval, the Transport Minister established a 5-men independent panel to conduct the investigation. One Opposition politician expressed doubt that this panel would get to the root cause of the cost overrun. In May 2015, the Cabinet finally agreed for the Auditor General to audit the project. In March 2016, the Transport Minister said the audited cost will be announced in Parliament once completed.

5. Express Rail Link (ERL) Extension project

Government website:
https://www.audit.gov.my/images/pdf/2016/LKAN_2015_Siri1/FEDERAL/lkan%20aktiviti%20
http://www.klia2.info/news/2015/pac-finds-conflict-of-interest-in-klia-klia2-rail-linkpersekutuan%20new.pdf

The EIA report for the project is not available in the Department of Environment website. The original ERL links the Kuala Lumpur International Airport (KLIA) to the heart of Kuala Lumpur.

The construction of KLIA2 required the ERL to be extended. The ERL operator, Express Rail Link Sdn Bhd (ERLSB), was given the approval to extend its service to KLIA2 on the 2nd May 2014. The Superintending Officer for the project was the Chief Secretary of the Ministry of Transport as the Ministry was the project funder. According to the audit, the government did not get the 'best value for money' for the project. The Economic Council approved a budget of RM100 million but the final cost came to RM129 million. The project was awarded through design and build and direct negotiation. The project was completed a year after its original date of completion. The project started on the 15 July 2011 and was supposed to have been completed on the 31 October 2012. Two EOTs were given, resulting the date of completion to fall on the 26th March 2013, and finally on the 28th September 2013. Among the weaknesses found by the Audit team were:

1. Price negotiations were not conducted before the project cost estimate was approved by the Economic Council,
2. The Supplement Concession Agreement was not finalised until the time the audit took place even though the ERL extension was already in operation from the 2nd May 2014.
3. Compensation claim by ERLSB amounting to RM2.9 billion for the year-long delay was not yet finalised. The computation formula for the compensation did not benefit and protect the interest of the Government, and
4. The objective and purpose of the value management exercise did not result in expected savings.

The Public Accounts Committee found conflict of interest in the award of the project as the shareholders of the operator and contractor were the same. The project was awarded on direct negotiation basis.

6. Sultan Yahya Petra Second Bridge, Kota Bahru, Kelantan

Government website:
https://www.audit.gov.my/docs/BI/LKAN2011/Federal/LKAN%202011%20-%20Synopsis%20(ENGLISH).pdf

The EIA report for the project is not available in the Department of Environment website. Neither is there any information about the tender for the project on the website of the Department of Public Works. Public Works Department (PWD) implemented the project. Through direct negotiation, Konsortium I. S. Resources Sdn Bhd-RIS Capital Sdn Bhd was appointed as the contractor. Contract value was RM143 million. The project was supposed to have taken 30 months, i.e. 18th June 2007 until 17th December 2009. However this project had to be re-assigned by PWD to Aneka Prestij Sdn Bhd in March 2010 because of slow progress. The project was delayed by 2 years. And the cost increased by 24%, to RM177.6 million. Problem with the design of the bore pile system took 2 years to resolve.

Other website:
http://malaysiansmustknowthetruth.blogspot.co.uk/2012/10/forged-bond-delays-bridge-in-kota-baru.html

Public Works Department caught Aneka Prestij Berhad putting up a forged performance bond of RM7.15 million (equivalent to 5% of contract value). Payments were held back leading to project delay. A police report was lodged in April 2009, and subsequently a bode fide performance bond was presented by the company. Investigations into the company by the audit team failed to come up with the contractor's work history as it was not listed with the Contractors Service Centre, and at one point was operating with an expired business registration.

Trade and industry projects

7. Upgrading of Penang Hill Railway Project, Penang

Government website:
https://www.audit.gov.my/docs/BI/LKAN2011/Federal/LKAN%202011%20-%20Synopsis%20(ENGLISH).pdf

The EIA report for the project is not available in the Department of Environment website. The project valued at RM59 million was awarded to Alam Langkawi Sdn Bhd through open tender, though the call for tender cannot be found in any of the government websites. Contract period was 48 weeks. The project was completed on 31st January 2011 and the Defects Liability Period ended on the 31st January 2012. Construction and post-construction weaknesses were found by the audit team:

1. Delay in project completion,
2. Low quality upgrading works and weaknesses in service operations after handing over to the Penang Hill Corporation, especially on human resource management,
3. Incomprehensive operations manual,
4. Failure in carrying out maintenance for the train operations manual,
5. Public Works Department and Penang Hill Corporation did not manage used train assets properly.

Other website:
http://www.thestar.com.my/news/community/2012/02/21/on-track-to-excellence/

The project was tendered out by the Public Works Department but fell under the Ministry of Construction. It was a design and build contract.

Alam Langkawi Sdn Bhd won the best contractor award in the G7 category (Class A) during the 2011 Malaysian Construction Industry Excellence Awards (MCIEA) ceremony.

8. Samalaju Water Supply, Sarawak

Government website:
https://www.pmo.gov.my/dokumenattached/RMK/RMK10_Eds.pdf

Other website:
http://www.theborneopost.com/2015/04/07/ag-spots-2-flaws-in-pwds-management-of-samalaju-water-supply-project/

The 2012/2013 Economic Report classified this project under trade and industry subsector. The EIA report for the project is not available in the Department of Environment website. Neither is there any information about the tender for the project on the website of the Department of Public Works. The Samalaju node as part of Sarawak Corridor Renewable Energy is mentioned in the 10MP document (EPU 2010). Samalaju Water Supply (SWS) Project is aimed at establishing a reliable water supply network for the use of industries in

Samalaju Industrial Park which is part of the Sarawak Corridor of Renewable Energy. The State Public Works Department was responsible for the project. The project was funded by both the Sarawak state government and Federal government through Regional Corridor Development Authority (Recoda) from 2007 to 2014 amounting to RM494.84 million and total expenditure as at Nov 2014 was RM411.08 million or 83.1 per cent. The project was actually partially completed in July 2011. However it was not in full operation after the raw chamber at Sika Raw Intake was modified. Besides, the Sungai Similajau Raw Raw Water Intake which is supplying raw water to the project was still under construction and was behind schedule by 21% as of December 2014.

Other website:
https://www.audit.gov.my/docs/BI/8Media/1Media%20Coverage/The%20Star/2009/The%20Star%209.9.2009-17.9.2009.pdf

KKB Engineering Bhd was awarded the project in August 2009 on a design and build basis. The project involved the laying of 90 km of 800mm and 650mm-diameter mild steel cement lined pipes for the transportation of raw water from intake point in Bintulu to Samalaju Industrial Park. The project completion date was set for August 2011. The Department of Works and contractor signed the contract agreement on the 9th September 2009.

9. Main infrastructure at Muara Selatan, Kuala Terengganu City Centre, Terengganu

Government website:
https://www.pmo.gov.my/dokumenattached/RMK/RMK10_Eds.pdf
http://www.ecerdc.com.my/en/procurement/contracts-awarded/?view-by-year=2011

The EIA report for the project is not available in the Department of Environment website. The East Coast Economic Region is mentioned in the 10MP (EPU, 2010). The Economic Report 2014/2015 categorises any federal expenditure on regional corridors under trade and industry subsector. On the 24th August 11, the East Coast Economic Region Development Council announced the winning tenderer. The project was awarded the RM31.25 million contract to construct and complete the main infrastructure works at Muara Selatan, Kuala Terengganu City Centre to Norwest Holdings Sdn Bhd. Contract period was 87 weeks. The East Coast Economic Regions is developing Kuala Terengganu City Centre into a heritage waterfront city. Covering an area of 7km it radiates from the centre of Sungai Terengganu estuary extending north, east, and south of Kuala Terengganu city area.

Other website:
None:

10. Pengerang Raw Water Supply, Johor

Government websites:
http://www.malaysiangas.com/portal/document/publication/1463465199_JPDC.pdf
https://pic.petronas.com/media/media-release/Pages/2016/PENGERANG-INTEGRATED-COMPLEX%E2%80%99S-RAW-WATER-PROJECT-BEGINS-OPERATIONS.aspx

Other website:
http://insidemalaysia.net/wapi/mctweb.dll/getObject?MID=INSIDEMALAYSIA&ObjID=5794

The EIA report for the project is not available in the Department of Environment website. The information for this project is not available in any government website as it was commissioned by a subsidiary of a GLC. In 1st May 2014, Petronas, the national oil company, through PRPC Water Sdn Bhd, signed a a contract for the procurement, construction and commissioning of a Raw Water Supply project to the Pengerang Integrated Complex (also known as PAMER) with Konsortium Asia Baru-Putra Perdana Construction JV Sdn Bhd (KAP). The Petronas Board of Directors approved its Final Investment Decision on the 3rd April 2014. The PAMER project involved the development of several main infrastructures, namely the Seluyut dam and water impounding reservoir with 73 million cubic metre storage capacity; an intake pump station at Sungai Sedili Besar; a booster pumping station at Sungai Seluyut; a terminal reservoir at Bukit Panjang; and 90 kilometres of large water pipelines connecting all these infrastructures and to the PIC. The contract period was for 23 months. Although it is a state project, Petronas would pay first for the project which was expected to be completed in 2016. On the 18th July 2016, with PAMER commenced operations as scheduled. The construction team adhered to PETRONAS' strict health, safety and environment (HSE) standards throughout the project, recording 2.5 million of working hours without injury. The contract value was not released, only that it was between RM700-RM800 million.

Pengerang Integrated Petroleum Complex (PIPC) was launched in 2011 to locate downstream oil and gas value chain activities on a single plot of 20,000 acres.

Public utilities

11. Pantai 2 Regional Sewage Treatment Plant

Government website:
https://www.audit.gov.my/images/pdf/2016/LKAN_2015_Siri2/FEDERAL/4.%20AGR2015sr2%20-%20Federal%20Gov.pdf
http://lib.doe.gov.my/cgi-bin/koha/opac-detail.pl?biblionumber=12501
http://www.pantai2stp.com.my/?display=31-03-2015-6th-external-environmental-audit

This mega-project has its own website (http://www.pantai2stp.com.my/). The Ministry of Energy, Green Technology and Water was the project owner, the Sewerage Services Department was the Implementing Agency, Kumpulan Ikhtisas Projek (M) Sdn. Bhd. was the Project Management Consultant and Beijing Enterprises Water Group of Chine the deisgn and build contractor. The contract is worth RM983.25 million. Construction period was 4 ½ years, and was expected to be completed at the end of 2015. There is an EIA report for the project in the depository of the Department of the Environment. Pantai Regional Sewage Treatment Plant (Pantai STP) provides sewage treatment services for Pantai catchment areas covering 6,700 hectares. The catchment areas include Bandar Baru Sentul, Sentul Raya, part of Kuala Lumpur City commercial centers, Bangsar, Bukit Kiara recreational area, part of Old Klang Road and Petaling Jaya. The objective of Pantai 2 Sewage Treatment Plan project is to upgrade the existing aerated lagoon system into a mechanical system of 1.42 million PE which would increase the overall capacity to 1.80 million PE. The project was awarded through direct negotiation to BEWG (M) Sdn. Bhd. on a Design and Build method. The audit conducted in early 2015 found that Pantai STP would be unable to accommodate for any new development in the Pantai catchment area by 2035 as the capacity will reach its optimum development by 2020. Implementation of work scopes were found not to be in accordance with the contract conditions. Certificate of Sectional Completion (CSC) was issued prematurely. Process proving test as well as testing and commissioning of equipment were not fully conducted resulting in non-assurance compliance on effluent quality and equipment performance. Operation and maintenance had started before the issuance of Certificate of Sectional Completion (CSC). Finally the audit found poor construction quality and malfunction of equipment within short operating period.

12. Murum Hydroelectric Power Project, Sarawak

Government website:
http://jan101.audit.gov.my/index.php?modload=content&action=002&id=368

The project serves to feed electricity demand for the Sarawak Corridor of Renewable Energy (SCORE). Construction work began in 2008. It is capable of generating 944 megawatts of electricity. Sarawak Energy Berhad, a wholly owned subsidiary of the State Financial Secretary Incorporated is the implementor of the project. An audit carried out in April to August 2015 found the management of the project to be satisfactory, although still with a few issues:

a. An additional cash injection of RM530 million was required, raising the contract cost to RM2.98 billion,
b. Resettlement programme did not comply with the approved implementation mode,
c. Ex-gratia payment was not in accordance with the Cabinet-approved rate,
d. Implementation of the agricultural development programme was not satisfactory, and
e. Survey works and issuance of land titles to affected communities were yet to be completed.

Other website:
https://businesshumanrights.org/sites/default/files/media/121019responsetobusinesshumanrightsremurum.pdf

A Social and Environmental Impact Assessment was actually conducted, but the report is not accessible through formal channels.

13. Langat 2 Water Treatment Plant

Government website:
None

Other websites:
http://www.kettha.gov.my/portal/index.php?r=kandungan/parlimen_view&menu1_id=5&menu2_id=19&parlimen_id=83#.WFhP8PI97IU
http://www.mmces.com.my/our-business/water-waste-water/langat-2
http://english.astroawani.com/malaysia-news/langat-2-project-finally-take-30866
http://www.themalaymailonline.com/malaysia/article/why-langat-2-green-light-now
http://www.salcon.com.my/wp-content/uploads/2013/07/Three-companies-shortlisted-for-Langat-2-water-project.pdf
http://infrastructure21.com/industry-news/3346-construction-of-langat-2-starts-wednesday/
http://www.mstar.com.my/berita/berita-semasa/2015/06/10/projek-langat-2/
http://www.carigold.com/portal/forums/archive/index.php/t-504311.html

When asked in Parliament, the Minister of Enery, Green Technology and Water explained that EIA is not needed for the Langat 2 project. 13 companies bid for the project, but in the end it was awarded to 3 competing companies which then form a joint venture company involving MMC Engineering Services Sdn Bhd, Salcon and AZSB. Start date was 30th April 2014 and completion date was 30th April 2017. Contract value was RM993.89 million. Construction period was set for 36 months. The project however is suffering from delays and is expected to be fully complete in 2019. The project was managed by Pengurusan Aset Ai Berhad (PAAB)

The project was scheduled for construction in 2010 but was delayed because the Selangor government which is run by the Opposition, refused to issue a development order. The impasse was resolved with the signing of a memorandum of understanding (MOU) between the Energy, Green Technology and Water Minister representing the federal government and the Chief Minister of Selangor in on the 26th February 2014 to enable the Selangor government to issue approvals for the federal government to plan for the project in the state.

Agriculture and rural development projects

14 Upgrading and improving Teng Bukap/ Kampung Sira/ Kampung Nyabet/ Kampung Taiee Road, Kuching Division, Sarawak

Government website:
http://jan101.audit.gov.my/index.php?modload=content&action=002&id=368#p=1

The EIA report for the dam is not available in the Department of Environment website. The scope of works covers the construction of a 13.5 km 2-lane road precast/ premix 6 metres wide with shoulders on both sides of 2.25 m wide and 3 reinforced concrete bridges of 49 metres over 3 rivers. The contract was awarded to M/S Team Engineering and Management Services (TEAM) through direct negotiations for a contract value of RM50.2 million. The implementing agency was the Public Works Department. The audit found that the design was completed in 2005 but the implementation only started 5 years later resulting in cost increase of RM38.02 million. The negotiations over the contract price took 27 months to finalise. Variation order of RM2.67 milion was approved and the construction of the variation had been completed but the Supplementary Agreement had yet to be finalised and signed. Quality of work was not satisfactory in terms of use safety, compliance with standards as well as contract specifications and installation of road furniture.

15. Paya Peda Dam, Terengganu

Government website:
http://www.intosaiitaudit.org/LKAN2013_SIRI1/FEDERAL/LKAN%202013%20Series%201-%20Synopsis.pdf

The EIA report for the dam is not available in the Department of Environment website (though it is actually available from a private source). The dam was aimed at supplying water to farmers and residents of Besut and Setiu in Terengganu. The project was awarded by the Ministry of Finance to a joint venture of Syarikat JAKS Resources Bhd and Pembinaan Sujaman Sdn Bhd through direct negotiations. The contract sum was initially set at RM333.10 million, but was raised to RM343.55 million through a Supplementary Agreement. This was in additional to the initial RM4.5 million allocated for consultation services to design the dam, and RM150 million allocation for related works such as geotechnical, survey, topography and design by companies appointed by the Ministry of Agriculture and Agro-based Industry. Contract period was from 1st June 2010 until 30th November 2013.

The audit team concluded that the contractor was inexperienced and unqualified. It failed to adhere to contract clauses, used fewer equipment than required and appointed a subcontractor without the ministry's approval. RM530,000 was improperly paid to the contractor for earth works. The company had since refunded RM150,000, and the outstanding balance was being paid in instalments.

The contractor did not fully comply with recommendations in the EIA report, including skipping the arsenic minerals test, unsatisfactory waste management on used oil, and not forming the Emergency Response Team at the beginning of the project. The contractors also failed to engage with local residents in flood hazard mitigation. One of the dam's banks had been eroded, causing its wall to collapse. In December 2012, extraordinary floods took place in Besut which may have been due to heavy downpour and dam overflowing. July 2013, The project was only 65.12% completed as July 2013 instead of the scheduled 83.61 per cent.

Other websites:
http://detikmalaysia.com/index.php/2015/12/01/empangan-paya-peda-di-hulu-besut-kini-siap/
http://www.freemalaysiatoday.com/category/nation/2014/04/15/a-g-report-shows-msia-bleeding-itself-to-death/
http://www.buletinonline.net/v7/index.php/kontroversi-empangan-paya-peda-rm333-juta-pecah-atau-dipecahkan/
https://www.scribd.com/document/61026638/DEIA-PAYA-PEDA

The EIA report is available from the private website. The project which was supposed to have been completed on the 30th November 2013 took another 1 year and 4 months to complete at a total cost of RM440 million. Centre to Combat Corruption and Cronyism singled out the Paya Dam project which was awarded through direct negotiations as one example of repeated wastage of public funds and the lack of political will to make corrections that is slowly leading to the nation's demise.

Education sector

16 Banting Polytechnic, Selangor

Government website:
http://www.intosaiitaudit.org/LKAN2013_SIRI1/FEDERAL/LKAN%202013%20Series%201-%20Synopsis.pdf

The EIA report for the polytechnic is not available in the Department of Environment website. The client of the new polytechnic was the Ministry of Higher Education (now known as the Ministry of Education). The Project Director was the Director of Selangor Public Works Department (PWD). The project was implemented under 2 packages:

i. Package 1 included earth works and infrastructure works such as drainage system, road works, sewerage system and external water supply system.
ii. Package 2 involved building works which consisted of academic complex, lecture theatre, ICT centre, student centre, library, main store, garage, canteen, classrooms/laboratories, TNB substation, guard house and pump house.

Both packages under this project were implemented using design and build method through direct negotiation. Extensions of time were granted, the project . Variation Order and Variation of Price were in accordance with the regulations in force and contract clauses. Even so, the audit team found:

a. delay/shortfall in interim payments to the contractor due to insufficient allocation being transferred to Selangor PWD by the Ministry of Education Malaysia,
b. ground settlement at bus garage, hall, ICT centre, canteen, Sewerage Treatment Plant and Administration Block due to peat soil foundation,
c. poor quality mechanical and electrical works, and
d. suspended ceiling system used in outdoor/ semi-outdoor areas were not suitable as strong winds could blow ceiling boards away from their support grids.

17. Institute Aminuddin Baki, Negeri Sembilan

Government website:
http://www.intosaiitaudit.org/LKAN%202013/Siri3/Persekutuan/BI/SYNOPSIS%20AGR2013%20FEDERAL.pdf

The EIA report for the campus is not available in the Department of Environment website. Earthworks and building works for Institute Aminuddin Baki, Enstek Tpwn, Nilai, Negerri Sembilan, started in 2008 and completed on the 10th September 2012. This project was originally allocated a sum of RM158 million but was reduced to RM118 million. The project was awarded 5 EOT for 815 days, compared to the original contract period of 743 days. The delay in completing the project exceeding 2 years causing the targeted outcome of training professional officers from local and foreign country during the said period was not achieved. Poor planning caused approval of post by the Public Service Department to be received 12 months after the completion of the IAB Building, Enstek Town. It also caused assets to be received between 8 to 15 months after the building was completed. Furthermore poor quality construction works and unsuitable design which could endanger and cause discomfort to the participants.

18. Kelantan Matriculation College

Government website:
https://www.audit.gov.my/images/pdf/LKAN2014/Siri1/Persekutuan/LKAN2014%20siri%201%20-%20Synopsis.pdf

The EIA report for the campus is not available in the Department of Environment website. Allocation for the project was RM213.29 million. The Public Works Department (PWD) was appointed as the implementing agency on behalf of the Ministry of Education Malaysia (MOE). The user is the Matriculation Division, MOE. The Ministry of Finance Malaysia agreed to award the construction contract to Syarikat Promotion Mantap Sdn. Bhd. The contract worth RM155 million should have been completed in 104 weeks commencing from the date of site possession on 6 October 2009. Instead it was completed on 14 October 2013, after 5 EOTs totalling 721 days. The contractor also awarded an additional contract worth RM5.28 million to supply built in furniture. The project was implemented in 2 phases with the following scope of works:

a. Phase One included construction of an administrative building; multipurpose hall; resource centre; lecture halls; tutorial block; science laboratory, dormitory buildings (2,000 students); guard house; garbage storage building; pump house; chiller room;

electrical substation; chemical store; water tank; water reticulation; detention pond as well as mechanical and electrical works.

b. Phase 2 included 2 blocks of dormitory, 1 block of dining hall, 4 blocks of apartments (Quarters), pavilion, sports facilities and prayer room.

The weaknesses of the project are as follows:

a. price negotiation process took 15 months to be finalised,
b. late signing of Agreements on Procurement of Consultant Services between 67 to 116 days,
c. non-compliance with special provisions in the contract for work allocation to Class F Contractors,
d. non-compliance with standards for the design of squash courts, resulting in additional costs for the construction of glass wall,
e. late submission of As-Built Drawing and the Operation and Maintenance Manual,
f. inappropriate design and unsatisfactory construction works, and
g. unsatisfactory mechanical and electrical works which needed improvement.

19. Subang UniKL Malaysian Institute of Aviation Technology (MIAT) Campus, Selangor.

Government website:
https://www.audit.gov.my/images/pdf/2016/LKAN_2015_Siri1/FEDERAL/5%20-%20synopsis%20agr2015%20series%201.pdf

The EIA report for the campus is not available in the Depatment of Environment website. This campus is an extension to the existing campus in Jenderam Hulu, Dengkil, Selangor. The Public Works Department (PWD) was appointed as the implementing agency on behalf of the client, which is Council of Trust for the People [Majlis Amanah Rakyat (MARA)], Ministry of Rural and Regional Development (MRRD). The Ministry of Finance Malaysia offered the contract to Nadi Cergas Sdn. Bhd. through direct negotiations. The contract value was RM130 million. Construction duration was planned for 24 months from the date of site possession which was on 18 February 2013. The audit team found that the management of the construction of Subang UniKL MIAT Campus was good. Contract was signed within the stipulated time; interim and advance payments were in order; and the Performance Bond and insurance policies complied with the terms and conditions of the contract. In addition, PWD established a good monitoring mechanism to monitor work done by the contractor. The project incorporated the result of value management laboratory in accordance with the Government's guidelines. However, there were several shortcomings:

a. the contractor failed to complete the project within the stipulated extension of time,
b. the issue over the construction site for taxiway had yet to be resolved,
c. delay in finalising price negotiations, and
d. Unsuitable designs, unsatisfactory quality of construction works, and faulty electrical works.

Health project

20. Kluang Hospital, Johor

Government website:
http://lib.doe.gov.my/cgi-bin/koha/opac-detail.pl?biblionumber=13589

https://www.audit.gov.my/docs/BI/LKAN2011/Federal/LKAN%202011%20-%20Synopsis%20(ENGLISH).pdf
The preliminary environmental impact assessment of the proposed development of Kluang Hospital is available in the Department of Environment's repository. The Ministry of Health Malaysia (Ministry) signed an agreement with Kluang Health Care Centre Sdn Bhd (Kluang HC) to construct the Kluang Hospital, Johor, with a capacity of 256 beds to replace the existing hospital. The project was awarded as a design and build contract. The Secretary General of the Ministry was designated the Projector Director and the Director of Engineering Services as representative of the Project Director. The project was completed on the 12th October 2011 and commenced operations on the 30th December 2011. The weaknesses of the projects are as follows:

2. Appointment of consultants which took 66 months,
3. Professional consultant fees was overstated by RM0.74 million and RM0.62 million had been paid,
4. Consultant fees amounting to RM0.75 was paid even before the contract was signed,
5. The basis for EOT 2 and EOT 3 was questionable,
6. Low construction work quality,
7. Acquisition of imported equipment worth RM11.64 million was made without prior approval of the Ministry of Trade and Industry even though it exceeded RM50,000, and
8. 158 units of completed quarters were not yet occupied by the hospital staff.

Other websites:
http://www.propertyguru.com.my/property-news/2012/1/33671/new-rm397m-kluang-hospital-officially-opens
http://www.protasco.com.my/constructions.html
http://www.freemalaysiatoday.com/category/nation/2012/10/15/pac-chief-cuts-off-deputy-over-mrt-issue/

The project cost came to RM397 million. During a press conference, the Public Accounts Committee, Mr Tan Seng Giaw, posed the question over the need of direct tender and lack of transparency when awarding the project. He also said that the specifications were not followed.



www.constructiontransparency.org

cost@constructiontransparency.org

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