



# INVIGORATING ECONOMIC CONFIDENCE IN MALAYSIA

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## ABOUT G25

G25 plays an active role in civil society as an advocate for moderation in Islam in accordance with the principles of Wassatiyah and Maqasid Syariah. These principles are in line with the objectives of achieving higher standards of governance in the administration of the country. Good governance means upholding the integrity, transparency and accountability of public institutions to ensure a clean and responsible government. These institutions also have a primary duty to protect the rights and freedoms of citizens under the Federal Constitution and uphold the rule of law to ensure fairness and justice for all.

G25 believes that with sensible policies and good management, especially in dealing with the delicate issues of race and religion, Malaysia has bright prospects to be a successful country. It can be a model for other majority Muslim countries that Islam, democracy and human rights are compatible with each other.

G25 produces articles and reports to convey its message of moderation in religion and good governance in public administration. It is also active in organising seminars and participating in public forums to present its views and engage with other groups in civil society on the important issues affecting our multiracial society.

G25 wishes to see Malaysia develop into a successful majority Muslim country based on respect and tolerance for its diversity in race, religion and culture.



# TABLE OF CONTENTS

<b>EXECUTIVE SUMMARY</b>	<b>v</b>
<b>PART I: ECONOMIC AND WORKFORCE REFORMS</b>	<b>5</b>
A. Macro-Economic Policies	5
Rising Prices, Ringgit Depreciation, Low Wages and Declining Disposable Incomes	6
Removing the Fiscal Drag on Growth	10
Reform Tax Structure and Widen the Tax Net	12
Addressing the Narrowing Current Account and Reversal of Capital Flows	18
Review the Economic Efficacy and Impact of GLCs and GLICs	19
Address Inequality and Strengthen Programs for the Bottom 40%	20
B. Workforce and Workplace Reforms	22
Revamp Labour Policies to Promote Use of Technology, Skilled Jobs, Higher Wages	22
Strengthen Active Labour Market Policies, Address Dependence on Foreign Workers	22
Better Alignment of Education Policies to Employability	24
Demand Greater Role for Industry in Procuring Workforce Requirements	24
Prioritize Contestability and Performance-Based Cost Effectiveness	24
Streamlining of Qualifications, Occupational Standards and Competencies	26
Improve Employability of University and TVET Graduates	26
Address Looming Challenges and Impact from Disruptive Technology	27
Continue to Favour Clusters and Corridor-Based Economic Activities	27
Revamp Governance of Universities with More Autonomy	28
Ensure High Performing Primary and Secondary Education to Build Pipeline of a High Quality Workforce	28
Improving Workers Welfare and Capacity to Exercise Worker Rights and Privileges	34
<b>PART II: STRUCTURAL REFORMS</b>	<b>37</b>
A. Independence and Strengthening of the Judiciary	38
Measures to Ensure Independence of the Judiciary	38
Restore the Legal Framework on the Clear Separation of Powers	38
Transparent Process and Reforms in the Appointment and Promotion of Judges	40
B. Dynamic Legislative System	41
More and Expanded roles for Parliamentary Committees	41
Maintain Certainty in the Administration and Legislation of Islam	44
C. Improving Public Sector Performance	46
Independence and Good Governance in Public Sector Institutions	46
Raising Standards for the Civil Service	54
D. Reforms for Clean Government	58
Closure of the 1MDB Case	58
Preventing Corruption in the Public Sector	60
Preventing Corruption in the Public-Private Space	62
Strengthen the Role of the Integrity Institute of Malaysia	65

# INVIGORATING ECONOMIC CONFIDENCE IN MALAYSIA

## INTRODUCTION

Over recent years, Malaysia has been experiencing significant changes in the domestic environment while coping with global economic developments of falling commodity prices and a changing regional and global competitive landscape. Developments on the domestic front have impacted responsiveness of capacity to meet global challenges. Political and social stability which investors have taken for granted in the past, are now pertinent factors in forming investment decisions. Developments on the religious front as well as concerns on the rule of law, governance within key institutions and fiscal management are factors now given greater prominence by investors and fund managers.

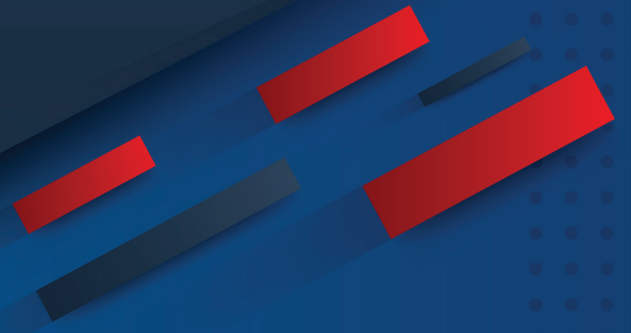
G25 has been observing these developments with acute concern. While the government has undertaken brave measures to ensure the economy will expand on track such as finally implementing the Goods and Services Tax ("GST"), approving the English dual language programmes, etc., other issues centering on governance, the depreciation of the Ringgit against regional currencies, as well as other negative financial developments are emerging as tipping-point risks which, if not corrected, will weaken economic prospects.

Given limited resources, it is not possible to address all issues of concern facing the nation. For the near-term, G25 is addressing as priority, selected issues which we view as fundamental to re-invigorate investor confidence and ensure that Malaysia will remain on investors' radar screen within the more competitive landscape of regional economies now providing equally if not more attractive investment opportunities. G25 feels it is important to take stock of issues facing the nation, both economic and structure, and take corrective actions to ensure that Malaysia will not lag the rapid economic advancement that is happening in the regional economies.

The proposals are arranged in two parts: Part I covers selective issues on the macro-economic front and the critical reforms needed on the labour market and workforce issues; while Part II details the many structural issues, focussing on checks and balances in a parliamentary democracy and overall governance across the judiciary and all public sector institutions.

On the macro-economic front, G25 is focusing on a few selective areas which we view are critical within the short window for timely action. In parallel, we view implementation of structural reform actions as equally essential to enable the adopted sound policy measures recommended on the macro-economic front to be effective and achieve its objectives. Accordingly, we have undertaken significant work on our own as well as taken on board the suggestions of other institutions in compiling this range of policy measures and structural reforms that are necessary to restore Malaysia's lead position and attractiveness among investors. For example, many of the structural reform measures are also taken from work by Institute for Democracy and Economic Affairs ("IDEAS"), the Center to Combat Corruption and Cronyism ("C4"), the Malaysian Economic Association and Transparency International in the areas where G25 supports the recommendations advocated.

# EXECUTIVE SUMMARY



# INVIGORATING ECONOMIC CONFIDENCE IN MALAYSIA

Measures to reinvigorate economic confidence and alleviate concerns about the impact of political as well as social stability on economic confidence needs to be addressed urgently. A changing competitive regional and global competitive landscape amidst increasing fears about the domestic developments which shows deteriorating observance by authorities of the rule of law, governance within key institutions and fiscal management are making investors accord higher risk premium on investments in Malaysia. Further rising religious tensions add to these risks.

G25 has been observing these developments and have looked at the more critical areas where reforms are urgently needed to reinvigorate investor confidence and place Malaysia back as a place of first choice for new investments and a place of choice to live and work, not only for foreign and domestic investors, but also for our talented workforce. This report details G25 proposals in two parts, touching initially on economic and workforce issues before moving to structural reform focused on the distinct separation of Parliament, Judiciary, and Executive Functions to strengthen the foundations for economic growth. Recommendations have consolidated those made by other CSOs which G25 supports, including primarily IDEAS, International transparency, C4 and the Malaysian Economic Association.

## PART I : ECONOMIC AND WORKFORCE REFORMS

### A. Macro-Economic Policies

#### Rising Prices, Ringgit Depreciation, Low Wages and Declining Disposable Incomes

The most important macro-economic statistic giving rise to deep anxiety for all Malaysians is the seemingly unrelenting rise in the level and pace of prices. Persistent inflation imply falling well-being and wealth, including from the sharp depreciation of the Ringgit. Hopelessness is compounded by low wages amidst stagnating wage levels and declining disposable incomes. Further, emerging increases in unemployment worry, in particular, the youth with tertiary qualifications. The government must address rising prices, but not with populist policies such as general subsidies on essential products and services nor the reintroduction of price controls or caps on profit margins. These direct intervention mechanisms are economically costly and unsustainable. Government must not generate false expectations about any immediate remedy for this malaise given the difficulties in reversing the factors causing the suffering.

The slow rise in inflation is mainly attributable to costs factors from adjustments to administered prices and the impact on fresh food items from unfavourable weather conditions. The effects of GST on prices have largely dissipated helped by lower fuel prices. But the resumption of fuel increases and ringgit depreciation will continue to cloud the outlook.

It is important to note that rising prices has become a deep concern because real wages are also declining amidst low disposable incomes. The combination of rising prices, low disposable incomes and declining real wages are making workers unable to cope with the situation and causing an overall decline in workers' economic well-being.

Policy induced constrains in competition on procuring essential products have also eroded disposable incomes. Lack of competition arising from crony arrangements through exclusive licences granted to monopolies, oligopolies and special import or operating permits or franchises have debauched price setting. Declining wage levels in real terms have made it difficult for households to absorb rising price levels for daily necessities. This is due in part to poor investment and labour policies, disquieting rent seeking and vested interests in profiteering from low paying labour-intensive production with high dependency on migrant low skilled workers. We need to move away from this low skill, low wage and low productivity culture and ecosystem.

The issue of rising prices cannot be addressed by itself. What is needed is a holistic approach of dealing not just with rising prices, but a package of measures to enable workers to manage higher living costs by removing protectionist policies to increase disposable incomes and addressing the dysfunctional labour market through better policies on human resource management to move away from the low skills low wage culture to jobs which are higher skilled and command higher wages. There needs to be a coherent policy package to enable a competitive labour market with higher wages, aligned to the vision of moving up the value chain of a developed economy and higher disposable incomes from better competition in the market place. Better competition will also allow price increases to be contained.

### a. On rising prices

The cost-induced inflation means that traditional demand management monetary policy has limited flexibility. For the immediate period, however, well targeted financial support packages would be needed to ease the price burden on the poor. Expand BRIM by introducing vouchers or stamps for food or defined services to the qualifying below 40% households to better influence how such support are utilized to promote healthy living and family well-being.

In addition, policies should be directed to increase awareness on causes of cost-push inflation, that it is beyond GST, but a range of other factors. Government must do more to prevent excessive profiteering by business service providers.

For the longer term, revive agriculture policies aimed at promoting food sufficiency through modernisation of the cultivation of cash food crops.

### b. On increasing disposable incomes

Next, removing the most abominable protectionist policies artificially forcing prices to be higher than world levels on food, essential services and durable goods will generate better capacity to manage cost push induced rising prices. Most important is to remove the protection on the car industry by reducing the excise duties on cars and restrictive oligopolistic import permits. Studies show that removing import and excise duties on cars can increase household incomes by as much as 30%, enabling households to better manage rising prices.



### c. On increasing wage levels and workers' welfare

Defective labour policies are the underlying reason for the current situation of stagnant wages and preponderance of low skilled low paid jobs.

Malaysia needs to compete on greater investments in equipment and technology to deliver higher skilled jobs and higher wages with higher productivity through extensive reforms in the labour policy to enable wages to increase in line with skills and productivity aligned with the objective to move to a high-income economy.

#### Measures include:

- Formalize the certification of qualifications and skills while asking industry to align or benchmark higher wages to such occupational norms and standards. It is critical to reverse policies favouring dependency on low cost foreign labour and the race to the bottom of competing on low skill and low wages production model. Political will to reform policies away from supporting cheap foreign labour, including corrupt foreign labour recruitment practices are needed. Measures such as a levy imposed on employers for foreign labour must be significant enough to help equalise cost of foreign and local labour. Hiring of foreign workers must be through reformed, and simplified processes, including having a one-stop single institution in charge of foreign workers. Subject to clear simplified regulations, employers sourcing workers directly from abroad will go to the one-stop institution for approval.
- The incentive environment towards a well-functioning labour market includes creating an incentive driven environment for employers to acquire technology and equipment operated by higher skilled worker to raise productivity. Incentives, including access to finance must be tied to automation, such as incentives to SME which reduce employment of foreign workers and raise ratio of capital investments to labour. Several other measures to revamp the management of reliance on foreign labour are suggested to ease the downward pressure on wages.

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### Protection of migrant workers

In line with a target of developed economy status by 2020, Malaysia should also support protection of foreign workers in the country. Terms and conditions of work of migrants are regulated by the Employment Act 1955 and the Workmen's Compensation Act 1952. Issues regarding relations between employers and migrant workers are covered by the Industrial Relations Act 1967, while labour unions are regulated by the Trade Unions Act 1959. Migrant workers, whether documented or undocumented are also protected by Article 8 of the Federal Constitution, namely equality before the law and equal protection of the law. Another issue is responsibility of foreign worker now do not rest with employers since recruitments are by outsourcing companies under Ministry of Home Affairs. There is now an issue that employers of foreign workers are technically not accountable to ensure reasonable and fair working conditions and treatment of foreign workers.

#### There are several legal problems that migrants in this country face:-

- Equality before the law: This equality is reflected in the Employment Act 1955 which applies to all workers, irrespective of whether the person is a local worker or a foreign worker. Malaysia should put in place a system of ensuring rights of foreign workers as provided by the Federal Constitution.

- **Outsourcing of migrant workers:** The recruitments policies and procedures needs reforms. Government to fully implement industries' call that firms employ foreign workers directly subject to governance and regulatory oversight of the one-stop agency on foreign workers in Malaysia. This agency is accountable to implement rules, approve employers' applications and exercise overall oversight on foreign labour practices in Malaysia.
- **Seizing of migrants' passports:** Stop the illegal practice of seizing migrant workers' passports and replace with other procedures to ensure workers observe conditions of employment.
- **Access to justice:** one stop agency on foreign workers must also ensure foreign workers have access to justice as an employee in Malaysia.

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## Removing the Fiscal Drag on Growth

The contribution of the public sector to overall growth has declined and even more disheartening is becoming a drag on growth. A drastic realignment within both the operational and development expenditures at all levels of government is urgently needed. The falling development expenditure ratios in the total budget (development expenditure has declined from 31% of total budget in 2010 to only 18% in 2016) should be urgently reversed to restore public sector contribution to GDP growth. These reforms need to be accompanied by a significant restructuring of public sector work practices as well as the workforce.

With the ratio of revenue to GDP remaining high, the government is in a good position with better expenditure policies to continue reducing the fiscal deficit. Operating expenditure has expanded drastically at the expense of development outlays thereby stunting the building of capacity for catalysing future growth. Operating expenditure currently consumes 99% of revenue, resulting in reliance on rising government debt to fund development with implications of risk to sovereign ratings leading to higher service payments and fuelling depreciation.

## ACTIONS

Invite the IMF and World Bank to undertake a comprehensive assessment of fiscal policy efficacy and undertake fiscal sector reforms.

Greater transparency in the composition of expenditure cuts is needed through more objective assessments about impact risks to determine where cuts can cause least damage. The higher cuts in education and health are detrimental to capacity building and sustaining a viable workforce.

The government must address the decadent effects of corruption which is the main cause of the rising costs of doing business as well as undercutting efficiency from the leakages of expenditure into unproductive activities and wastage.

Review the size of government, given greater reliance on technology. Reduce the subsidy on tertiary education with autonomy given to universities to be market based and compete to improve rankings to attract students. Make funding for tertiary education contestable among public and even private institutions.

## Reform Tax Structure and Widen the Tax Net

The tax regime must be reformed to move to a structure more suitable for a high income economy. In the meanwhile, adjustments to improve the current tax structure can be undertaken.

The one-off impact on prices from the implementation of the GST has diminished and benefits of GST in revenue collection are becoming more evident. The new tax covers a wider base of companies and establishments than the previous sales tax. Profiteering by unscrupulous traders did contribute to raising prices, but these have now largely dissipated but will require continued close monitoring. Another teething problem is ongoing technical delays in giving GST refunds to companies. It is accepted that a further shortcoming is that the GST has too many exempted and zero rated items as compared to the successful experiences elsewhere.

### ACTIONS

We propose that the government set up a Panel for a Public Review of the Tax system, comprising mainly business leaders and tax experts.

The GST must remain and implementation improved, while reducing direct taxes. We strongly advocate that it is prudent for the government to maintain the GST rate of 6 %. There could be a weak case to reduce the rate to say 4% but only by counter balancing through a judicious reduction of the exemptions list so as to make GST more effective in terms of coverage. The government must not bow to populist or uninformed pressures to remove or reduce the GST rate to zero. Such a major policy reversal will have dire implications for Malaysia's international standing and sovereign ratings, not to mention erode the revenue base significantly.

Customs, which manages the GST, must put greater efforts into making the GST rebate mechanism more efficient. It must increase manifold the provision of information on collection trends while being more forthcoming in responding to complaints through greater openness and provide feedback on how complaints have been handled through publication in wider dissemination channels.

The government should take advantage of GST by moving towards widening the tax net and restructuring the company and personal income tax regime in line with regional trends to keep tax rates competitive to attract talents and investments. Malaysia should consolidate all incentives into a common effective tax for corporations, enabling corporate tax to fall to 20 % for big corporations and 15% for small firms and SMEs. At the same time consolidate personal income tax relief into three major buckets to simplify reliefs. These measures together with consolidating tax incentives to corporations will raise revenues by making the tax buoyancy more responsive to GDP growth. Tax rates on individuals and companies should be competitive with regional peers. Other measures include: incentives to bring informal sector into the tax net by introducing a flat tax of 10% and a collaboration with local authorities to collect data and tax estimates at point of licensing; address rent seeking behaviour and include all foreign migrant business in the tax net; and government contracts to be given only to those registered in the tax data base and deductions of flat 10% of contact payments made until tax liabilities are paid.

A reduction of the excise duties and domestic tariffs on cars will help reduce the household debt burden among the younger city population. The "sin" taxes on liquor and tobacco products are extremely high. They have resulted in smuggling and counterfeiting, at a high cost to government revenue. Government should refrain from further increases in "sin" taxes which would become counterproductive. Instead these taxes should be reviewed and reduced

to make it unattractive for smugglers to operate, as experience elsewhere has shown that such a policy usually leads to larger collections.

Greater transparency and better management of government debt and contingent liabilities will serve to ameliorate repayment abilities and sustain international credit ratings. With GST, the lower income group are now paying taxes compared to not being taxed before. Hence, they are naturally concerned on government spending, whether there will be better services affecting the poor. MOF must be more transparent on government expenditure—releasing details of allocations and not only the consolidated expenditure items. The current situation of cuts on health and education allocations is seen as affecting the poor, and hence the growing grouses to abolishing GST. MOF needs to make new efforts on expenditures impacting the lower income groups, now that they are falling into the taxation net through GST (the poor has high propensity to consume and any income windfall will be spent on goods such as television and other consumer durables, all within the GST net). Expenditures on scholarships and education support will be seen as assisting the poor.

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## Addressing the Narrowing Current Account and Reversal of Capital Flows

Restrictions on foreign exchange trades in the Non-Deliverable Forward (NDF) market, while intending to support development of the on-shore hedging market, has given rise to negative sentiments among long-term overseas investors and triggered fears of Malaysia's exclusion from the global bond index, within which the share of the country's assets was quite prominent. Together with speculation that Malaysia may soon see external balance registering deficits, because of lack of dynamism in goods and services exports, slowing FDI and portfolio inflows, could ignite possible foreign exchange volatility.

## ACTIONS

Policy measures must continue to emphasize shoring up the competitiveness of the export sector, particularly for manufacturing to move to higher value activities involving innovative technology to raise productivity and thereby sustain Malaysia's position in the global supply chain. Better financing of technology driven investments and innovation in technology-oriented delivery of goods and services will spur innovation better. Adjustments in financing include moving away from providing loans to adopting the global practices of financing equity stakes and providing technical support to grow IT innovation.

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## Review the Economic Efficacy and Impact of GLCs and GLICs

The lack of efforts to lessen and remove the dead-weight driving the high costs of doing business by the insidious presence of GLCs and GLICs in almost all segments of the economy has become precarious for the country. In some segments of the economy GLCs have become so dominant they are actually stunting growth with their uncompetitive and privileged behaviour.

## ACTIONS

Many reviews on the economic inefficacy and negative impact of GLCs and GLICs have already been undertaken and the required corrective policy measures identified but inadequately or never implemented.

The government should not hold large blocks of equities in GLCs unless these GLCs are strategic. Non-strategic GLC should be privatised and government should focus its role as a regulator and facilitator.

In segments where GLCs are slated to continue to be present, they must operate on a strictly commercial basis free of government interference and preferential treatment. GLCs and GLICs must not be exempt from any provisions of the competition law.

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## Address Inequality and Strengthen Programs for the Bottom 40%

Assistance programmes should place greater attention to promoting the building of capacity and capability of the disadvantaged, other than the need for adequate sustenance, health and shelter. A bold revamp should be undertaken on managing access to education and business opportunities for members within the bottom 40% and other disadvantaged citizens. The criteria for participation must only be based on the main principles of need plus merit and non-discriminatory on the basis of race, religion or status must be transparently pursued.

## ACTIONS

Existing programmes and institutions supporting the needs of the bottom 40% should continue but must be revamped to remove the rent seeking and perceived discriminatory nature distorting the effectiveness and blemishing the programmes. The revamped new generation of supportive assistance programmes will consider all ethnic groups fairly and equally as long as they are in the low income 40% of households or business owners.

Other community assistance programmes must be based on market-friendly and market-based criteria taking into consideration the needs and merits of the applicants, free of race-based quotas or any such discriminatory practices. The focus of corrective policy actions must be on relative poverty and not race, taking into account regional or locational disparities, especially for Sarawak and Sabah.

Special attention must also be given to those with physical or other impairments, requiring assistance, including orphans and refugees.

Procedures and criteria for targeting the qualifying citizens within the bottom 40% and in the delivery of assistance must be transparent. For all the above purposes, it is best to establish an Equal Opportunities Commission as recommended by the NEM, to ensure fairness and address undue discrimination when deceptive abuses by any dominant group are encountered.

A more direct support for the Equal Opportunities Commission is to introduce a legal framework to streamline non-discrimination in employment in all government departments and the private sector. Malaysia has reached a mature economic status to put in place the Anti-discrimination law (outlawing discrimination on basis of race, gender, religion) to give the legal basis underlying the proposed Equal Opportunities Commission.

## B. Workforce and Workplace Reforms

In addition to reforms of the labour policies (other than affecting foreign workers addressed in Part A above) labour policies must not only focus on employment creation but also on labour rights and welfare. Malaysia needs to upgrade its reputation on guaranteeing workers' rights and undertake measures to ensure workers can exercise their rights to higher wages, good working conditions, etc.

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### Strengthen Active Labour Market Policies, Address Dependence on Foreign Workers

Ensure active labour market policies and an appropriate worker safety net are in place to assist workers to participate meaningfully in the inclusive equitable growth aspiration of the country. Without sustained improvements in productivity in the face of rapid innovative technological changes, compensation dispensed to workers cannot increase or even keep pace.

The outlook for labour productivity is challenging given the growing adverse demographic trend from aging and greater competition in attracting investment flows globally and regionally.

### ACTIONS

The worker safety net and flexible labour laws supportive of industry and job creation needs to be reviewed and planned actions already under discussions for many years implemented.

In particular, mandatory unemployment insurance should be quickly put in place as it has been more than adequately discussed for more than 15 years among all stakeholders. Other safety net schemes like health insurance should not require another 15 years to be realised.

Better efficiency in allocation of resources and a conducive business environment are needed to attract investments to generate the high-value added future jobs to match the higher skills required of Malaysians. The regulatory burden and the degree of corruption perception will need to be transparently addressed with bold measures.

Improved productivity will lead to reduced reliance on labour intensive processes which will also as a corollary diminish the volume of foreign workers required to support growth. It is therefore important to lessen the presence of GLCs and GLICs in the market, with perceived preferential treatment, cloistered operating environment and competition unfriendly practices constituting the main obstacles holding back productivity improvements.

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### Better Alignment of Education Policies to Employability

The concerns of employability of graduates, especially from public universities grows deeper each day. This means that on-going efforts are not enough.

## ACTIONS

Education policies must be strategically re-designed to ensure that academic and TVET training institutions provide workers with the skills and knowledge required for the current and future labour market which is aligned to Malaysia's economic objectives and aspirations.

Government must demand that employers take an active role in moulding the workforce development plan consistent with the desire to sustain and raise labour productivity.

The concept of life-long learning must be given operational meaning and not be mere buzz words. Workers need to be directed to or given the opportunity to acquire new skills and competencies. Policy initiatives should focus on modular approaches in progressions towards higher levels of skills training, allow flexible pathways for transfers between qualification programs and promote recognition of prior learning on-the-job and experience.

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## Demand Greater Role for Industry in Procuring Workforce Requirements

Further entrench the role of the HCDC, which has participation from all related ministries and agencies with representatives of industry (employers and employees), and experts that can coordinate and develop a national workforce development strategy through a consultative process.

## ACTIONS

The participation of industry representatives must be better institutionalized and their roles and responsibilities defined, if needed through regulations or legislation. Start-up funding to establish the administrative framework of the industry skills committee for each qualifying sub-sector should be provided to facilitate the proper channelling of the contribution of industry and employers to human capital development as well as push the productivity growth agenda.

The Environmental Scan (ES) spearheaded by MIDA and ILMIA should become the primary instrument to assess the skill gaps and future job creation of key industry subsectors through their respective industry skill committee. The ES will align the skill gaps and future jobs with the curriculum and training packages of training providers. Direct industry involvement and ownership of the ES would ensure the availability of attachments and apprenticeship places, while fostering curriculum design, instructor exchanges and job placements. These interventions are expected to have an impact on lifting the compensation of workers as their employability, capabilities and experience levels together with productivity would be raised in line with the requirements of industry.

## Streamlining of Qualifications, Occupational Standards and Competencies

Recent efforts to streamline qualification standards, competencies and their proper certifications should be redoubled. Making industry and the economy adhere to occupational norms and standards are key requirements for aligning workers' wage/salary at higher levels in recognition of a better skilled workforce and higher productivity.

### ACTIONS

Impose a common set of accreditation standards that reflect the occupational standards and competencies developed. Separate accreditation processes must be developed for curricula plus training packages; training providers and instructors/lecturers.

These accreditation standards should be transparently codified and disseminated on line.  
Improve

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## Improve Employability of University and TVET Graduates

The current cohorts of graduates entering the workplace are experiencing difficulties in finding jobs. The job market is weak because of recent softness in global markets, job losses in sectors that have driven Malaysian growth in the recent past and low productivity. There are issues of misalignment in the field of studies of graduates with market demand compounded by deficient quality from gaps in technical and soft skills. Other factors include unrealistic demand for compensation and reluctance to relocate to where the jobs are.

### ACTIONS

Expand employability programs offered by HRDF, other agencies and TalentCorp. But these programs need to be developed with greater employer participation per the HCDC referred to above. Employers may need to be provided with fiscal incentives to expand participation.

Enhance employment services provided by government at JobsMalaysia locations and Urban Transformation Centres (UTCs), to help prospective and unemployed graduates in job search, join employability programs, upskill or reskill and access support for relocations to where the jobs are.

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## Address Looming Challenges and Impact from Disruptive Technology

The Government must begin to purposefully prepare for the workforce and workplace dislocation and disruption stemming from innovation and technological changes. We already observe that many occupations are being made redundant, e.g. in routine office administrative work, factory assembly lines, storage and warehousing, service jobs like cashiers, bank tellers, etc. Loss of these types of jobs have a heavy bearing for women in the workforce, as these are the jobs that women have a preference and inclination for.



## ACTIONS

Focus greater efforts on the skills needed to fill the new jobs and occupations as well as drive productivity arising from technological innovations, automation, robotics, and artificial intelligence stemming from big data analysis and accumulation.

Use the Environmental Scans (ES) and the Critical Occupation List (COL) to gauge the impact on the future workforce profile and the new skills to bridge and attract digital age investments.

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## Continue to Favour Clusters and Corridor-Based Economic Activities

The efforts to create production platforms through regional clustering and corridor-based incentives to attract innovative investment to drive high valued added growth remains relevant. These initiatives have proven to have impact in sustaining productivity and fostering growth from strong spill over effects from economies of scale and efficiency in delivery of supporting services. This will also help to bunch the locations of academic and TVET training providers and bring benefits to student workers from exposure to the work site environment through attachments, placements, instructor exchanges and better coordination between training providers and industry for curriculum review and development.

## ACTIONS

Design practical policies to build up the ecosystem for entrepreneurship and application of innovative processes. These include easing the entry and exit of entrepreneurs, flexibility in the operations of venture and seed capital funds and simplification in bankruptcy regulations to promote vibrancy in entrepreneurship. Successes in the corridor approach should be replicated.

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## Revamp Governance of Universities with More Autonomy

## ACTIONS

Universities should be given the full mandate to operate independently within broad parameters across academic programmes and financial management with freedom to select all categories of staff. Vice chancellors and top administrators cannot be politically appointed. More collaboration with foreign universities must be fostered.

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## Ensure High Performing Primary and Secondary Education to Build Pipeline of a High Quality Workforce

Quality primary and secondary education is necessary to break not only equity barriers along income lines, but also income equity along gender, ethnicity and geographic dimensions in order that growth can be inclusive and hence, more sustainable. As with the link between education and economic growth, equality of access to basic quality education is necessary and sufficient factor in promoting equality of opportunities in a society.

Malaysia's performance in standardised international student assessments is well below the performance of the high-income economies that Malaysia aspires to compete against for innovation and knowledge-based investments.

### ACTIONS

A total reform on the governance framework is required, both in policy design and implementation at the Ministry level and for governance at schools level.

Measures are needed to transform the teaching profession to significantly upgrade the quality of teaching. To retain the best teachers a teacher licencing system may be needed together with a better accreditation framework for the teaching profession.

Malaysia's education system administration is among the most centralised in the world. Autonomy and decentralisation of school management by freeing decisions on hiring teachers and determining salaries, textbook choices and curriculum flexibility improves delivery outcomes. Excessive centralization is a major impediment to parent participation, preventing proper accountability and better school performance.

Transcend the equity in access to quality education caused by gap between private and public schools by ramping up the quality standards of national schools.

Foster equity in learning achievement by adopting a model similar to Finland which recognizes that children have diverse learning capabilities and special intervention programs are needed by attracting the best and brightest to the profession to become special education teachers.

Government should replicate successful and working models tested in various locations and widen their application throughout the country. These include the Yayasan Amir Trust school model which focus on an array of best pedagogical practices that encourage interaction and stimulate learning to produce a better-rounded student. There is also the Teach for Malaysia program which recruits graduates with very strong academic credentials, leadership and management skills and an aptitude for teaching for placement in secondary schools. Finally, we advocate strongly for the greater use of English language instructions in schools, which will restore proficiency in the language while fostering better ethnically balanced schools like in the past.

## Improving Workers Welfare and Capacity to Exercise Workers Rights and Privileges

Malaysia has subscribed to UN conventions on workers' rights. It is imperative that we have a plan to ensure protection of these rights to workers. Specific measures include: a) A National Wage Council on the Singaporean model with participation of workers, employees and government to ensure that workers' wages are increased annually. Increase in wages must reflect cost of living as well as productivity and performance; and b) Labour should be given rights to organise themselves to enable representation to employers and the government to make demands on work conditions including wages and fair labour market conditions.

## PART II: STRUCTURAL REFORMS

### Distinct Separation of Parliament, Judiciary, and Executive Functions to Strengthen the Foundation for Economic Growth

Malaysia is encumbered by a malaise of twin dynamics--growth sputtering at a moderate pace for nearly two decades and the asphyxiating emergence of poor governance which is threatening the upside of the growth potential. Poor governance has opened the flood gates for endemic corruption at high levels of government and government-linked business entities. This shameful culture has been eroding both the efficiency and efficacy of the public sector and businesses, promotes the improper allocation of resources and raises the cost of doing business.

Malaysia must restore public confidence in good governance practices so that citizens and investors are confident that laws, regulations, procedures and processes will be implemented with appropriate checks and balances. The key areas most essential to rebuild the strong foundations for supporting sustainable inclusive economic growth are: a) Strengthening the independent judiciary; b) Making the legislative system dynamic; c) Improving public sector performance; and d) Restoring a clean government.

### A. Independence and Strengthening of the Judiciary

#### Measures to Ensure Independence of the Judiciary

The fundamentals of good governance are set in the independence and separation of powers of the judiciary, the Parliament and the Executive. The independence of the judiciary has suffered accelerating erosion over the past few decades. The legal framework on the clear separation of powers between the Executive and the Judiciary must be restored.

## ACTIONS

It is recommended that Parliament should amend Art. 121 Clause (1) of the Constitution and restore the original provision that vested the judicial power of the Federation in the High Courts of Malaya and Borneo. In this context, G25 wholeheartedly applauds the recent courageous and innovative judgment of the Federal Court in the case of *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat* (and another appeal) that restores the judicial power of the Judiciary and affirms the doctrine of the Separation of Powers. In so ruling, the Federal Court has propounded two important principles of constitutional law, namely, (1) that the Independence of the Judiciary and the doctrine of the Separation of Powers are basic features of the Federal Constitution; and (2) that Parliament has no power to amend the Federal Constitution with the view to remove these two basic features.

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## Transparent Process and Reforms in the Appointment and Promotion of Judges

Under the Federal Constitution, Judges nominated by the Judicial Appointment Commission (JAC) are appointed by His Majesty the Yang Di-Pertuan Agong on the advice of the Prime Minister after consultation with the Conference of Rulers (Art. 122B). The Prime Minister is not obliged to give a reason if he were to reject a nomination by the JAC. As His Majesty is constitutionally obliged to act on the advice of the Prime Minister, the person who effectively decides on the appointments or promotions of Judges is the Prime Minister. This system of appointment is unsatisfactory because it gives rise to the perception that the Judiciary is beholden to the Executive. This stems from the fact that the Prime Minister is the head of the Executive Branch and exerts substantial influence on the Legislature. It is clear that there are times when Judges have to make unfavourable decisions involving the Executive or the Legislature.

## ACTIONS

It is proposed the Prime Minister plays no role at all in the appointment of judges. The JAC (instead of the Prime Minister) recommends the names to the Conference of Rules (for their views) and thereafter to the Agong. A constitutional amendment is required.

## B. Dynamic Legislative System

### More and Expanded roles for Parliamentary Committees

For ensuring proper and effective checks and balances so as to safeguard public interests against the abuse of power, it is imperative that that Parliament has a greater and more dynamic role in overseeing the functions of the Government, particularly the operations and performance of Ministries and other Public Sector Agencies.

## ACTIONS

Establish a range of Parliamentary Select and Special Select Committees which should have oversight functions of government activities on a regular basis, as well as undertake special investigations when there are wrongdoings. Greater prominence for Parliamentary committees will trigger a restoration of powers to MPs when approving legislation and diminish attempts by the Executive to undermine the role and powers of Parliament. Specific proposals include: setting up of Parliamentary committees for Legislation to consider bills, and other Parliamentary committees to oversee Executive activities; enhancing the PAC with chairman from the Opposition party as is the international practices; strengthen the legal framework and Parliament Standing Orders which define the processes cum procedures including the rules of best practices in appointments to plus functioning of parliamentary committees and their financing as well as independent administration.

Other legislative reforms. A Freedom of Information Act should be enacted to foster greater access to information. Secrecy should be replaced with freedom to share information. Enhancing the compulsory declaration of assets and business interests prior to appointment of Ministers and senior officials through an independent audit firm to ensure integrity.

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## Maintain Certainty in the Administration and Legislation of Islam

There are concerns over recent trends to expand the scope of syariah laws to cover a wider area of Muslim social life and to increase the punishments for offences under the Syariah Criminal Offences Enactments of the various states. As the constitution is the supreme law of the country any efforts to expand Islamic laws will give rise to uncertainties over the system of law and justice in the country.

## ACTIONS

G25 recommends that Malaysia supports efforts for a moderate Islam. Powers and practices by religious authorities should be reviewed to ensure such actions do not transgressed the Constitution. Religious authorities in open discussions with civil society should review how best they can achieve their objectives in manners that are supportive of the economic and social aspirations of Muslim themselves and the multi-cultural population.

We also maintain that open debates on policies, laws, regulations and rules on the practice of Islam is necessary to ensure inputs from all quarters and regulatory impact assessments of proposed laws and regulations be undertaken. Regulations and laws on Islamic matters affect all Malaysians and the implied processes of change must be treated in the same vein as processes on changes of other laws and regulations through a Parliamentary Committee on Religious matters.

Proper governance and accountability in religious institutions should be established. Given that these institutions are dependent on the public sector budget, they should be treated like any other public entities, subject to audit by the Auditor General and the administrative officials subject to key performance indicators like any other government agency. During periods of budgetary constraints, these agencies should share the burden of lower allocations as other agencies in the public sector.

## C. Improving Public Sector Performance

### Independence and Good Governance in Public Sector Institutions

#### a. Reform the Office of the Attorney General

The AG currently performs two roles as public prosecutor and as legal adviser for the government. This practice has created problems of accountability and hindered prosecution of corruptions cases involving government officials. Good governance calls for the separation of the two roles which will result in greater confidence in the criminal justice system. It avoids conflict of interest and the suspicion or perception of political interference with regard to the AG's prosecutorial function.

#### ACTIONS

Article 145 of the Federal Constitution and Article 376 of the Criminal Procedures Code would need to be amended to redefine the functions of the Attorney General, and to establish the separate independent office of the Director of Public Prosecution (DPP).

#### Proposal on how the AG and DPP are to be appointed

Currently, the AG is appointed or removed by His Majesty the Yang Di-Pertuan Agong on the advice of the Prime Minister. The AG thus could be perceived as beholden to the PM.

#### ACTIONS

To ensure the independence of the office it is proposed that the AG should be appointed (with security of tenure) or terminated by His Majesty on the advice of an independent commission through a transparent, accountable and merit-based process.

Likewise, to secure the independence of the DPP in the exercise of its functions, appointment (with security of tenure) or termination by His Majesty will be upon the advice of the same independent commission adopting the same process based on the principles of accountability, transparency and merit-based. periods of budgetary constraints, these agencies should share the burden of lower allocations as other agencies in the public sector.

#### b. Sustaining Independence of Bank Negara Malaysia

G25 hopes that the independence of the Bank Negara as provided in the Central Bank Law will be unconditionally respected by Parliament and the Executive. Given the management and technical expertise at Bank Negara, and through its independent Board, BNM will face no constraints for maintaining its tradition of oversight over financial transactions and the stability and growth of the financial sector.

### c. Institutional Reform for Independence of MACC

The MACC must function independently and impartially with structural protection from governmental control or dictate, in order to be a viable and potent entity to eradicate corruption.

#### ACTIONS

This can be achieved by setting up the Independent Anti-Corruption Commission (IACC) as mandated through a Constitutional amendment. The MACC will then be established as the investigative arm under the oversight of and within the IACC. A constitutional commission is beyond the scope and control of the executive with independent Commissioners holding security of tenure serving the commission. IACC commissioners will be selected or terminated by the Parliamentary Select Committee on Corruption and appointed by the PSC.

### d. Governance for Checks and Balances in the Police Force

The Malaysian Police System is highly centralised and States are not given any police mandate under the Federal Constitution. The Inspector General of Police (IGP) is only answerable to the Home Minister. This centralised position has proven to be detrimental in protecting citizen's rights under the Federal Constitution because of weak governance and the absence of the checks and balances in the leadership of the police force. The Police Force Commission (PFC), which exercises disciplinary control lacks independence since it is chaired by the Home Minister with the IGP as member together with up to 6 other members from the PSC. All in all, the PFC's membership compromises its impartiality. The result has been a lack of professionalism, veiled abuse of power and impunity on the part of the Police force. The Enforcement Agency Integrity Commission (EAIC) has been ineffective from the lack of resources and with insufficient powers to compel enforcement agencies to take action. Other entities like the AG's office and the MACC have also failed to provide remedies to aggrieved citizens about Police misconduct.

#### ACTIONS

We support the recommendations of IDEAS to decentralise and separate police powers according to several key areas of competencies for checks and balances and promote greater accountability.

Establishment of the Independent Police Complaints and Misconduct Commission (IPCMC) to place it beyond Executive influence and reporting to Parliament, with mandatory investigative powers on police misconduct and the authority to recommend disciplinary actions.

## Raising Standards for the Civil Service

### Civil Service Reforms and Diversity

The civil service ought to be bench marked against the best in the world like in the UK, France and Japan.

#### ACTIONS

A thorough review should be undertaken in terms of strengthening recruitment, training, career progression and performance. The role of the civil servant should also be examined. They should not be a jack of all trades by being seconded all over the place. Greater focus need to be placed on having subject matter experts in the career track of selected personnel. Their functions and responsibilities must be optimised by using technology.

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## Structural Reforms in Public Sector Governance for Sound Decision Making

Malaysia had in place in the past a good working structure and processes which promoted economic thought leadership and innovation in development policies ensuring successful outcomes. Teams within the Inter-Agency Planning Group (IAPG) ensured thorough research, analysis and debates on policy initiatives prior to their submission to the National Development Policy Group (NDPC) for decisions, with all parts of government and the private sector having opportunities to provide inputs and criticisms. Cabinet was always kept abreast of the status of policies implemented and Ministries were aware of their respective roles in implementation of policy decisions. EPU played a critical role in coordination of policy and project design while the Implementation and Coordination Unit (ICU) ensured proper implementation within the budget and following proper public sector management procedures. This successful structures and processes have been replaced by a centralised decision making approach leading to inefficiencies, poor governance, weak policy formulation, flawed decision making and reversals, deficient implementation and unsatisfactory outcomes.

#### ACTIONS

We recommend reinstating the NDPC and IAPG, with a reengineered ICU enhanced by drawing lessons from the work of PEMANDU.

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## Other Structural Changes in the Civil Service

Stronger efforts and a robust revamp of service norms, promotion processes and procedures to facilitate the recruitment of a more inclusive and diverse composition of the workforce in the civil service. Similar objectives should also be extended to the workforce composition in the armed and security forces.



Leverage on improving technical and subject matter experts in the civil service and stop appointing generalists into leadership positions within technical departments. In the face of greater automation and other technological advancements, it is inevitable that the civil service will face the need for downsizing. Special packages to redeploy surplus staff should be created.

The current situation of race discrimination in the civil service should be redressed. Discrimination against Non-Malays in the civil service reinforces discrimination of Malays in the private sector. The public sector should revert to employment of best and brightest regardless of race. Many Malaysian institutions have a multicultural workforce and Malays have been able to compete very well in these multicultural settings. Denying other races a place in the civil service is denying the high capacity of Malays to be able to compete with those who are highly qualified for the job. The time has come for the Malaysian civil service to adopt practices to raise the quality and capacity of its staff and not practice racial discrimination which has led to the current state of uncompetitive recruitment.

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## Openness and Transparency in Leadership Appointments

Civil service reforms should place strong emphasis on meritocracy and personal integrity. This is particularly crucial for appointments to top posts such as secretary generals and director generals without which leadership effectiveness will be compromised.

### ACTIONS

Special committees should be established under the Public Services Commission to screen the nominees to these posts following well publicised transparent procedures.

## D. Reforms for Clean Government

### Closure of the 1MDB Case

One of the most important steps is to have a closure of the 1MDB issue.

### ACTIONS

The government should release a full comprehensive transparent report on the official status of 1MDB. This should contain explanations from management towards meeting financial commitments and achieving corporate objectives. Where appropriate the report should be consistent with and reflect the findings and court documents already in the public domain in the US, Switzerland, Singapore, and others countries as well as the actions taken by authorities in these countries impacting 1MDB.

Going forward, government would ensure that current regulations are strengthened to prevent a recurrence of such an incident.

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## Preventing Corruption in the Public Sector

Ministers and senior officials in the public sector prior to appointment should be subject to mandatory enhanced Asset Declaration System (ADS) to fulfil the objective of safeguarding against conflicts of interest and illicit enrichment. Declarations must be done periodically on a regular basis with processes for verification of assets and secured exchange of information with tax authorities for cross reference purposes.

A legal framework will govern and provide oversight of the ADS, establish sanction mechanisms and require an independent auditor to verify the integrity of declarations. The legal framework will also define where individuals or entities are the counterparts to the corruption.

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## Preventing Corruption in the Public-Private Space

### Better Regulations on Access to Political Financing

Legislation, regulations and monitoring processes to address the financing of political parties are urgently needed. There must be adequate powers to monitor and enforce the laws and regulations on political funding.

Equitable access to funding by all political parties should be championed together with standardized dissemination of information on expenditures.

Limits and disclosures on private funding from entities, individuals and foreign donors. Address political party ownership of businesses.

A proper entity (not the Registrar of Societies) for registering, monitoring and reporting on political party elections and their functioning must be established as part of the remit of the Election Commission.

### Legislative Framework for Political Financing

Reform of the functioning of the election commission is sorely needed to protect its autonomy and impartiality; ensuring it is fully independent and reports to Parliament and not the PM. The independence of the Election Commission is further ensured through a transparent process of appointments and the composition of its Commissioners through public hearing managed by a Parliamentary Select Committee.

## Other Enabling Measures

- Calls for a Freedom of Information Act should be recognized and the government should pass legislation to enable greater access to information
- Malaysia still have many onerous (and sometimes overlapping) regulatory and licensing requirements at various levels of government, which increases compliance costs and deters private sector innovation and investment. Malaysia must continue efforts to reform its regulatory framework taking into consideration best practice principles of proportionality and consistent with global developments aimed at reducing business costs and complexity, while enhancing the country's productivity and international competitiveness.

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- Consider an Equal Opportunity Commission (EOC) to eliminate discriminatory and unfair practices. Give greater prominence to needs-based and merit as essential criteria. The proposed EOC will be tasked with the responsibility of monitoring and considering cases of discrimination and unfair treatment in society covering the actions and activities of both the public and private sectors.
- Strengthen the Role of the Integrity Institute of Malaysia. The Integrity Institute should be assigned the role as the Independent Evaluation Oversight Office for the civil service. The Institute will put in place a mechanism for systematically evaluating the performance of the civil service, based on best practices in the OECD and the multilateral institutions.

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MAIN REPORT



*"Reforms are urgently needed to  
reinvigorate investor confidence  
and place Malaysia back as a  
place of first choice for new investments."*

– G25 Malaysia



PART I: ECONOMIC AND WORKFORCE REFORMS



## PART I: ECONOMIC AND WORKFORCE REFORMS

### A. Macro-Economic Policies

#### Rising Prices, Ringgit Depreciation, Low Wages and Declining Disposable Incomes

The current most important macro-economic statistic giving rise to anxiety for all Malaysians is the seemingly unrelenting rise in the level and pace of price increases amidst stagnating wage levels and declining disposable incomes. Most people associate this persistent inflation with a feeling of lower well-being and wealth, including from the sharp depreciation of the Ringgit against regional peers in recent months. Their hopelessness is then further compounded by the perception of being consistently paid low wages and a gradual uptick in the unemployment rate stirs worries about the future outlook. Data showing new jobs are mainly in the unskilled job category further raises concerns among the youth with tertiary qualifications, making them doubt promises of a prosperous Malaysia.

The government must address the pressing inflation issue, but not with populist policies such as the restoration of general subsidies on essential products and services nor the reintroduction of price controls or caps on profit margins. These direct intervention mechanisms are economically costly and unsustainable. Experience have also shown that they give rise to inefficiencies and hamper future growth potential due to misallocation of resources. Instead, the authorities must explain, in layman terms, the factors behind the rise in prices, the sharp depreciation of the currency, the inability of wages to keep pace and the slack in creating good paying jobs. Effective policies to ameliorate the impact of these factors must then be implemented to restore macroeconomic stability over time. The government must not generate false expectations about any immediate remedy for this malaise given the difficulties in reversing the factors causing the suffering.

The slow rise in inflation observed worsened in 2016 and 2017 and are mainly attributable to cost factors. These arose largely from adjustments to administered prices in 2016 (electricity tariffs and cost of cooking oil) and the higher prices of fresh food items from unfavourable weather conditions which rose 5.6%, compared to an overall headline inflation of 2.1%. Higher prices were somewhat offset by the lapse of the impact of GST on prices (one-off impact in 2015), and lower fuel prices. Bank Negara Malaysia ("BNM") maintains that the impact of Ringgit depreciation on prices was mitigated by lower energy prices, and lower commodity induced producer prices.

Headline inflation in 2017 is expected to increase to as high as 4.0%, mainly from the pass through of the resumption in increases from oil prices and heightened by further Ringgit depreciation. Cost driven inflation is not expected to be aggravated by higher demand given slower growth in both public and private consumption. Risks of even higher cost-push inflation will emanate from: 1) higher global oil prices than forecast; and 2) continued depreciation of the Ringgit with large pass through effects on domestic prices.

The share of imported food in the consumption basket remains substantial, in the 24-26% range in the last five years. Further, there are also indirect high import costs impacting domestic production of foodstuff like chicken, vegetables and fruits, from imported fertilizers and animal feed.

The more fundamental problem facing low income households is not just rising prices. The burning issue is stagnant and even declining wage levels in real terms which have made it

difficult for households to absorb rising price levels for daily necessities. As the economy develops, one can expect price increases from the acquisition of better quality products, improved innovative services, and wider choices. Such progress and rising prices that go with it should be manageable and leads to a higher quality of life but only when there are some balance with corresponding wage adjustments that keep abreast. Unfortunately for Malaysia, wage levels seem to be declining in real terms, in part due to poor investment and labour policies, disquieting rent seeking and vested interests in profiteering from low-paying labour intensive production with high dependency on migrant low-skilled workers. For decades now, Malaysia's policy direction of attracting low-skilled foreign workers has led to a low-wage, low-skill and low-productivity culture in the workforce.

Another unspoken insidious practice affecting prices in Malaysia is the policy induced constraints in competition on procuring essential products which has served to erode disposable incomes. The most egregious policies relate to exclusive licences granted to monopolies, oligopolies and special import or operating permits or franchises. Malaysian households suffer from lack of competition arising from these most often crony arrangements that impact on price setting which negatively affect disposable incomes. This includes government policies to protect the car industry and arrangements for procuring and distributing essential products like rice, sugar and pharmaceuticals.

### WHAT CAN WE DO?

The average worker would benefit from containment of rising prices, higher disposable incomes and an environment of wage increases which reflects skills and productivity through a significantly reformed labour market. Policy actions cannot address each of these issues in isolation. There needs to be a coherent policy package to enable a competitive labour market with higher wages, aligned to the vision of moving up the value chain of a developed economy and higher disposable incomes from better competition in the market place. Better competition will also contain price increases.

This package of measures must aim to enable workers to manage higher living costs associated with quality of goods and services and better housing, etc. These measures involve removing protectionist policies to increase disposable incomes and addressing the dysfunctional labour market through better policies on human resource management, including revamping policies on foreign labour in favour of policies to promote high-skilled and high-wage jobs with greater investment in equipment and technology. The end game is an economy with a better balance in the share of incomes accruing to labour and capital.

#### a. On rising prices

Given the cost-push nature of rising prices amidst slower economic growth, there is less flexibility for standard demand management macro-economic policies to contain rising prices. However, there are options to ensure cost-push inflation is not stemming from excessive profiteering from monopolistic and competition-unfriendly arrangements:-

- By removing abominable protectionist policies artificially forcing prices to be higher than world levels on food, essential services and durable goods will generate better capacity to manage cost-push induced rising prices.
- Analysis of cost-push inflation is required and made transparent to the public. Greater understanding can lead to better management of consumption patterns.



- There must be greater monitoring of price increases commensurate with cost, and deter excessive profiteering.
- In the immediate period, well targeted financial support packages are needed to ease the burden of the poor in coping with rising prices. In this regard, the cashback system or BRIM in Malaysia should be implemented in a more targeted manner, directed to only those eligible on an economic-needs basis. Further consideration should be given to introducing vouchers, food stamps or defined services to the qualifying below-40% households to better influence how such support is utilized to promote healthy living and family well-being. This additional assistance should not be politicized and must be well managed to keep out the unscrupulous and shameless rent seekers.
- For the long term, to revive the agriculture policies aimed at promoting food sufficiency through modernisation of cash food crops.

### b. On increasing disposable incomes

- Remove the protection on the car industry by reducing the excise duties on cars and restrictive oligopolistic import permits. Studies show that removing import and excise duties on cars can increase household incomes by as much as 30%, enabling households to better manage rising prices. Given the sale of nearly a 50% share of Proton to a foreign entity, removing this protectionist policy is essential. It is unthinkable that Malaysian households must suffer to continue subsidies to protect foreign investors.
- Liberalise imports and the controls on essential food items and services to better reflect world prices for essential goods and services.



### c. On increasing wage levels and workers' welfare

Defective labour policies are the underlying reason for the current situation of stagnant wages and preponderance of low-skilled low-paid jobs in the Malaysian labour market. This labour policy of competing on labour intensive production with low wages and foreign labour dependency has for years now been out of sync with the policy of attaining developed country status, and not aligned to Malaysia's comparative advantage of higher skills in its workforce (unemployment is higher among graduates).

Malaysia needs to compete on greater investments in equipment and technology with higher skilled jobs and higher wages with higher productivity. Malaysia has to therefore undertake extensive reforms in labour policy to enable wages to increase in line with skills and productivity. The government must exercise the political will to undertake reforms commensurate with the objective to move to a high-income economy. The New Economic Model ("NEM") ascertained two basic factors for supporting sustained growth which is absent in Malaysia, namely: a) workers striving to upgrade their skills to earn higher wages and, b) firms purposefully seeking to increase the use of skilled workers in order to raise productivity and profitability. What we observe is that employers are not willing to pay for skills and instead continue to operate in short-term vision mode, in a comfort zone with a readily available pool of foreign workers and under-priced resources to generate profits. This modus operandi must be replaced with a more dynamic framework towards a high value-generating environment creating high skilled and high income jobs.

- Several fast acting policies may be put in place:
  - The government needs to formalize certification of qualifications and skills while making the industry adhere to such occupational norms and standards by aligning them with wage/salary levels reflective of the required skill levels.
  - Appropriate benchmarks of wage/salary levels for similar occupations, globally and regionally, should be developed for reference purposes.
  - Malaysia's stage of development calls for an end to attracting and accepting the low-wage investment model towards investment in industries based on the availability of an agile-skill capable workforce which is adaptable to innovative and disruptive technology.

### REVAMP THE FOREIGN LABOUR POLICY:

The substantial growth of foreign unskilled labour has raised concerns of driving a low wage culture and a low purchasing power syndrome which has longer-term implications on GDP growth. Studies also show that foreign labour is positive on long-term economic growth only when the labour force is educated and skilled. When foreign labour is skilled, it complements local labour. When foreign labour is unskilled, it tends to substitute local labour. Measures include:

- Foreign unskilled labour brought in as short-term interim measures has been going on for too long and must be reversed with policies to upscale and increase skills over time and with appropriate combination of equipment, machinery and technology to raise productivity.
- Review current foreign labour recruitment processes to remove rent seeking and corrupt practices. This is essential to change the current environment of employers, now accustomed to easy, cheap, low-wage labour and perpetuated by rent seeking in foreign labour recruitment, being highly dependent on unlimited, unskilled and low-wage foreign labour.
- In the interim, a levy system imposed on employers can discourage recruitment of foreign labour. The levy system, reviewed annually and imposed on employers must be such that the resultant cost of labour must equalise between local and foreign workers. The higher the share of foreign labour, the higher is the levy on each foreign worker (Singapore model). The levy should not go to the Consolidated Fund, but instead accumulate in the HRDF, where it can be expended to support companies to automate or set up supporting facilities like nurseries for the benefit of workers.
- Over the medium and longer term, however, it is imperative to implement a more comprehensive policy and ecosystem which will incentivise employers to better leverage foreign labour to raise productivity through greater automation. Processes on foreign labour recruitment must instil a search that such labour is not available locally. Further hiring costs of labour can be brought down by employers hiring foreign labour directly through transparent processes, hence avoiding rent seeking and corruption among recruiting agents and government departments.
- Labour policies must be complemented by an incentive structure to promote use of modern equipment, machinery and technology and pay higher wages in a competitive higher skill labour market. The strategy for reducing dependence on foreign labour calls for appropriate incentives to increase automation. Incentives

can also include a reward system for progressive reduction in employment of low-skilled foreign labour, especially for the SMEs and services sector. The end game is to reduce the share of incomes accruing to labour and capital from labour share of 34.8% to levels seen in other countries: 50.7% for China; 44.5% in Korea; and 43.5% in Singapore.

- The government to announce a strategic plan to meet the 11th Malaysia Plan objectives to limit the ratio of foreign labour at not more than 15% of total labour. The ratio is currently estimated at around 43%. They make up around 50% of the construction workforce in the country, and nearly 60% of the workforce in the manufacturing sector.
- The formulation of this strategy must involve employers to provide input on practicality as well as guidance on the necessary initial conditions which needs to be established for the different range of measures to be successful, achieve their objectives, and avoid a labour crunch emerging if a policy to reduce foreign labour is not implemented carefully and in consultation with employers.
- An over-riding issue that is fundamental to a coherent strategy on reducing the dependency on foreign labour is having accurate statistics on the labour market, including foreign labour. The current exercise in MOHR through ILMIA on data issues as well as research should support adjustments in labour policies and provide employers with labour data for optimal business decisions.
- In addition to the above suggested measures, the Ministry of Human Resource and the Economic Planning Unit should conduct open debates with employers and business associations to review studies on the labour market undertaken by the World Bank ("WB") and subsequent proposals to assess their implementation. Resources are wasted when the work by multilateral institutions is not discussed and proposals not evaluated with the industry on their applicability and practical implementation.
- Protection of migrant workers: In line with a target of developed economy status by 2020, Malaysia should also support protection of foreign workers in the country.

The working terms and conditions for migrants are regulated by the Employment Act 1955 and the Workmen's Compensation Act 1952, under the administrative jurisdiction of the Labour Department. Issues regarding relations between employers and migrant workers are covered by the Industrial Relations Act 1967, while labour unions are regulated by the Trade Unions Act 1959. These laws are all overseen and implemented by the Ministry of Human Resources. In addition, migrant workers' affairs are also regulated by immigration laws and regulations, supplemented by policies from the Ministry of Home Affairs which issues work permits. There are several legal problems that migrants in this country face:-

- Equality before the law: Migrant workers, whether documented or undocumented are also protected by Article 8 of the Federal Constitution, namely equality before the law and equal protection of the law. This equality is reflected in the Employment Act 1955 which applies to all workers, irrespective of whether the person is a local or foreign worker. Even a migrant worker is accorded the right to make a complaint about discrimination at work to the Director General of Labour. Malaysia should put in place a system of ensuring rights of foreign workers as provided by the Federal Constitution.

- **Outsourcing of migrant workers:** The majority of migrant workers in the manufacturing sector are not hired directly by the factories, but by outsourcing agents, which manage not only the bureaucratic aspects of the recruitment and migration process, but also the wages of foreign workers. In other words, these outsourcing companies have become direct employers. These labour outsourcing companies are approved and regulated by the Ministry of Home Affairs. Workers hired by such labour outsourcing companies remain the employees of those companies and not the employees of the factories where they work. This means that the responsibility for labour management has moved from the employer (for whom the migrant worker is actually working) to the outsourcing companies.
- This creates a legal issue in terms of responsibility for ensuring that wages, conditions of work, and other aspects of the treatment of migrant workers (such as accommodation, access to medical care, etc.) comply with the relevant labour laws. Under this outsourcing arrangement, it becomes technically possible for a factory owner to claim that he/she is not legally responsible for any unlawful treatment accorded to migrant workers in his/her factory because they were provided by a labour contractor.
- **Seizing of migrants' passports:** In Malaysia, it is common practice for employers to seize migrant workers' passports upon arrival to this country. This practice is however, illegal under the Passports Act 1966. Nevertheless, the withholding of migrant workers' passports is widely used as a mechanism of control by employers over workers which enhances their vulnerability and restricts their ability to move.
- **Access to justice:** Migrant workers are often fired by employers for filing complaints with government officials, NGOs or trade unions. Termination of employment results in the ending of the work permit, which is the basis in law for the migrant's right to stay in Malaysia. Thus, filing a complaint prompts action by the employer that makes the migrant complainant subject to immediate deportation.



## Removing the Fiscal Drag on Growth

Recent forecast of economic performance show declining contribution of the public sector to both consumption and investment, thus to overall growth in the economy. This decelerating trend in driving growth moreover masks a much more disquieting problem. For some years now, despite registering stable revenue to GDP collections, the public sector has actually been a drag on growth. Structural changes are required across the board to reverse this negative trend and remove the fiscal drag on growth. This will require a drastic realignment of allocation within both operational and development expenditures at all levels of government as the principal element of reforms in managing the national budget. A significant restructuring of public sector work practices as well as the workforce in tandem with stronger growth would be indispensable. Public sector expenditure has been rising, but not contributing to growth and wealth creation for two reasons: Development expenditure, which is important for increasing the capacity for future growth and employment creation has been declining alarmingly from 31% of total expenditure in 2001 to only 16% in 2016. Operating expenditure on the other hand, has expanded drastically from 67% in 2001 to 81%. As a result, more and

more revenue have been used to finance operating expenditure. While operating expenditure contributes to expansion in aggregate demand, it does not contribute to building capacity and future growth. There are also increasing incidences of leakages from operating expenditure into unproductive activities and wastage.

With revenue being used for operating expenditure, the government has to borrow more to finance development expenditure. In 2016, almost the entire development expenditure was funded by higher borrowings which rose to more than RM900 billion. This situation of development expenditure being financed by borrowings cannot continue. Together with higher leakages in public sector expenditures, borrowings would tend to swell the drag on economic growth. Moreover, higher borrowings will lead to threats of downward revisions in sovereign credit ratings and consequently higher borrowings costs which will also affect private sector financing requirement. All in all, the combination of these developments in public finance management is contributing to a mounting negative impact on overall investor confidence on the prospects of the economy.



### WHAT CAN WE DO?

#### Maintain the balanced budget fiscal target by 2020:

While the government has stuck to the laudable objective of reducing the fiscal deficit and has largely been able to maintain meeting the medium-term target, the inadequate adjustment in the composition of expenditures continues to burden the efficacy of budgetary intentions. With relatively stable revenue to GDP, the government is in a good position with better expenditure policies to continue reducing the fiscal deficit while eschewing the perceived fiscal drag on overall economic growth. Although there currently appears risk of reducing capacity to continue fiscal consolidation, the balanced budget target in 2020 should be maintained. This can be done by better reviewing expenditure policies in addition to better policies on raising revenue.

Current focus on expenditure cuts needs to be more transparent. The higher cuts in education and health are detrimental to capacity building and sustaining a viable workforce to maintain investor confidence. There needs to be a more comprehensive review of operating expenditure at the central government level and more objective assessments on impact risks to determine where cuts can cause least damage. Decisions need to be more economic based, notwithstanding the political situation. Long-term risks of inappropriate budgetary cuts are high.

The government should invite the International Monetary Fund ("IMF") and WB to undertake a comprehensive assessment of fiscal policy efficacy and undertake fiscal sector reforms, including reforms to better manage the civil service pension scheme.

In the immediate term, the government must address corruption issues which is an outrageous cause of the rising costs of doing business as well as undercutting efficiency in the delivery of public sector services while distorting the allocation of resources. In this regard, the Integrity Institute must double efforts to strictly monitor and evaluate integrity practices in government departments. Transparent policy measures to make mandatory asset declaration at ministerial and senior levels to an independent authority must be quickly adopted. A consumer bureau

to receive reports from the public on corruption practices, which is less intimidating than the current practice, must be set up with mechanisms (e.g. time-bound process, transparent, scorecard on investigations, strict whistle-blower protection, etc.) for the public to be assured that the required action against corrupt practices will be undertaken.

While fiscal assessment is being undertaken, some immediate measures to reduce the operational budget can be carried out. These include among others:

- Review the size of government, given greater reliance on technology. A strategic plan to reduce the civil service (excluding the armed forces and teachers) must be undertaken.
- Reduce the subsidy on tertiary education with autonomy given to universities to be market based and competitive to improve rankings to attract students. Make funding for tertiary education contestable among public and even private institutions. Increasing disposable incomes from reduced or abolishing protection on cars will enable parents to spend more on education.
- Instead of the government heavily subsidising university fees, it should support education insurance products to encourage parents to have long-term plans for tertiary education as has happened in the provision of private health care.
- Significant operational costs are incurred by government-linked companies (“GLC”). The government should reinstate the NEM recommendations on a strategic model for the development of GLCs, including a privatisation program for companies which can create a pipeline for IPOs to reinvigorate the equities market. (See Section (v) below).

### Reform Tax Structure and Widen the Tax Net

Malaysia’s tax system has not changed as the economy evolved. Its structure and alignments has been one of a developing country with a myriad of different and specific incentives directed at promoting the move towards industrialisation. Given that the economic model is now aimed at attaining developed economy status and the economic structure has evolved with a large and growing services sector including burgeoning IT related services, the taxation regime must also be aligned to be consistent with the new economic structure. This can mean that the country will need to move increasingly towards consumption-based taxation with an appropriate reduction in direct taxes and a suitable ratio between consumption-based taxation and direct taxes. The taxation regime must also consider imposing capital gains tax and other taxation on wealth, including on properties as essential components of progressive taxation in a developed economy.



### WHAT CAN WE DO?

Many of the tax measures proposed have been made by the Malaysian Economic Association. G25 supports these proposals. Reforms on the tax front can be undertaken from several aspects:

#### a. Prepare for a modern tax regime aligned to the new economic structure

As we move to implement the NEM or design the TN50, it is timely to undertake a complete review of the tax regime. A two-pronged approach is proposed:

- The government announced the setting up of a taxation public review panel comprising mainly of businesses and tax experts with appropriate government representatives. The panel must be serviced by the Ministry of Finance (“MOF”) and wide consultations among various business communities must be conducted. This panel’s mandate should be confined to coming up with a modern tax structure suitable for a high income country which is competing on technology driven productivity rather than low-cost production.
- Simultaneously, the government should secure services of the WB and the IMF to undertake their own independent proposals on a new tax regime aligned to developed country status. The advantage of doing this is to leverage on the multilateral institution’s data base of tax regimes across the developed world. This independent study will also help neutralise the biases which could emerge from the business groups.

While working towards a long-term strategy on the tax structure, some immediate steps can be taken to make the tax structure relevant and attractive to tax payers, as follows:

#### b. The Goods and Services Tax

The GST must remain and implementation improved, while reducing direct taxes. The GST was introduced as a broad-based consumption tax to replace the 50-year-old Sales and Service Tax. As expected, the implementation of the GST effective 1 April 2015 created a one off impact on prices as the new tax covers a wider base of companies and establishments than the previous sales tax. Further, there has been instances of profiteering by unscrupulous traders who took advantage of the lack of clarity and public understanding of the GST to mark up their prices unnecessarily making customers feel cheated. Another teething problem was the technical delays in giving refunds to companies.

All these problems led to accusations that the GST is responsible for the increase in prices and the weaker consumer demand, although there were other factors at work like the fall in the ringgit and the concerns over job security especially for those working in vulnerable sectors affected by global disruptions like in the oil and gas, banking and commodities sectors. Consumers are currently more cautious in spending because of several factors, not just the GST.

Many of the implementation problems on GST have been resolved as the public and business sector become more familiar with the workings of the new tax, especially the different treatments regarding items exempted and zero rated. Further, many small companies, especially the small traders, were initially not familiar with the refund mechanism of the tax.



Tax analysts have commented that in Malaysia, the GST has been implemented with too many items being exempted and zero-rated compared to other countries like Singapore, Australia and New Zealand where the exemption list is kept to a bare minimum. Their exclusion list is very short, covering essential items like infant foods, priority medicines and school books. In this way, Singapore was able to make the coverage of its GST (VAT) very wide, so that even with a low starting rate of 3%, the revenue impact was strong. The Singapore rate has since been increased in stages to 7% now.

Conceding to populist pressures to reduce the GST rate to zero will be quite disastrous for the economy. Other than making a severe dent in the revenue base, such action will most definitely be seen in the financial markets as a policy reversal. It will have a negative impact and pose a challenge to the government's commitment on fiscal consolidation, especially with the oil prices remaining relatively low. Moreover, the Ringgit is likely to weaken in response to market concerns over the government's populist action.

If the Malaysian government intends to reduce the GST rate from 6% to a lower level of say 4%, it has to cut down the list of exclusions to the most essential items for health and education like in Singapore, so that the revenue impact is neutral. The threshold for taxing restaurants under the GST should also be lowered so as to bring more establishments into the coverage. This will ensure no revenue loss with the lower tax rate. Otherwise, if the rate is lowered to 4% with the existing wide list of exclusions maintained, the revenue collection will be adversely affected.

It will be prudent for the government to maintain the GST rate of 6% and when the time is appropriate, it should gradually reduce the exemptions list so as to make it more effective in terms of coverage. In other countries, they increase the rate in stages over a few years after starting with a low rate. Malaysia need not raise the rate and instead the GST can be made more effective as a strong revenue generator by cutting back on the exemptions list step-by-step over the next few years.

Employers and companies, including SMEs, are adjusting to the mechanics of the GST after making the necessary changes to their accounting and book keeping systems. The Customs department, which manages the GST, must expend greater effort into making the GST rebate mechanism more efficient. It must increase manifold, the provision of information on collection trends while being more forthcoming to complaints through greater openness and provide feedback on how complaints have been handled through publication in wider dissemination channels. While the complaints on delays in getting refunds from the Customs department on their input tax are getting less, this is largely due to companies becoming more familiar with the claim procedures and not clearly attributable to the Customs' efforts thus far. It is important to fulfil the timeline for GST refunds. Such refunds are business costs and delays affect company cash flows. After two years, Customs must already be efficient in administration, and refunds should be made within the 14 days' timeline for electronic submissions.

With GST, the lower income group are now paying taxes compared to previously not being taxed. Hence, they are naturally concerned on government spending – whether it is services affecting the poor. The MOF must be more transparent on government expenditure – releasing details of allocations and not only the consolidated expenditure items. The current situation of cuts on health and education allocations is seen as affecting the poor, and hence the growing grouses to abolishing GST. The MOF needs to make new efforts on expenditures impacting the lower income groups, now that they are falling into the taxation net through GST (the poor has high propensity to consume and any income windfall will be spent on goods such as television and other consumer durables, all within the GST net). Expenditures on scholarships and education support will be seen as assisting the poor.



### c. Income Tax

With the GST now into its third year of implementation and starting to show its effectiveness as a revenue instrument, the government should take advantage of its success by moving towards restructuring the company and personal income tax regime in line with regional trends to keep tax rates competitive to attract talents and investments.

It is reported that less than 10% of the Malaysian workforce pay income tax, which is low compared to other countries. Most countries make the income tax coverage as wide as possible by giving very few personal reliefs. As a result most income earners pay direct tax, unlike Malaysia which has given too many reliefs to make the tax coverage very narrow, with the burden of direct taxes falling disproportionately on the upper middle and higher income groups.

In addition, companies also enjoy a wide range of tax reliefs under the government's incentive programme to attract foreign investments as well as local industries. While these tax holidays were justified when the country was competing strongly against neighbouring countries to attract foreign investment, they are less necessary now due to the strengths of its infrastructure and other facilities to enable the country to be more selective in approving the incoming investments. Most investors look for stable macroeconomic policies, good infrastructure facilities, a trustworthy system of government and administration, a trainable work force and long term social and political stability in choosing the country to locate their business operations. Tax reliefs are not the deciding factor. The following recommendations will address these issues:

- The current tax structure should be simplified, where possible, to reduce costs of tax administration. The many incentives to the real sector (manufacturing, agriculture, services sectors) can be reviewed to derive an effective tax level. The corporate tax should then be lowered to this level. Past estimates show that taking into account all incentives, the effective tax can be as low as around 20%. A single corporate tax of 20% for large companies and lower tax of say 15% for smaller companies and SMEs will attract a larger tax base. Past experiences have shown that lowering corporate tax has always resulted in higher revenue.
- At the personal income tax level, the various exemptions should be simplified to maximum absolute amounts for 3 categories: Lifestyle relief; pensions, EPF and life insurance savings; and relief for safety nets including medical and health insurance.
- On the tax bands, these should be widened considerably to make it attractive to move higher up the salary ladder and not feel dis-incentivised to be included so soon into the next higher tax band.

### d. Indirect taxes

Malaysia has brought down most of the import duties but has maintained high excise duties to protect certain industries, especially the motor car sector. The differentiated excise duties on locally produced cars to protect the national car PROTON has resulted in local cars being priced higher than in the world market. Many young borrowers get into debt difficulties as a result of paying high instalments on their cars. A reduction of the domestic tariff on cars will help reduce the household debt burden among the younger city population. The

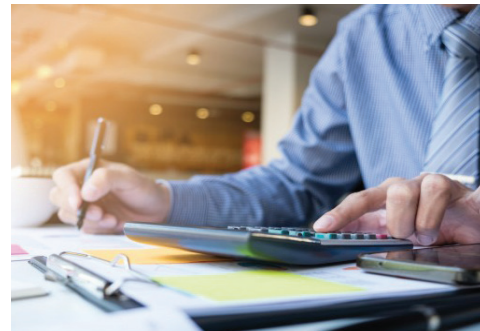
government has been reducing the excise duties in an effort to liberalise the local market. It is hoped this reduction will continue now that PROTON has secured a foreign partner to make the company competitive in the export market. This will lighten the household expenditure and debt burden from paying currently disproportionately large car loans.

The “sin” taxes on liquor and tobacco products are extremely high. They have resulted in smuggling and counterfeiting, at high cost to government revenue. Government loss of revenue from: (a) tobacco contraband as reported by the Minister totalled some RM4 billion a year; (b) contraband beer is estimated to be about RM550 million a year; (c) contraband hard liquor (wine and spirit) constitutes another RM200 million losses a year. In most cases, there is an additional loss from non-collection of GST estimated to yield a further RM100 million a year. There is a belief that government should refrain from further increases in duties on tobacco, beer, wine and spirits – which would become counterproductive. These taxes should be reviewed and reduced to a lower level such that it does not make it attractive for smugglers. With less smuggling, the Customs Department will collect more revenue.

### e. Widening the tax net

Widening the tax net should be taken up at two levels: 1) bringing into the net those who are not in the tax net and are not even registered; and 2) ensuring that those already in the tax net actually pay appropriate taxes.

On 1) above, several ideas on extending the tax net include:



- Increase coverage to the informal sector, through incentives such as a low flat tax rate, say 10%. In addition there must be a program of education to this sector to build understanding that their registration into the tax system will make enterprises attractive to bigger firms looking for suppliers of inputs.
- Adopt an approach to include the informal sector through collaboration between the federal and local authorities. The low flat tax on small enterprises are imposed by the federal government but implemented by local authorities with an agreed sharing of tax proceeds. At point of licensing or renewal of licensing, local authorities must require enterprises to submit a template of information which would enable tax estimates. In this context, the investigation section of the Inland Revenue Board (“IRB”) would work with local authorities to undertake tax estimate exercises where relevant.
- Government contracts can only be awarded to small businesses if the entity is registered for tax purposes, and a flat rate such as 10% could be deducted from contract payments for tax purposes. Refunds are made as is normal practice when tax submissions show lower tax liabilities.
- There are significant numbers of foreigners being given licenses to do business in Malaysia. It is imperative that these enterprises are taxed. Sharing of information between the Immigration Department and IRB will be facilitative. Under the e-government concept, this should not be a problem. Similar to the informal sector, tax records must be established at the point of licensing.
- IRB should make greater use of data available on the sale of properties to ensure tax is paid on property transactions.

- Institutional changes are required:
  - Much of poor tax coverage smacks of corruption and favouritism being exercised by officials whereby individuals and enterprises are not included in the tax net. In this regard, the Integrity Institute should be given greater powers to evaluate integrity processes and procedures at relevant Ministries and Agencies.
  - The investigative units in Customs and IRB should be given adequate resources to do their work to effectively raise and widen the tax net. The Key Performance Indicator (“KPI”) and bonuses of these units must be tied to specific targets on widening the tax net and increasing numbers of enterprises registered for tax purposes, not just on revenue collections.
  - Further institutional reforms of IRB are needed for it to be fully autonomous and accountable for its total operations and expenditure management, including all its IT systems and other capital expenditures. Currently, certain capital expenditure is still not included in the IRB budgetary processes, but decided by the MOF. Practices in BNM and the Securities Commission (“SC”) should be applied to the IRB. The IRB as a public sector institution must be transparent in reporting its total cost of operations against its tax collection, i.e. there needs to be a more accurate measurement of cost of tax collections to calculate efficiency of the IRB in terms of cost-collection ratios.

### f. Government Debt

Malaysia’s national Federal Government debt was just below 54.5% of GDP in 2016, of which domestic debt represented about 97% of the total. It was reported that contingent liabilities in the form of government guarantees of public entities loans amounted to another 15.5% of GDP. The IMF and Moody reports Malaysia’s overall debt ratio at a higher 66% of GDP and states this is the highest level among larger economies in the region. Debt has also grown by more than 10 percentage points since 2009 and the external vulnerability indicator for Malaysia has risen to one of the highest in the region, behind only Mongolia. The IMF also concluded in the latest 2017 assessment that federal debt and contingent liabilities were considered high thereby limiting the policy space to respond to shocks that may impact on the economy. This is against the background that the risk to the outlook was tilted to the downside, originating from external as well as domestic factors.

### WHAT CAN WE DO?

Greater transparency and better management of debt and contingent liabilities of government will serve to ameliorate repayment abilities and sustain international credit ratings. This will serve to reduce negative perception about the outlook and contribute to reducing downward pressure on the Ringgit.

In parallel, there has been recommendations for improvements to the fiscal framework as part of debt management, such as elaborating medium-term public finance projections and preparing and publishing an annual fiscal risks statement, which would help anchor medium-term fiscal adjustment and mitigate risks. In this manner, the public sector borrowing requirements and associated debt sustainability assessment will better inform the market about public finance stability.

## Addressing the Narrowing Current Account and Reversal of Capital Flows

**Capital Flows:** Recent developments in the foreign exchange markets created concern on the ability by traders and investors to hedge their foreign exchange exposures. The clampdown in the non-deliverable forward (“NDF”) market late last year, while intended to develop the domestic hedging market, has made it difficult even for long-term investors to invest in Malaysia. The risk of index exclusion was particularly salient at that point given Malaysia’s share in global bond indices.

**Narrowing of the current account:** Of more concern are the perceived medium term risks—there is speculation that Malaysia can soon become a deficit country which will generate accompanying foreign exchange volatility. This potential risk stems mainly from the lack of dynamism in export sector activities. Relative to our ASEAN neighbours as well as the previous average growth of export of goods and services, Malaysia has just not managed to generate sufficient export momentum and is also not attracting enough services income inflows. Malaysia’s manufacturing export growth has been one of the least dynamic across almost the entire emerging market universe. At the same time, domestic demand has been robust in recent years, gradually eroding the surplus in the external goods and services accounts of national income.

In the past, any weakness arising in the current account (when the trade surplus was eroded by stronger deficits in the services and income accounts), the pressures on the exchange rate was moderated or off-set by continued inflows in the investment account. In more recent times, we observe that the investment account is getting less responsive in part because of higher outflows of overseas investments by Malaysians and lower foreign investments inflows into the domestic real sector. New investments are more of the one-off types and mainly in the construction sector, especially for residential housing. Further, such investments seem to stem mostly from emerging markets with strict exchange controls on outflows, which lend uncertainty to whether the foreign exchange to finance the touted investments will actually materialize. In addition, it is not very clear how the construction activities behind the investments are being funded.

When these emerging developments are pulled together, there could be risks giving rise to pessimism creeping into the medium-term assessment of the strength of the Ringgit.

### WHAT CAN WE DO?

It is clear that trying to micro-manage is not a long-term solution. It is also abundantly clear that the past policies which have worked best over the last 20 years will continue to be relevant. But new approaches are required to address the current market behaviour:

- Thus we can no longer pursue low-cost production strategy adopted by regional countries. We need to sustain the policy measures aimed at shoring up and facilitating the build-up of competitiveness within the export sector which are directed at nurturing the dynamism of the manufacturing sector to move to higher value activities involving innovative technology to raise productivity and thereby continue to sustain its position as part of the global supply chain. While pursuing the long-term measures to build competitiveness, there is a need to increase productivity and foster national savings in the near-term, with tighter policies. With demand slowing down, this is a good development from the perspective of the external balance.

- Addressing the labour policies above will also ensure better competitiveness and a productivity-driven export sector.
- Autonomy in universities can drive competition to higher standards to attract private sector sources of income including foreign income in the education sector.
- There is a need to relook at financing technology and innovation for the country to move up the value chain in digital and internet based provision of services. The current schemes skewed towards giving loans (such as by Malaysian Debt Ventures) should be modified to also take equity, share risks with start-ups and align with global practices of financing technology-driven innovative entrepreneurship.
- Improving competitiveness to attract foreign investment must continue to rely on the private sector as the main driver of growth. Productivity gains can only be attained from market-led investment dominated by innovative and state-of-the-art technology to generate high value added goods and services in a competitive environment. The government must be a better facilitator with further efficiency achieved by the continued streamlining of a proportionate, market-focused and supportive regulatory framework. Undulations from the impact of disruptive technology on the labour market and education system must be adequately monitored and well managed.

### Review the Economic Efficacy and Impact of GLCs and GLICs

A dominant presence of government linked companies in the economy, while intended to support economic expansion has demonstrated a history of under-performance and poor governance practices. While the setting up of GLCs were aimed at maintaining government control of strategic industries and engineering socio-economic change through wealth redistribution, investors now view that GLCs are competing directly with private firms, crowding out markets for the private sector. GLCs enjoy preferential treatment for contracts and licensing, hence the private sector is operating on an uneven competitive playing field.

#### WHAT CAN WE DO?

The NEM has undertaken detailed assessments of the government-linked investment companies ("GLIC") and GLC development and made wide-ranging recommendations to rationalise GLC operations. In addition to instituting better oversight mechanisms on GLC (GLCs under Minister of Finance Inc. are estimated to have accumulated more than RM80 billion of financial losses), the NEM recommended a strategic approach to rationalisation of GLCs. These recommendations are still valid and should be implemented:

- The government should not hold large blocks of equities in GLCs unless these GLCs are strategic. Non-strategic GLC should be privatised and government should focus its role as a regulator and facilitator.
- Divestment proceeds from sale of GLCs should not be treated as revenue (flow) but recognised as conversion of capital stock, and placed in a sovereign wealth fund that invests in various asset classes.

- Existing regulatory framework must be adjusted to ensure a level playing field between private firms and GLCs. As GLCs role in businesses are reduced, GLCs can be restructured to play a catalytic role in driving the private sector towards innovative high value industries. GLCs and GLICs must not be exempt from any provisions of the competition law.
- In rationalisation of GLCs, there must be a clear policy that GLCs as operators cannot also be the regulators.
- For GLCs maintained in the government coffers, operations must be on a strictly commercial basis free of government interference and preferential treatment and the government should observe certain principles:
- The focus should be on professionalizing the management of the GLICs and GLCs. The senior management should comprise of professionals with requisite training and expertise in the relevant areas of business.
- Since the GLICs and GLCs have a social role to play, the board of directors should include senior members of the bureaucracy with relevant experience.
- No sitting politician should be appointed to the boards of directors of the GLICs and GLCs. One exception would be Khazanah Nasional, a sovereign wealth fund, where the Prime Minister will chair the board, with the Minister of Finance as the Deputy Chairman.
- The Board of Directors and the senior management of GLICs and GLCs have to report to parliamentary select committees ("PAC") which will oversee the running of these enterprises. These PACs must be led by a member of parliament from an opposition party.
- All GLICs and GLCs must have an independent Investment Vetting Committee. This Vetting Committee, which will review investment decisions taken by the management of a GLIC or GLC, should comprise members of the bureaucracy and corporate sector, with relevant experience. Members of the Vetting Committee should not be sitting members of the boards of directors of other GLICs and GLCs.

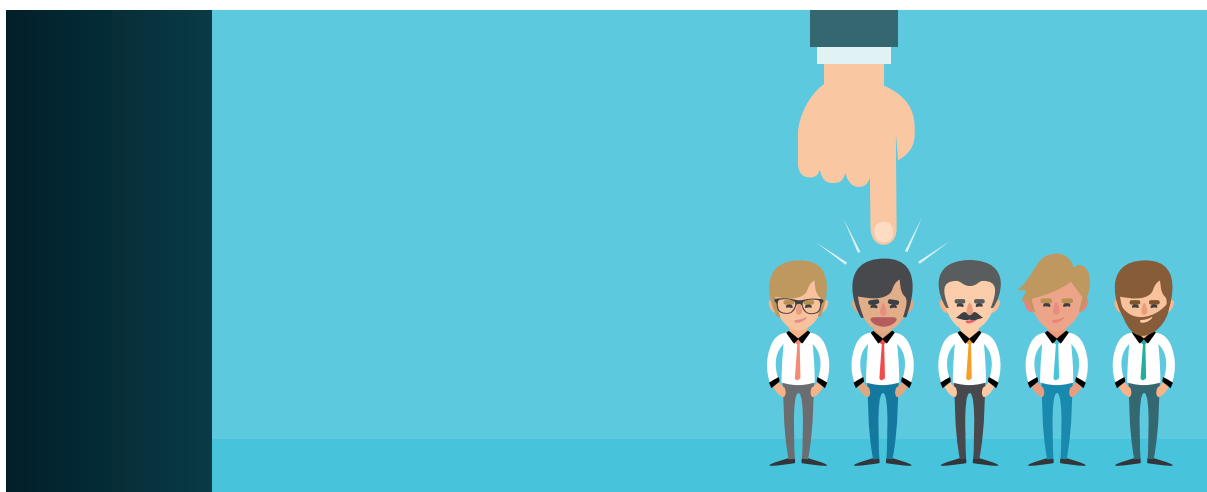
### Address Inequality and Strengthen Programs for the Bottom 40%

Existing programmes and institutions supporting the needs of the bottom 40% should continue but must be revamped to remove the rent seeking and perceived discriminatory nature distorting its effectiveness and blemishing the programmes. The revamped new generation of supportive assistance programmes will consider all ethnic groups fairly and equally as long as they are in the low income 40% of households or business owners.

#### WHAT CAN WE DO?

- The participation in support programmes must only be based on two main principles of: a) need plus merit, and b) non-discriminatory on the basis of race, religion or status.

- Assistance programmes for the bottom 40% should place greater attention to promoting the building of the capacity and the capability of the disadvantaged, other than the need for adequate sustenance, health and shelter.
- A bold revamp is needed to enable better access to education and business opportunities for members within the bottom 40% and other disadvantaged citizens.
- Other community assistance programmes must be based on market-friendly and market-based criteria taking into consideration the needs and merits of the applicants, free of race-based quotas or any such discriminatory practices.
- The focus of corrective policy actions must be on relative poverty and not race, taking into account regional or locational disparities, especially for Sarawak and Sabah.
- Special attention must be given to those with physical or other impairments, requiring assistance, including orphans and refugees.
- Procedures and criteria for targeting the qualifying citizens within the bottom 40%, and the delivery of assistance must be transparent.
- Introduce measures and regulations to overcome race discrimination in both the public and private sectors. Non-discrimination in employment must be streamlined in all government departments and imposed on the private sector by the labour department.
- For all the above purposes, Malaysia has reached a mature economic status to put in place an anti-discrimination law (discrimination on basis of race, gender, religion). Supporting implementation of this law is establishing an Equal Opportunities Commission as recommended by the NEM, to ensure fairness and address undue discrimination when deceptive abuses by any dominant group are encountered.



## B. Workforce and Workplace Reforms

The concerns of employability of graduates, especially from public universities grow deeper each day. This means that on-going efforts are not enough. Monies are spent to conduct studies by the World Bank and other consultants, including education blueprints by the Ministry of Education (“MOE”). Little evidence of implementation is seen on the ground and concerns grow louder while youths become increasingly despondent about their future.

Further, productivity driven growth, touted over many Malaysia Development Plans has yet to happen. Total factor productivity (“TFP”) growth has remained stable and not rising, and continue to be below those observed in global and regional competitors. The same picture has emerged with respect to labour productivity growth. In fact, labour productivity has not recovered to the pre-1998 crisis levels and it is expected unlikely to do so, similar to the experience of many competitors because the global manufacturing structure and supply chain has changed considerably in the interim. The outlook for labour productivity is challenging given the prospective adverse demographic trend and greater regional competition in attracting investment flows globally and regionally.

Further, labour policies must not only focus on employment creation but also on labour rights and welfare. Malaysia needs to upgrade its reputation on guaranteeing workers’ rights and undertake measures to ensure workers can exercise their rights to higher wages, good working conditions, etc.

### WHAT CAN WE DO?

#### Measures to promote a competitive and transparent labour market

##### Revamp Labour Policies to Promote Use of Technology, Skilled Jobs, Higher Wages

See proposals outlined in Section A above.

##### Strengthen Active Labour Market Policies, Address Dependence on Foreign Workers

There is a need to ensure that there are active labour market policies and an appropriate worker safety net to assist workers to participate meaningfully in the inclusive equitable growth aspiration of the country. The ultimate objective of this package of labour policies is of course to lift and enhance compensation and benefit levels of the workforce and conceive a workplace that is conducive to productivity. Without sustained improvements in productivity in the face of rapid innovative technological changes, compensation dispensed to workers cannot increase or even keep pace. But it is also clear that an acceptable balance in the sharing of economic gains must also prevail, which will inevitably fluctuate but on average should deliver justice to workers and capital owners.

The most essential active labour market policies must be complemented by supportive policies which can enhance the employability programs:

- The worker safety net and flexible labour laws supportive of industry and job creation are other elements that will require action. In particular, mandatory unemployment insurance should be quickly put in place as it has been more than adequately discussed for more than 15 years among all stakeholders.



Attention must now turn to policies to safeguard workers through affordable mandatory and consolidated health care schemes. We should not require another 15 years of discussion and procrastination to come up with a viable scheme. We must draw lessons from the vacillations or intrigues of ObamaCare and pertinent initiatives adopted by other countries.

- Both capital and labour have contributed to growth resulting in Malaysia reaching high middle income status today, although we have been stuck at this level for too long. We benefitted from the demographic dividend and the increasing qualification mix of the workforce. Large public sector infrastructure and human capital investments complemented by sustained private sector investments, including through external capital inflows, drove productivity previously. To sustain productivity and foster further growth, it is thus imperative that the policies to improve and change the composition of the workforce to higher skills aimed at attracting and filling high-value added future jobs must bear fruit. These will need to be supported by continued investment in infrastructure responsive to industry needs emerging from technical and non-technical innovations in production and services, together with better efficiency in allocation of resources and a conducive business environment. In the latter area, the regulatory burden and degree of corruption perception will need to be transparently addressed with bold measures. Measures to manage misallocation of resources will have positive productivity effects, particularly in reducing the continued over-reliance on labour intensive processes and thus its association with dependence on foreign workers and low paying jobs.
- Address misallocation of resources connected to the role of GLCs and GLICs in the market, with perceived preferential treatment, cloistered operating environment and competition unfriendly practices which have become significant obstacles holding back productivity improvements. This is becoming more alarming given the significant share of GLCs in economic activities. The dominance of GLCs and their adverse impact in fostering fair competition in the private sector has constrained innovation and private sector growth. Rationalisation of GLCs as suggested in the NEM should be revisited and acted upon. (See Section A (v) above on rationalisation of GLCs, including through a strategic privatisation program).
- The World Bank suggestions on further needed actions in fostering trade facilitation and greater enhancement of R&D to support introduction of automation, robotics, use of artificial intelligence and technological innovation should also be assessed and implemented.
- Finally, many SMEs would need support to improve productivity and move up the value chain, otherwise these unproductive labour-intensive SMEs should be pushed into mergers or exit from the market as part of managing the misallocation of resources.

Many of these initiatives are also covered by the NPC blueprint, which give rise to overlaps and duplications unless the measures are well coordinated. This is rather unfortunate, but is quite symptomatic of the silo mentality within government when blueprints and policy measures are designed. There are usually laudable claims of widespread consultations and labs for this and that, but they appear not to capture similar initiatives that are already in train or otherwise previously already slated for implementation. These procedures require a drastic revamp as described in Part 2, Section C on raising the standards for the civil service through structural reforms in governance for sound decision making.

### Better Alignment of Education Policies to Employability

Education policies must be strategically re-designed to ensure that academic and Technical Vocational Education and Training (“TVET”) training institutions provide workers with the skills and knowledge required for the current and future labour market which is aligned to Malaysia’s economic objectives and aspirations. The government must demand that employers take an active role in moulding the workforce development plan consistent with the desire to sustain and raise labour productivity. With the industry leading the way, this workforce plan will have greater responsiveness to the requirements of the economy and be demand-driven. It will give better assurances about the quality, relevance and employability of the output of graduates, an increasing proportion of which should be highly skilled to meet the challenges of innovative but disruptive technological advancement.

The concept of life-long learning must be given operational meaning and not be mere buzz words. Workers need to be directed to or given the opportunity to acquire new skills and competencies. Those striving for higher income must be motivated as far as their ambition, talent and abilities can take them, to continually upgrade their skills during the work life cycle. Other than fostering constant curriculum upgrading and revamps, policy initiatives should focus on modular approaches in progressions towards higher levels of skills training, allow flexible pathways for transfers between qualification programs and promote recognition of prior learning on-the-job and experience.

Earlier work by the World Bank recommended preparation of a medium-term strategic plan (three to five years) to map out the time-bound direction for the workforce development system in line with Malaysia’s economic, productivity and social priorities spelt out in the ongoing five-year rolling national development plans. Such a comprehensive plan will serve to reduce overlap and duplication in training programs. Currently some eight ministries run TVET-related operations in an uncoordinated manner resulting in discrepancies in quality and inefficiencies in delivery.

### Demand Greater Role for Industry in Procuring Workforce Requirements

The HCDC has representation from all related ministries and agencies with representatives of industry (employers and employees), and experts that can coordinate and develop a national workforce development strategy through a consultative process. Overlaps with the recently proposed National Productivity Council (“NPC”) should be clarified, more pertinently the NPC should be merged with the already established HCDC. The participation of industry representatives must be better institutionalized and greater clarity is needed as to their roles and responsibilities, if needed through regulations or legislation. Consideration should also be given to providing start-up funding to establish the administrative framework of a few industry skill committees which will serve to channel the contribution of industry and employers to human capital development as well as push the productivity growth agenda.

The Environmental Scan (“ES”) work being spearheaded by Malaysian Investment Development Authority (“MIDA”) and the Institute for Labour Market Information and Analysis (“ILMIA”) is already underway and would need to be fully applied to key industry subsectors. The ES is supposed to define the workforce profile of each industry subsector and to track labour productivity. With coordination among industry and training providers, the skill gaps and future job-needs identified in the ES is to be aligned with the curriculum and training packages of training providers. Direct industry involvement includes the provision of attachments and apprenticeship places, instructor exchanges and job placement. These efforts are expected to have an impact on raising the compensation of workers as their employability, capabilities and experience levels together with productivity would be raised in line with the requirements of industry who provided major inputs into the design of the training packages.

### Prioritize Contestability and Performance-Based Cost Effectiveness

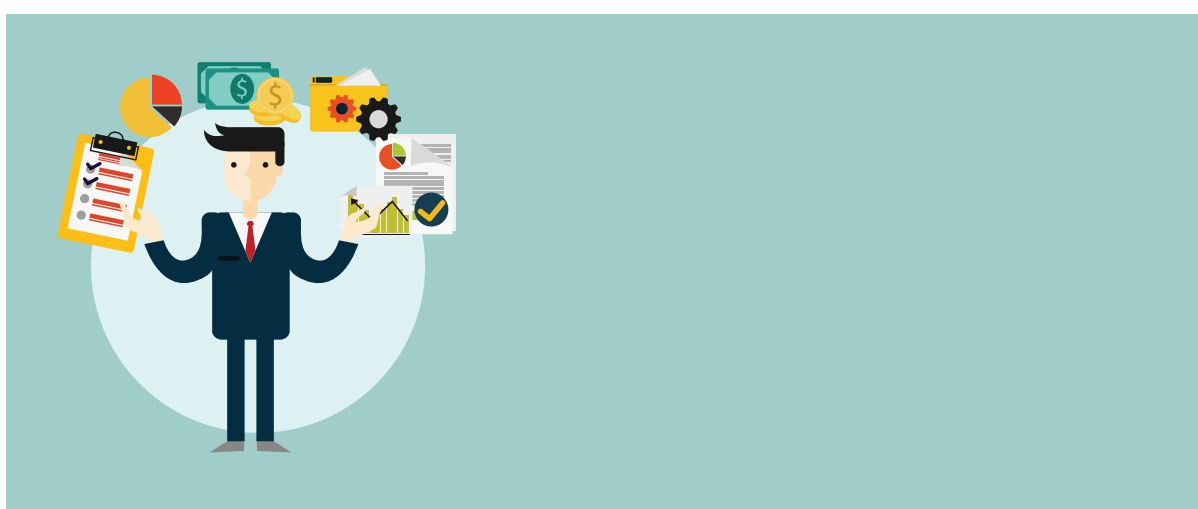
Funding for all academic and TVET training providers, especially public sector entities, should be progressively made contestable on the basis of attractiveness of each institutions measured by the volume of enrolment, which reflects mainly the completion rates of students, their ability to find jobs because of a high degree of employability, their starting wages and the satisfaction of employers with their capabilities. In addition, private sector training entities should also be permitted to bid for government funding. International evidence suggests that training providers competing for funding contribute to improvements in the quality of graduates, foster employability and improves the relevance of the training program or curriculum.

In the interim until contestability in financing is fully applicable, the current funding practice which is incremental in approach should be revamped and more and more elements of performance-based budgeting introduced. Such an approach will still fall far short of ensuring that graduates are of the quality and relevance required by industry.

Furthermore, training providers receiving government funding should be continuously evaluated for cost effectiveness and impact on meeting labour market demand, in addition to the employability of their graduates.

Evaluation must necessarily be evidence-based, which therefore calls for the development of a central database which monitors and analyses information on graduate outcomes and operational components. A standardized information framework for recording the particulars of all individuals enrolling with the academic and TVET training system should be developed in coordination with ILMIA and implemented by all public and private training institutions. This will enable an individual to be followed throughout the workplace history and allow proper assessment of the effectiveness of skill training programs and life-long learning sequences.

In particular, tracer studies should be more extensively utilized and information should be recorded not only upon graduation or completion of a training event, but be longitudinal to better measure impact on work life. Separately, operational information and other student outcomes must be collected and conveyed to a central data warehouse together with the enrolment data discussed earlier. In this respect, the data warehouse developed by ILMIA should be leveraged upon to serve this centralized data collection function. An open data platform will allow different levels of policy makers and other workforce researchers to access the information for analyses to support the formulation of evidenced-based informed decisions.



### **Streamlining of Qualifications, Occupational Standards and Competencies**

Recent efforts to streamline qualification standards and their proper certifications should be redoubled. This work will at the same time serve to fully expand the setting of occupational standards and identify all the relevant competencies required for the occupation to be responsive to industry labour market demands and facilitate productivity enhancement. Formalization in the certification of qualifications and skills, and making the industry and the economy adhere to occupational norms and standards are key requirements for aligning workers' wage/salary at higher levels in recognition of a better skilled workforce and higher productivity.

Certification of qualifications would need to be supported by imposing a common set of accreditation standards that reflect the occupational standards and competencies developed. Separate accreditation standards applicable to the curricula plus training packages; training providers and instructors/lecturers are needed. These accreditation standards should be transparently codified in coordination with industry and training providers and disseminated online, together with all accredited curricula, training packages and the training providers delivering the qualification or training. Effective enforcement of standards across all academic and TVET training institutions (public and private) will give assurance to employers about the employability of entry level workers and provide mechanisms designed in partnership with the industry for documenting the competencies and skills acquired.

### **Improve Employability of University and TVET Graduates**

Attending to the issues raised above would in all likelihood fix the current issues about graduate employability over time. However, we recognize that in the interim we have to deal with the current cohorts of graduates entering the workplace who are experiencing difficulties in finding jobs. A part of the problem is of course conjectural, following the aftermath of the global crisis and the bumpy recovery trajectory among Malaysia's trading partners, which have affected domestic investment sentiments, resulting in a slower pace in job creation as well as worker attrition in certain key sectors which have driven the economy previously, e.g. oil & gas, the financial sector, and IT. But the main issue is still misalignment in the field of studies of graduates with market demand compounded by the deficient quality and more precisely, the gap in technical and soft skills of the job seekers relative to the requirements of employers. Other factors include unrealistic demand for compensation of entry level workers, failure to ignite productivity gains and their reluctance to relocate to where the jobs are posted.

Immediate policies to address this transition problem would be to expand the current employability programs offered by HRDF, other agencies and TalentCorp. However, the content of these programs need to be developed with greater employer participation, through curriculum design, increased offers of attachments, internships, apprenticeships and placements, as well as on-the-job training arrangements. Employers may need to be provided with fiscal incentives to expand participation in employability programs, through additional tax credits or augmented depreciation allowances.

Employment services provided by the government would also need to be enhanced at JobsMalaysia locations and Urban Transformation Centres ("UTC"), to help prospective and unemployed graduates in their job search, join employability programs, upskill or reskill and access support for relocations to where the jobs are.

### Address Looming Challenges and Impact from Disruptive Technology

The government must begin to purposefully address the need to prepare for the workforce and workplace dislocation and disruption stemming from innovation and technological changes. Malaysia will regret not focusing enough attention on and being nonchalant in its awareness on the impact of automation, robotics and artificial intelligence on the workplace and workforce. These potentially destructive job market structural changes have to be managed together with the degenerating demographic evolution leading rapidly to an aging society with its attendant deep seated implications. Inexorably, Malaysia is already facing a less than replacement population growth rate and the cohort of primary school children enrolment is falling (particularly in peninsula Malaysia), with implications for the future labour market, productivity and the mix of foreign to Malaysian workers.

We already observe that many occupations are being made redundant, e.g. in routine office administrative work, factory assembly lines, storage and warehousing, service jobs like cashiers, bank tellers, etc. Loss of these types of jobs have a heavy bearing for women in the workforce, as these are the jobs that women have a preference and inclination for. Counter policy measures described in the above paragraphs need to be implemented urgently to address this unrelenting future digital work environment in order not to endanger the policy push for increasing the participation rate of women in the labour force.

It is pertinent to repeat that greater efforts must be focused on the skills needed to fill the new jobs and occupations as well as drive productivity arising from technological innovations, automation, robotics, and artificial intelligence stemming from big data analysis and accumulation. This will require greater coordination and cooperation with industry and training/educational institutions to scope out the future jobs outlook given global and regional industry trends.

The existing Human Resources Development Council (“HRDC”) (working with the National NPC if one exists) is well placed to coordinate policies in this area, including through the development of Environmental Scans and the Critical Occupation List (“COL”), which seek in part to gauge the impact of future economic trends on the workforce profile, new jobs and the skills gaps that have to be bridged to attract digital age investments. The major approach of the ES and COL is to forge a workable framework for integration of the needs of industry and the output of training/TVET/academic institutions to meet the labour and skill requirements of the future digital age environment. More resources must be allocated to the work program of the HRDC following a thorough review and consolidation of all the government intervention to support development of human resources. In this respect, the procedures embedded in the NPC blueprint appear to be at odds or duplicate in some areas the functions of the HRDC. These would have to be reconciled or better still, the two councils should be merged.

### Continue to Favour Clusters and Corridor-Based Economic Activities

The efforts to create production platforms through regional clustering and corridor-based incentives to attract innovative investment to drive high valued added growth remains relevant. These initiatives have proven to have impact in sustaining productivity and fostering growth from strong spill over effects. The inherent gains from clustering fosters economies of scale stemming from efficiency in delivery of supporting services. More importantly, such layouts will also help to bunch the locations of academic and TVET training providers so that aspiring student workers can benefit from exposure to the work site environment from attachments, instructor exchanges will be simplified and coordination between training providers and industry will be enhanced for curriculum review plus development, attachments and placements. Spill over effects may include expansion into new markets like downstream

agricultural outputs, alternative energy generation with climate mitigation effects, supply chain amplification and health or eco-tourism.

**Foster ecosystem for entrepreneurship and innovation:** Within each cluster or corridor, foster doable policies to build up the ecosystem for entrepreneurship and application of innovative processes. Successful policy outcomes may then be replicated among the different regional clusters and corridors. Policies to be considered will include easing the entry and exit of entrepreneurs, i.e. the cost of failures should not be too onerous. It would require flexibility in the operations of venture and seed capital funds. This needs support through the simplification in bankruptcy regulations to promote vibrancy in entrepreneurship. Some of the risks borne by both entrepreneurs and capital providers could be partially covered by a pooled insurance scheme to be funded initially in part by the government, industry and the entrepreneurs themselves, particularly those that are lucratively successful.

### Revamp Governance of Universities with More Autonomy

Recent calls for autonomy in public universities should be considered seriously by government. Autonomy in the true sense where universities are given the full mandate to operate independently within broad parameters and internationally benchmarked regulations to ensure quality education and fair treatment of students. Recent conclusions from the IDEAS study on autonomy for public universities should provide lessons to devise autonomy policies for public universities. Such autonomy should cut across the academic programmes, financial management and freedom to select all categories of staff. Vice chancellors and top administrators cannot be politically appointed. More collaboration with foreign universities must be fostered.

### Ensure High Performing Primary and Secondary Education to Build Pipeline of a High Quality Workforce

A quality workforce that can drive productivity is dependent on the quality of its education institutions providing basic primary and secondary education. The quality of the education system at the primary and secondary levels can impact the quality of students entering universities, TVET and other tertiary institutions as well as dampen or amplify socio-economic inequalities. Good lower and secondary education matters significantly for the workforce to generate adequate incomes not only at the macroeconomic but also at the individual level, as labour markets reward workers with higher quality education. If children from poor families have access to excellent education, they can expect to earn higher incomes than their parents, breaking the poverty cycle. Even if graduating students after secondary schools choose not to pursue university education, high quality education at primary and tertiary levels will provide that necessary basic education for them to pursue the entrepreneurial line and sufficiently manage risk taking to enter private businesses.



## INVIGORATING ECONOMIC CONFIDENCE IN MALAYSIA

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Poor quality primary and secondary education will lead to lack of access to entrepreneurial and tertiary education opportunities, especially those born in poor households. Such individuals will then be tied to lower-paying jobs and low incomes, perpetuating poverty within the family lineage.

Quality primary and secondary education is necessary to break not only equity barriers along income lines, but also income equity along gender, ethnicity and geographic dimensions in order for growth to be inclusive and hence, more sustainable. As with the link between education and economic growth, equality of access to basic quality education is necessary and a sufficient factor in promoting equality of opportunities in a society.

A high-performing education system is therefore one characterised by coverage, quality and equity.

- a. Coverage: is every child in school?
- b. Quality: are children learning, and what can they do with what they learn?
- c. Equity: are children of every income level, ethnic group, gender and geographical area able to access quality education?

Malaysia's performance in standardised international student assessments is below what would be expected of a country with the equivalent income per capita or level of educational expenditures. It is well below the performance of the high-income economies that Malaysia aspires to compete against for innovation and knowledge-based investments. Moreover, performance appears to have deteriorated over the past decade. The level of English proficiency is widely perceived to have declined over time, a hypothesis that is supported by data on English teacher proficiency. The disproportionate share of post-secondary graduates among the unemployed further suggests that the education system is not producing the skills sought by the labour market. Meanwhile, schools have become more segregated in the past forty years, decreasing their potential to contribute towards greater social cohesion.

Evidence of poor quality primary and secondary education in Malaysia is provided from results of performance in international benchmarking tests. Malaysia participates in two international tests, PISA (Programme for International Student Assessment) and TIMSS (Trends in International Mathematics and Science Study) in order to gauge its standard of education and ranking, in comparison to the rest of the world. PISA is conducted triennially, to selected 15-year olds (Form 4 in Malaysia) testing Mathematics, Science and Reading skills. TIMSS is conducted quadrennial, to selected 14-year olds (Form 2 in Malaysia), testing Mathematics and Science skills.

The quality of cognitive skills of Malaysian students, as measured by standardised international tests, is not on par with the country's aspirations to become a high-income economy. Malaysia performed in the bottom third for Reading, Mathematics and Science, well below the international and OECD averages, as well as the level of performance expected given Malaysia's income level and that of high income economies that Malaysia aspires to join.

More than half of Malaysian students do not reach basic proficiency levels in Mathematics, and even the top 5 percent of Malaysian students perform only in line with the average Korean or Japanese pupil.

Average performance is not driven by urban-rural disparities, as students from large cities similarly underperform relative to peers in other East Asian cities.

The PISA results suggest that schooling is not translating into learning. While school enrollment among 15-year olds in Malaysia is broadly similar to advanced economies in the region, quality gaps mean that schooling is not translating into higher levels of human capital.

In the 2009 PISA assessment, Malaysia's performance was at least 100 points below that of regional peers like Singapore, Japan, South Korea, and Hong Kong on all three subjects. In PISA, a 39-point difference is the equivalent of one schooling year of learning (OECD, 2010). This means that 15-year-olds in Malaysia are performing as though they have had three years' less schooling than 15-year-olds in OECD countries. Compared to Shanghai, the world's best-performing school system in PISA 2009+, the gap is equivalent to four years of schooling.

### WHAT CAN WE DO?

a. **To boost the performance of its education system and reach its goal of becoming a high-income nation, Malaysia may improve governance across the board:** governance in policy design and implementation at the Ministry level and governance in schools. A total reform on the governance framework is required. This governance framework should provide for education policies to address the economic needs and welfare of the population and not manipulated for short-term political objectives. A good governance framework within the MOE at the policy and implementation level can avoid unnecessary changes in education policy by Ministers taking over the education portfolio. This can be achieved by having education policy oversight under the responsibility of a bi-partisan Parliamentary Select Committee (See Part 2 below on governance in Parliament).

b. **At the schools level, based on an assessment of the drivers of the current performance of the system, two main policy thrusts to enhance governance within schools need to be pursued with vigour and urgency:**

- increasing in parallel, school-level accountability and operational decision-making; and
- Transforming the teaching profession to significantly upgrade the quality of teaching – becoming teachers must again be a job of first choice.

A number of additional policies, most of which are already anticipated in the Malaysia Education Blueprint 2013-2025 (MEB) can complement these two policy thrusts, but given Malaysia's high and increasing spending on education against declining enrolments and deteriorating test scores, it is clear that additional inputs will not be sufficient to improve results. Rather, fundamental reform of the governance of the education system is needed to change the incentives of administrators, teachers, parents and students, to re-orientate towards student welfare, well-being and education excellence.





### c. Measures in ensuring equity in education

- **Equity in access:**

Malaysia performs very well in terms of access to education; it is equitable across rural-urban area, ethnic groups, and children of different socio-economic levels. Enrolment in primary and lower secondary is nearly universal. But the quality of education is the issue; based on Malaysia's performance in PISA and TIMSS.

- **Equity in socio economic status:**

The liberalisation of international and private school education have widened the gap between the socioeconomic groups. Those who are able to afford private quality education would opt for the option, thus leaving behind their peers. Once national schools meet quality standards, there will be more equitable, opportunities for children of poorer families to have education matching those of international schools.

The MOE should not attempt to limit the setting up of international schools or clamp down on schools established by the missionary, but reform national primary and secondary schools to standards delivered by international and missionary-type schools.

- **Equity in learning achievement:**

The PISA result shows that Malaysian 15-year olds are three years behind their peers in the world. Therefore, Malaysia must focus on enhancing equity in learning, and adopt the model that Finland is world famous for, which provides education equity and effective intervention programmes.

The Finland concept of enhancing equality focuses on giving children who need more time and help receive additional support to be able to match up to their peers. They recognise that students are different. Some students may have learning difficulties, behavioural problems, and various issues that hamper their learning. Finland has the most number of special education teachers specialising in early intervention than anywhere else in the world. They have not only employed the best and brightest for the teaching profession but have also made equity in education the cornerstone of their education reform since the 1970s. From that objective, they realised that they needed better-educated and prepared teachers to take on the task. They redesigned teacher education and required that preschool and primary school teachers have masters' degrees to cater for that particular purpose. Thus, it is not enough to have quality teachers, but quality teachers that are purposefully developed to serve a need.

### d. Malaysia's education expenditure

The country's expenditure on basic education is more than double that of the other ASEAN countries. However, education expenditure per student for primary and secondary school is extremely low based on the statistics of PISA 2012, when comparing the annual education budget allocation to those of top performing countries in PISA scores. The budget allocated for education is 20% of the total budget allocation. In 2015, total

education budget allocated was RM56 billion. Total spent was RM56.63 billion. But a UNESCO data on education expenditure per student for primary and secondary education shows that only approximately 10% of the budget allocated is spent for this sector.

Malaysia's nominal per capita GDP in 2015 is USD\$26,891. Malaysia spends 12% of per capita GDP per student between the ages of 6 and 15 (PISA 2012) while countries which top the PISA chart spend more than 100%. Based on OECD average, Malaysia should be spending USD\$39,530 per student within the age group of 6-15 years in 2015 and not USD\$3,227.

### e. Consider decentralisation advantages to improving the education deliverables

Malaysia's education system administration is among the most centralised in the world. Most countries whose students perform well confer substantial autonomy to local authorities and schools. For example, the hiring of teachers - over 65% of hiring for schools in Malaysia are decided by the central Ministry of Education, but in South Korea, only 5%.

The key constraints to improving the quality of basic education lie in the institutions because of:

- Highly restricted levels of autonomy and centralisation (decision on hiring teacher & determining salaries, formulating and allocating the school budget, student policy and textbook choice, curriculum).
- Low parental involvement, which affects accountability – Decentralised decision-making is only beneficial to the extent parents and communities are informed and involved in demanding performance from schools.
- Shortcomings in teacher recruitment and performance management. Teacher numbers have increased even as enrolment has been declining. Teacher salaries in relation to per capita GDP for seasoned teachers are not low. It is 1.1 times Malaysia's per capita GDP. The OECD average is 1.2 times.

Decentralisation increases client satisfaction and improves education outcomes. School autonomy and accountability can help to solve some of the fundamental problems in education. If schools are given some autonomy over the use of their inputs, they can be held accountable for using them in an efficient manner.

Decentralising power to the school level can also improve service delivery to the poor by giving poor families a say in how local schools operate and by giving schools an incentive to ensure that they deliver effective services to the poor and by penalising those who fail to do so.

A well-functioning education system balances schools' autonomy by allowing parents and students to hold education providers accountable for use of resources and results. The clients (parents and students) hold the state accountable. They do this by using their voice and votes, through the political process, to try to ensure that politicians and policy makers deliver the services they demand. The state holds providers (schools and teachers) accountable for their behaviours and their results through a compact or managerial relationship. When citizens, and poor citizens in particular, lack the voice or the political clout to hold politicians and service providers accountable for service delivery, quality can suffer.

## INVIGORATING ECONOMIC CONFIDENCE IN MALAYSIA

Getting states to play a role in decentralisation of governance of schools can help improve quality of schools. It can create a favourable environment of states competing to have the best schools, and schools themselves competing to be the best. Within the parameters and principles of oversight over schools, states can be authorised to share the oversight that schools exercise the governance and accountability required of them. If states desire providing funds to schools, they should be encouraged within certain guidelines to promote equity in funding.

Such an open sharing of accountabilities between state and federal authorities to promote the common objective of delivering quality primary and secondary education can result in greater efficiency and cost effective policies to meet common state and federal objectives. This was seen in the early years of independence in Penang and to a lesser extent in Selangor, Johor and Perak where schools gained reputations as schools of choice among students and parents. In Penang, high performing schools gained reputation to attract students from Thailand, Sumatra and Myanmar, based on reputation of good management and hence, high performance.

### f. Improving quality of teachers and teaching

The Malaysia Education Blueprint (“MEB”) is candid and comprehensive about the challenges faced in the education system in terms of the quality of teachers, teaching and school leaders.

46% of school principals report that there is lack of qualified teaching staff. Some candidates enrolling in teacher training institutions also did not meet minimum secondary level achievements.

Approximately two-thirds of teachers in Malaysia are under 40 years old, making it likely that approximately 60% will still be teaching in 20 years, and 50% will still be teaching in 30 years.

A research on quality of teaching shows that 50% of the lessons were observed to be delivered unsatisfactorily.

Lessons did not sufficiently engage students, relying on a more passive lecture format of content delivery by the teacher. The focus was more on achieving surface-level content understanding for summative assessment purposes, rather than on cultivating higher-order thinking skills. For example, students were more likely to be tested on their ability to recall facts (70% of all lessons observed) than to analyse and interpret data (18%) or synthesise information (15%).

The MEB outlined comprehensive plans and targets to ensure that the quality of teachers, teaching and school leaders improve over the course of the MEB, however it is unclear how the proposed measures will be monitored, implemented, assessed and evaluated, in order to quantify its impact on students learning.

The critical factor lies in the need to remove low-performing teachers who could possibly spend another 30 years in service.

Consideration should be given, that in order to ensure retaining only the best teachers, teacher licensing be implemented, or internationally accredited teaching profession recognition for the in-service teachers be introduced.



### g. Sustaining initiatives, which show good results

The government has made significant efforts to improve the quality of primary and secondary education. Along the way, these efforts are often thwarted by politically-motivated groups. It is important that initiatives showing good outcomes are allowed to continue. The proposed governance framework in (a) above can help make this a reality.

In this context, working models should be replicated throughout the country. Some examples of the best working models that are proven to be successful in the Malaysian education system include:

- The Yayasan Amir Trust school model - Under the Trust Schools Programme, teachers are exposed to an array of best pedagogical practices that encourage interaction and stimulate learning to produce a better-rounded student. This is through a series of teaching and learning programmes and a structured performance management system. The teachers are then encouraged to incorporate what they learn into their daily classroom lessons, providing students with stimulating learning experiences to maximise student potential. The result is an improved and dynamic classroom environment, with students being more engaged and excited about learning.
- Teach for Malaysia (“TFM”) is based on the successful Teach for All programmes such as Teach for America in the United States of America. The TFM programme recruits students with very strong academic credentials, leadership and management skills and an aptitude for teaching, and works with the Ministry to place TFM fellows in high-need schools in two-year placements. TFM fellows are provided coaching and support during their placements, while simultaneously working towards a professional qualification in teaching.
- Given the shortage of qualified teachers in Malaysia, and the difficulty experienced in attracting high-quality candidates to teacher training programs in the country, a program like TFM holds great potential in terms of bringing good teachers into the system.
- Revisiting the English medium schools of yesteryears – Malaysia’s economy is trade dependent. ASEAN region is the 3rd largest economy in Asia. The official language of ASEAN is English. It is the second language to most of the ASEAN nations.

Older cohort teachers who went through the English medium education have better English proficiency, and students who passed through MCE had a higher chance in being admitted to top universities of the world. English proficiency is needed for tertiary education, and this should also be extended to teacher training colleges, as bilingually-abled teachers would be better equipped to gain new knowledge provided for by books and the internet.

English medium schools in 1967 were more ethnically balanced and neutral. Schools are for all Malaysians, and not race skewed.

### Improving Workers Welfare and Capacity to Exercise Worker Rights and Privileges

Malaysia has subscribed to UN conventions on workers’ rights. It is imperative that we have a plan to ensure protection of these rights to workers. Specific measures include:

- A National Wage Council on the Singaporean model with participation of workers, employees and government to ensure that workers' wages are increased annually. Increase in wages must reflect cost of living as well as productivity and performance.
- Labour should be given rights to organise themselves to enable representation to employers and the government to make demands on work conditions, wages etc. Such organisation may not necessarily take the form of trade unions, but would be sufficient to enable sound representation of worker interests to facilitate competitive and fair labour market conditions.
- Worker rights should also be extended to foreign workers (see section on reform of foreign labour policies in Section A). This includes rights given to foreign workers to move up the skills ladder and obligations on employers to provide acceptable working conditions to foreign workers.

## PART II: STRUCTURAL REFORMS



## PART II: STRUCTURAL REFORMS

### Distinct Separation of Parliament, Judiciary, and Executive Functions to Strengthen the Foundation for Economic Growth

Malaysia is encumbered by a malaise of twin dynamics—growth sputtering at a moderate pace for nearly two decades and the asphyxiating emergence of poor governance which is threatening the upside of the growth potential. The advent of poor governance has opened the flood gates for endemic corruption at high levels of government and government-linked business entities to expand and deepen. Being ostensibly unchecked, this shameful culture has been eroding both the efficiency and efficacy of the public sector delivery systems and business practices which ultimately promotes the improper allocation of resources and raises the cost of doing business, all leading to slower, low quality growth.

It is proven that countries with good governance perform better economically. In addition to purposeful economic policy changes, Malaysia must restore public confidence in good governance practices to make the country a favoured choice to invest, work and live. This means that investors, both domestic and foreign, as well as the general public are confident that laws, regulations, procedures and processes will be implemented with appropriate checks and balance. It is essential that key reforms are taken to address what is seen as the weakening structural foundations to support the implementation of economic policies. While there are many areas of reforms needed, the priorities should focus on key areas which are most essential to rebuild and sustain the strong foundations for supporting sustainable inclusive economic growth to meet the high income aspirations of the citizens.



#### The key areas of focus are

- A. Independence and Strengthening of the Judiciary;
- B. A Dynamic Legislative System;
- C. Improving Public Sector Performance; and
- D. Reforms for Clean Government.

## A. Independence and Strengthening of the Judiciary

### ■ Measures to Ensure Independence of the Judiciary

The fundamentals of good governance are set in the independence and separation of powers of the Judiciary, Parliament and the Executive. The Federal Constitution was designed with the three arms of government fulfilling their individual functions, enabling the balancing required to ensure the protection of rights and safeguarding justice as enshrined in the Constitution. In order for Malaysia to continue being a location of choice for investors, the comfort derived from the observance of the rule of law must be ensured. The proposals below are aimed at achieving the objective of re-establishing the independence of the judiciary which has suffered undue and accelerating erosion over the past few decades.

### ■ Restore the Legal Framework on the Clear Separation of Powers

The doctrine of separation of powers has its origin in the published work of the French cultural and political thinker, Baron de Montesquieu, *The Spirit of the Laws*. By this doctrine, a government is divided into three branches, namely, the Legislature, the Executive and the Judiciary. The function of the Legislature is to make laws. The function of the Executive is to carry out the laws. And the function of the Judiciary is to interpret and enforce the laws. These three bodies are meant to check and balance each other.

Malaysia, like other modern democratic states, adopts the doctrine of separation of powers. Although the term 'separation of powers' is not found in the Federal Constitution, the concept, however, is entrenched in the provisions of the Constitution. Like other modern democratic states, the separation of the functions of the three branches of government, for practical reasons, is not a tight or a rigid one. There is some degree of overlapping between the function of one branch and the other. For instance, although legislation is a function of the Legislature/Parliament, many laws are made by the Executive in the form of rules, regulations and by-laws made by Ministers and statutory authorities under the system of delegated legislation. The Judiciary too exercises limited legislative functions when it makes rules of procedure and when Judges make or develop the law through judicial interpretation of the laws and judicial activism. The Executive also in some limited ways exercises judicial functions. For example, the Industrial Courts are not part of the Judiciary but rather a part of the Executive organisation. Yet they perform judicial functions.

In Malaysia the separation of powers between the Legislature and the Executive is to some extent blurred by the fact that all Ministers (including Deputy Ministers who are part of the Executive branch) have to be members of the Legislative branch, that is to say, Parliament (see Art. 43, Clause (2)(b) and Art. 43A Clause (1) of the Federal Constitution). The majority of Ministers and Deputy Ministers are members of the Dewan Rakyat, whilst a few are members of the Dewan Negara. Since Independence, largely due to the system of 'party discipline', the practice appears to have evolved resulting in Parliament not being independent of the Executive but instead allows itself to be dominated by the latter. This is undesirable: for Parliament is not performing its role in the manner as envisaged by the doctrine of the separation of powers.



In this regard, there is a matter that needs to be addressed. In Malaysia, prior to the amendments to the Constitution in 1988, Art. 121(1) of the Federal Constitution provides that –

(1) Subject to clause (2) the judicial power of the Federation shall be vested in two High Courts of co-ordinate jurisdiction and status ... and such inferior courts as may be provided by federal law.

This article vested the judicial power of the Federation in the High Courts of Malaya and Borneo. However, in 1988, Parliament amended Art. 121(1) – the Federal Government moved to amend Art. 121(1) following the Supreme Court decision in *Public Prosecutor v Dato' Yap Peng* [1987] 2 MLJ 311, which ruled that section 418A of the Criminal Procedure Code (that empowered the Public Prosecutor, who is the Attorney General, by the issue of a certificate to require a subordinate court to remove to the High Court any particular case triable and pending before it) was unconstitutional as it was a 'legislative incursion to facilitate executive intrusion into the judicial power of the Federation' (per Abdoolcader SCJ). Art. 121(1), as amended, now reads:

121(1) There shall be two High Courts of co-ordinate jurisdiction and status ... and such inferior courts as may be provided by federal law; and the High Courts and inferior courts shall have such jurisdiction and powers as may be conferred by or under federal law.

The amendment to Art. 121 Clause (1) by Act A704 in 1988, followed twenty years later by the Federal Court case of *PP v Kok Wah Kuan* [2007] 6 CLJ 341, are disturbing developments as far as the doctrine of separation of powers and the concept of 'judicial powers' are concerned. In this case, the Federal Court took the position that the doctrine of separation of powers is not a provision of the Malaysian Constitution; and that the judicial power of the judiciary is only to the extent as is conferred by the Legislature.

There is a preference for the dissenting view as expressed by Justice Richard Malanjum CJSS, who opined that the 1988 amendment does not make the Superior Courts servile to, or mere agents of, the Federal Legislature; and that Art 121(1) is not, and cannot be, the whole and sole repository of the judicial role in this country (and he gave his reasons). In the same case but at the Court of Appeal stage, Justice Gopal Sri Ram, in delivering the judgment of the Court, states the law correctly when he said that the doctrine of the separation of powers is very much an integral part of the Federal Constitution.

### WHAT SHOULD WE DO?

It is recommended that Parliament should amend Art. 121 Clause (1) and restore the original provision. Pending that amendment, it is suggested that the Federal Court will have the opportunity one day to revisit Art. 121, Clause (1), and to reconsider its view on the doctrine of the separation of powers and on the meaning of 'judicial powers'.

In this context, G25 wholeheartedly applauds the recent courageous and innovative judgment of the Federal Court in the case of *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat* (and another appeal) that restores the powers of the Judiciary and affirms the doctrine of the separation of powers. In so ruling, the Federal Court has propounded two important principles of constitutional law, namely, (1) that the Independence of the Judiciary and the doctrine of the separation of powers are basic features of the

Federal Constitution; and (2) that Parliament has no power to amend the Federal Constitution with the view to remove these two basic features.<sup>1</sup>

With this decision in *Semenyih Jaya*, the emasculation of the Judiciary by the notorious 1988 constitutional amendment has now been removed. The Judiciary has, at last, and to its credit, corrected a horrible wrong that had been done to it.

### Transparent Process and Reforms in the Appointment and Promotion of Judges

More transparency and reformation of the current practices in appointments and promotions of Judges is recommended to better reflect the principle of an independent Judiciary.

Currently, Judges are nominated by a Commission called the Judicial Appointment Commission ("JAC"). The JAC comprises of the Chief Justice, the President of the Court of Appeal, the Chief Judge of Malaya, the Chief Judge of Sabah and Sarawak, a Federal Court Judge, and 'four eminent persons'. The Federal Court Judge and the 'four eminent persons' are appointed to the JAC by the Prime Minister. Under the Federal Constitution Judges are appointed by His Majesty the Yang Di-Pertuan Agong on the advice of the Prime Minister after consultation with the Conference of Rulers (Art. 122B). Thus the role of the JAC is merely to nominate names of suitable candidates to the Prime Minister. As His Majesty is constitutionally obliged to act on the advice of the Prime Minister, the person who effectively decides on the appointments or promotions of Judges is the Prime Minister. The Prime Minister is not obliged to give a reason if he were to reject a nomination by the JAC.

This system of appointment is unsatisfactory. This is because the Prime Minister is the head of the Executive Branch of the Government. There are times when Judges have to make decisions involving the Executive or the Legislature. Recently the Malaysian Bar, the Sabah Bar and the Sarawak Bar had jointly issued a statement expressing their disagreement with the present method of appointing judges. It gives rise to the perception that the Judiciary is beholden to the Executive.

### WHAT SHOULD WE DO?

A better method is proposed whereby the Prime Minister plays no role at all in the appointment of judges. The JAC (instead of the Prime Minister) recommends the names to the Conference of Rulers (for their views) and thereafter to the Agong.

Membership of the JAC should be re-examined with a view to have it expanded to include, for example, apart from the four eminent persons, representatives of the Bar and the academia. Representation of other interests should also be considered. Models of best practices in other jurisdictions should be studied to reform the appointment process and procedure to truly ensure independence of the Judges from the Executive and Parliament.

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<sup>1</sup> On 20 April 2017, the Federal Court delivered a landmark decision in *Semenyih Jaya*, wherein the Federal Court departed from the position that it had taken in *Public Prosecutor v Kok Wan Wah*. The appellants in the two appeals in *Semenyih Jaya* challenged the constitutionality of section 40D of the Land Acquisition Act 1961 on the ground that that provision (section 40D) vested judicial power with the assessors (who sit with the Judge in hearing the land reference case) and therefore violated Art. 121 of the Federal Constitution. Section 40D of the Land Acquisition Act provided for a conclusive determination of compensation (for the landowner) by the assessors rather than by the Judge with whom the assessors sit. The 1988 constitutional amendment became the central issue of the appeals before the Federal Court. Before the Court, the Malaysian Bar advanced the argument that the 1988 constitutional amendment was unconstitutional on the ground that it violated two basic features of the Federal Constitution, namely, the doctrine of separation of powers and the independence of the Judiciary.

## B. Dynamic Legislative System

### ■ More and Expanded roles for Parliamentary Committees

Considering the imperative need for proper and effective checks and balances so as to safeguard public interests against the abuse of power, it is imperative that Parliament should have a more dynamic role in overseeing the functions of the Government, particularly, with regard to the operations and performance of the Ministries and Public Sector Departments. The following proposals below are aimed at enabling Parliament to have oversight functions of government activities on a regular basis, as well as to undertake special investigations when there are wrongdoings.

### WHAT SHOULD WE DO?

It is proposed that parliamentary select committees should become the main mechanism for Parliament to implement its governance framework. Through this tested mechanism, a range of Select and Special Select Committees should be established, in order for Parliament to foster and ensure good governance in all key public sector institutions. This mechanism can also avoid further financial losses through containing bad behaviour (which are estimated to have cost more than RM140billion in recent years, not counting smaller cases).

Malaysia can leverage on the legal framework which already exists for setting up parliamentary committees to meet the objectives of strengthening oversight by MPs to restore public confidence that public sector agencies and its officials are always accountable and observe ethical practices. Parliamentary committees will enable restoration of powers of MPs to approve legislation and not give opportunities for the Executive to undermine the role and powers of Parliament.

The following are a summary of measures for Parliament to become more effective:

- Set up a Select Committee on Legislation to consider bills and make recommendations relating to the bills, including the policy issues involved and the evaluation of legislative alternatives.
- In addition, set up several new select committees to enable better oversight and monitoring of federal Ministries and their activities. Select Committees covering activities in the Executive on the following areas should be a starting point:

- National Security and Foreign policy;
- Economic Policy and Financial Management;
- Education and Health;
- Transport and Communication;
- Public Sector Finances;
- Political Financing and Elections;
- National Unity and Multiculturalism



- Establish special committees when required to undertake investigations of suspicions of unethical behaviour or accusations of wrongdoings by public officials.
- Improve operations of current PAC by adopting the good practice wherein the appointed chairperson is from the opposition party.
- Enhance the legal framework to enable adoption of processes and procedures as provided by Article 62 of the Federal Constitution; the Parliament Standing Order should provide for stronger policies to make parliamentary committees effective.
- Adopt principles and procedures on appointments and operations of parliamentary committees which are aligned to best practices (see Box I below)
- The Parliamentary Service Bill announced by the Speaker to be tabled in 2017 must be implemented with urgency. This Bill is required to 'revive' an earlier legislation (the Parliamentary Service Act 1963 that was repealed in 1992) that will enable parliament to have its own dedicated administrative service, so that officers can have continuity in their parliamentary work and grow to become professionals in assisting members of parliament in the performance of their duties.
- Undertake other reforms to create a supportive regulatory environment so that parliamentary committees can be effective:
  - Reasonable freedom of the media to provide for unbiased, professional reporting on issues concerning public interests such as education, health care, finances, governance and administration. Initially, it is recommended that liberalisation of the media focus on two main changes: reform strict laws governing the media, particularly the PPPA; and promote greater autonomy for journalists within the media industry.
  - Calls for a Freedom of Information Act should be recognized and the government should pass legislation to enable greater access to information. Secrecy should be replaced with more open access and freedom to share information.
  - Other regulations which can greatly support work of MPs include enhancing the asset declaration for Ministers and senior officials by having an independent audit firm which collects and evaluates the integrity of reporting, compulsory public declaration of assets and business interests by Ministers prior to appointments.
  - Strengthening integrity rules and practices, strengthening whistle-blowing protection practices and a more open system of appointments to senior positions and heads of government ministries and agencies to strengthen leadership and integrity in the public sector.



### BOX I: Recommendations on the Set-up and Operations of Select (“SC”) and Special Select Committees (“SSC”)

Best practices principles in setting up and putting in place procedures on operations of SCs and SSCs are proposed as follows:

#### a. Establishment of SCs and SSCs:

1. Set-up of SC: Parliament agrees to set up SCs to undertake oversight on key areas of government responsibilities and that SCs are permanent until Parliament decides to dissolve or amend their functions and set up. Parliament agrees to a set of criteria for selection of members of the SC, giving emphasis to expertise of members. Overlapping memberships should be allowed, with maximum numbers fixed for a MP.
2. Chair of SC must be shared proportionately between the ruling and the opposition parties, but chairs of key committees must come from the Opposition Party. This is particularly crucial for the PAC and the Legislative SC.
3. SCs and SSCs may appoint sub-committees.
4. Composition of the SC must be proportionate to the party representation in Parliament.
5. Nominations for members of SCs and SSCs can be made by the party subject to MPs meeting criteria. MPs can volunteer to sit on SCs and SSCs, and usually MPs select committees where they have expertise. There must be a transparent process for membership in SCs and SSCs.
6. MPs can sit in a pre-determined maximum number of committees, while MPs cannot sit in committees where he/she has a pecuniary interest.
7. The SSC is set up by the Selection Committee or by a resolution in the Dewan Rakyat or the Dewan Negara.
8. A process should also be established for the public to be able to make requests for Parliament to convene an SSC on a particular issue of public interest, and for the public to share information on the subject, particularly on matters of abuse of power by public officials. To avoid unwarranted requests, a transparent criteria-based guidance is issued to the public.
9. SSCs will cease to function once the time allocated for it to do its work expires or upon presenting its final report to Parliament.

#### b. Operations and Conduct of SCs and SSCs

1. Matters being discussed at SCs and SSCs should be made public. In particular, special enquiries by SSCs should be made public early in the investigations to encourage the public to submit relevant evidence.
2. SCs and SSCs can appoint expert advisors.
3. In the conduct of its work, SCs and SSCs should have the power to call for hearings and demand that officials from ministries being overseen by the committee provide the required information. SCs and SSCs can also call on experts as well as convene public hearings to seek evidence from a wide range of witnesses, collecting such evidence through oral presentations/questioning at hearings or written submissions.
4. SCs and SSCs have the same status as a court of law in summoning witnesses and experts from the public and private sectors to give expert views or opinions. In this context, witnesses can request evidence to be given in camera.
5. In the case of government servants, guidelines shall be established that they are required to fulfil their accountability obligations by providing full and accurate information to the committees. Public officials shall be given immunity to enable them to give evidence freely and honestly without fear of recrimination.
6. A process must in place to provide protection against victimization of private sector witnesses (especially by government officials) for individuals and corporations called up to give evidence or experts views.
7. Work of the SCs and SSCs will culminate in a comprehensive report to be submitted and discussed by Parliament.
8. Reports are eventually published and the public is invited to give feedback.

### Maintain Certainty in the Administration and Legislation of Islam

Economists and international experts who have studied Malaysia's economic development to become one of the most advanced economies in the developing world over a relatively short period of time, have always cited its system of law and administration as a key factor in attracting foreign and local investors to do business here. It is a system which foreign investors are familiar with because it's similar to what they find in their own countries. This makes it easy for their headquarters to transfer their top management and professionals to live here. Their presence is most important for the transfer of knowledge and technology so that Malaysians can benefit to develop our own skills for competing in the world market.

While all Malaysians accept the special status of Islam in the country, and its position as the religion of the Federation, there are concerns over recent trends to expand the scope of syariah laws to cover a wider area of Muslim social life and to increase the punishments for offences under the Syariah Criminal Offences Enactments of the various states beyond the limits imposed by the Syariah Courts (Criminal Jurisdiction) Act 1965. As the constitution is the supreme law of the country, which is basically secular in character, containing the same fundamental principles of human rights and freedoms as found in other modern democracies, any efforts to expand Islamic laws will give rise to uncertainties over the system of law and justice in the country.

Our country will be taking a big risk with foreign and local investors if we have a system of law which is moving away from its original character to become more religiously oriented and less tolerant of modern lifestyles and values. Even though the religious laws apply only to Muslims, big corporations will hesitate to place their best talent here in view of doubts about the future direction of the country, and its tolerance for diversity and multiculturalism. Their scepticism should not be dismissed as misplaced because with the growing trend for religious extremism in other countries, both foreigners and locals will be concerned whether Malaysia is heading towards a failed state.

### WHAT SHOULD WE DO?

G25 recommends that Malaysia supports efforts for a moderate Islam. Powers and practices by religious authorities should be reviewed to ensure that these authorities' overzealousness on religious practices are not operating in a vacuum and that they ignore the adverse impact of their actions on the costs of doing business. Many actions affecting the public such as moral policing have transgressed the Constitution. These actions should cease immediately with religious authorities taking stock and reviewing how best they can achieve their objectives in manners that are supportive of the economic and social aspirations of Muslim themselves and the multi-cultural population.

Proper governance and accountability in religious institutions should be established. Given that these institutions are dependent on the public sector budget, they should be treated like any other public entities, subject to audit by the Auditor General and administrative officials subject to key performance indicators like any other government agency. During periods of austerity in public finance, these religious departments should also be subject to budget cuts like any other agency, based on considerations of least adverse impact of the budget cuts on immediate and long-term sustainable economic growth.

Over the long-term, a thorough study of the functions of religious departments should be undertaken within the objectives of the Constitution to accord rights of religious freedom and human rights to all citizens. The objectives of the study is to recommend reforms that such authorities implement practices of Islam which are true to the Quranic principles of justice,

equity, mercy and compassion and aligned to the Constitution. In this regard, G25 maintains that the government should pursue the G25 open letter calls for an international expert group to review the State Ordinances to make them consistent with the Federal Constitution. We also maintain that open debates on policies, laws, regulations and rules on the practice of Islam is necessary to ensure inputs from all quarters and regulatory impact assessments of proposed laws and regulations be undertaken. Regulations and laws on Islamic matters affect all Malaysians and the implied processes of change must be treated in the same vein as processes on changes of other laws and regulations. These proposals must be reviewed by the Parliamentary Select Committee on Legislation. Parliament can also consider a Parliamentary Committee on Religious matters, which is set up on the same principles as other Parliamentary Committees, and accountable to the Dewan Rakyat as well as by ensuring that its reports and deliberations are accessible to the public. (See (a) under Section B above on the oversight role of Parliament).



## C. Improving Public Sector Performance

### Independence and Good Governance in Public Sector Institutions

#### a. Reform the Office of the Attorney General

The current constitutional role of the Attorney General (“AG”) is spelt out by Art. 145 of the Federal Constitution. He is the legal adviser to the Government. He represents the Government in Court proceedings. He draft laws for the Government, that is to say, he drafts government bills meant for tabling in Parliament.

As a legal adviser to the Government, the AG must not to be involved with issues of Government policy. His role is merely to advise the Government on the legal aspects of the policies or proposed policies. He should refrain from engaging in political debates; and must be neutral in relation to party politics.

In his role as the Public Prosecutor, the AG is bound by the principle that any decision to prosecute should be made by him alone, independent of political considerations.

The role of the AG as public prosecutor is further defined by Section 376 (1) of the Criminal Procedure Code. In this dual role, principles of good governance dictate that the AG is the guardian of public interest and he is expected to uphold the Rule of Law.<sup>2</sup>

In earlier years the two offices of legal adviser and public prosecutor were separate in practice with the role of the public prosecutor carried out independently by the Solicitor General. In subsequent years, the two roles of the AG were fused, with the abolition of the position of Solicitor General.

Currently, unlike some Commonwealth countries, which have begun to separate the roles of legal adviser to the government and the public prosecutor, Malaysia does not have a separate office of Public Prosecutor (or Director of Public Prosecutions). Thus, in Malaysia, the AG is also the Public Prosecutor, that is to say, he conducts prosecutions in the Courts, and he decides whether or not a person alleged to have committed a crime ought to be prosecuted. This fusion of roles of the AG as public prosecutor and legal adviser for the government has created problems of accountability and hindered prosecution of corruption cases involving government officials and politicians of the ruling party. Further, his discretionary powers to solely decide on prosecutions without any opening for legal redress has been challenged in the courts. The latest position of the courts is that there should be limits on the AG’s powers to prosecute.<sup>3</sup>

It is good governance that Malaysia should adopt practices in other Commonwealth countries so that the separation of powers will result in greater confidence in the criminal justice system. In addition to avoiding conflict of interest, there will no longer be that suspicion or perception of political interference with regard to the AG’s prosecutorial function. It is also good for the office of the AG to combat corruption while enabling the AG to concentrate on his other functions as legal adviser and counsel to the Government, authorities implement practices of Islam which are true to the Quranic principles of justice, without being burdened with matters

<sup>2</sup> Fusion of roles of AG since independence was rooted in the Reid Commission report, the rationale being that the Commission at that time believed that high standards of governance would always prevail in the Malaysian Executive arm of government.

<sup>3</sup> Raja Azlan’s judgement that the Public Prosecutor can be challenged in the courts was strengthened in 2015 (case of Dato’ Pahlawan Ramli bin Yusuff v. Tan Sri Abdul Ghani Patail when Judicial Commissioner Vazeer Alam Mydin ruled that the AG who is a public official cannot have absolute immunity, and such immunity “has no place in a democratic society and is contrary to the rule of law”...“in a legal system where rule of law is central, no one is above the law.”



pertaining to prosecution; or having to deal with public suspicion or allegations of political biasness with regard to criminal matters.

### WHAT TO DO?

It is recommended that in order to create such an office, that is, the office of the Director of Public Prosecution, the government amends Article 145 of the Federal Constitution and Article 376 of the Criminal Procedures Code to redefine the functions of the Attorney General, and to establish the separate office of the Director of Public Prosecution: 1) The AG as an adviser to the government on all legal issues and drafting bills for the government; and 2) the Office of Public Prosecutions in charge of all prosecution related decisions. Similar to appointments in the civil service, the Public Prosecutor cannot be a member of any political party. It is also good practice that the Public Prosecutor is a qualified judge of the Federal Court.

For such an amendment to be effected, the government must have the support of 2/3 majority in Parliament. However, since at the moment the government does not have the requisite 2/3 majority, the government would need the support of opposition MPs. In consultations with MPs on issue of governance, opposition MPs are agreeable to the change and would support such a move for an amendment for the betterment of the country's legal system. What is needed is the political will of the ruling government.

Pending an amendment to the Constitution, the previous practice of appointing a Solicitor General as a de facto public prosecutor should be reinstated. It should be noted that pending amendment of Article 145 of the Constitution, the AG still has powers on prosecution. Therefore, to improve governance and avoid decisions on prosecutions by one person, a panel should be set up to review decisions made by the Solicitor General. With the setting up of such a panel it becomes more difficult for the AG to overturn recommendations by the Solicitor General. Once these administrative arrangements are approved by Parliament, it has to be observed. Amendment of Article 145 continues to be pursued as the eventual goal.

### Proposal on how the AG and DPP are to be appointed

Currently, the AG is appointed and can be removed by His Majesty the Yang Di-Pertuan Agong on the advice of the Prime Minister (see Art. 145, Clause (5) of the Federal Constitution); and he does not enjoy a security of tenure as he holds office at the pleasure of His Majesty the YDP Agong (and His Majesty acts on the advice of the Cabinet/Prime Minister). This being the case, the AG might be perceived to be beholden to the Prime Minister.

Thus to ensure the independence of the AG so that he could give honest legal advice to the Government without fear or favour, we propose that the AG should be appointed by His Majesty on the advice of an independent commission. The independent commission should comprise the Presidents of the Bar Council, Advocates Association of Sarawak and the Sabah Lawyers Association, Chairman of the strengthened Public Service Commission (see section on Reform of the Public Sector), President of the National Chamber of Commerce and a High Court Judge. The AG's Office will provide secretarial services to the Commission. The panel to assist the Solicitor General on prosecutions should also be appointed by the Commission.



It is further recommended that the Commission adopts best practices in terms of appointments of the AG. The appointment process must be transparent, accountable and merit-based. The Prime Minister cannot choose whoever he likes to recommend to the Agong.

Likewise, in order to secure the independence of the Director of Public Prosecution (“DPP”) in the exercise of his functions, he too should be appointed by His Majesty on the advice of an independent commission adopting the same principles of accountability, transparency and merit-based. The AG or DPP to be appointed need not necessarily be from the Judicial or legal service.

This independent commission should also advise on termination of the AG, the DPP, and the panel, adopting due process of hearing as befit senior positions in public office, similar to that provided by Article 145 (6) of the Constitution of convening a tribunal to sack a judge (see section below on tenure of the AG and DPP)

There needs to be clarity on the relationship between the AG and the DPP. Some have recommended that the AG functions as the Minister of Law and be allowed oversight of the DPP with reports on the DPP provided to Parliament. However, it is far better that the offices of the AG and the DPP be separate and totally independent offices. The DPP should be accountable to the Public Services Commission rather than the AG, largely because the PSC is also independent of Parliament.

### **Should the AG enjoy a security of tenure? Should the independent DPP (assuming such a post is created) also enjoy a security of tenure?**

In other countries, not all AGs enjoy a security of tenure. For example, in the United States the AG can be removed at any time by the President. In India, the AG holds office during the pleasure of the President. It is the same position in Indonesia and Brunei: there, the AG holds office at the pleasure of the President/Sultan.

However, in Kenya the AG enjoys a security of tenure in that he could only be removed for gross misconduct, for criminal misconduct and for unconstitutional misconduct. He could only be removed after a hearing before a Parliamentary Select Committee of 11 MPs, who, if satisfied that the allegation is proven, must refer him to the Full House of Parliament for the final decision.

The Attorney General of Singapore also enjoys a security of tenure in that he cannot be removed except on ground of disability or misbehaviour. Even then, in order to determine disability or misbehaviour the government is obliged to set up a tribunal consisting of judges. In Malaysia in order to ensure independence, it is proposed that the Attorney General and the DPP should have security of tenure. Their retirement age should be similar to that of Federal Court Judges (currently 66 years); and they cannot be removed, except in accordance with the procedures as prescribed by the Federal Constitution for the removal of Federal Court Judges (see Art. 125 (6) of the Federal Constitution).

Many Commonwealth countries have moved away from the practice of having the same person performing the dual role as Attorney General (AG) and Public Prosecutor; and have created a separate independent office of Public Prosecutor or Director of Public Prosecution. Should Malaysia also create a separate independent office of Public Prosecutor (or Director of Public Prosecution)?

Regarding the role of the Attorney General, legal developments have taken place in several Commonwealth countries. In these countries, the AG no longer plays an active role in regard to prosecution. In England and Wales, Canada, Australia and New Zealand the position is that, by statute or by convention, the Attorney General ceases to exercise the powers of prosecution. Such powers are now vested in the Director of Public Prosecutions, who exercises such powers independently of the Attorney General. In some jurisdictions, the role of the Attorney General regarding prosecutions, if at all the AG has a role in prosecution, has become merely supervisory in nature. The purpose of these developments is essentially to ensure the independence of the prosecution decision-making function from inappropriate political control, direction and influence.

In England and Wales the Attorney General still exercises control on the prosecution of certain serious offences; but in the vast majority of cases the prosecution is carried out by the Director of Public Prosecutions, independently of the Attorney General.

In India the Attorney General has no powers of prosecution. Such powers are vested in the respective Union/State Director of Prosecutions.

In Mauritius and Ireland, there is also an independent Director of Public Prosecution (DPP).

### b. Sustaining Independence of Bank Negara Malaysia

Malaysia envisages reaching developed nation status by 2020. What defines 'developed nation' status goes beyond per capita income. Developed nations give equal significance to good governance and the supremacy of the rule of law. These require strong institutions with leadership integrity and practicing the highest level of governance in performing their functions.

Bank Negara Malaysia was established in January 1959 based on the time tested traditions of the developed economies of England and Australia, with the highest levels of governance. From the very beginning, it was deemed necessary to grant independence to Bank Negara Malaysia, with the Bank having access to Parliament in the event of any difference with the Minister of Finance. Since its establishment, there has never been a need to invoke this provision in the Central Bank Act as Bank Negara Malaysia has consistently operated within its powers and exercised its responsibilities to the advantage of the nation.

Bank Negara Malaysia not only promotes a sound financial system—it has helped to set it up, expanded the financial services industry and weathered several crises to make Malaysia a country with one of the strongest financial systems in the world, able to ensure that financial institutions make available appropriate and adequate financing to fund economic growth. Bank Negara Malaysia has been able to achieve this because consistently good performance has given confidence that the independence has been exercised prudently and benefitted the economy.

There has never been a reason before to dispute Bank Negara Malaysia's actions. There is no reason today to dispute the ability of the Bank to exercise its powers for the good of the country. G25 hopes that the independence of the Bank Negara as provided in the Central Bank Law will be unconditionally respected by Parliament and the Executive. Given the management and technical expertise at Bank Negara and through its independent Board, it will have no constraints to maintain its tradition of oversight over financial transactions and the stability and growth of the financial sector.

### c. Institutional Reform for Independence of MACC

Proposals for the reform of the Malaysian Anti-Corruption Commission ("MACC") to strengthen the fight against corruption in Malaysia are taken from the memorandum submitted in November 2015 by IDEAS, C4, CNBM (Citizens' Network for a Better Malaysia) and Transparency International Malaysia.

At the heart of these proposals is the establishment of a constitutionally mandated Independent Anti-Corruption Commission ("IACC"). This newly created entity would operate essentially as an oversight body to the Anti-Corruption Agency ("ACA"), the investigation arm of the IACC. This is the current MACC. It is axiomatic that the MACC must function independently and impartially to be a viable and potent entity to eradicate corruption. The target should be the maintenance of an effective and efficient public administration, and a high standard of professional ethics in the public service.<sup>4</sup> In order to achieve this purpose, the MACC must have structural protection from governmental control or dictation. This can be achieved by putting the MACC beyond the reach of executive intervention and influence.

## WHAT CAN WE DO?

It is proposed that the setting up the IACC be mandated by the Constitution. This would require that a stand-alone "Part" be introduced in the Federal Constitution to establish the IACC as a constitutional commission in the mould of the Election Commission<sup>5</sup> but with a unique structure and substance befitting its position as an institution with sufficient powers of oversight and accountability. These proposed amendments to the Constitution would:

- create a constitutional commission, to be beyond the scope and control of the Executive;
- ensure the independence of Commissioners serving the commission; and
- ensure security of tenure for the Commissioners.

Accordingly, there should be consequential amendments to the:

- MACC Act 2009;
- Official Secrets Act 1972;
- Whistleblower Protection Act 2010; and
- Witness Protection Act 2009

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<sup>4</sup> See Section 196(2) of the Constitution of South Africa 1996 that guarantees the independence of the South African Public Service Commission as an institution that operates without the interference of any other organ of the state.

<sup>5</sup> Federal Constitution of Malaysia, Part VII on Elections.

The IACC will operate as a constitutional oversight and supervisory body. Features of the IACC include:

- Functions as a constitutional oversight and supervisory body that oversees the overall operations of the investigative arm, the Anti-Corruption Agency. Responsible for the appointment, promotion and discipline of the officers of the ACA (the current MACC, reformed appropriately);
- Its recruitment powers are to be exercised independent of the Public Services Commission;
- The objectives and functions of the MACC's current five oversight committees may be absorbed and discharged by the IACC barring the Special Committee on Corruption which will be retained and renamed as the Parliamentary Select Committee on Corruption;
- The IACC may establish working committees as it sees fit;
- Its annual report to be tabled and debated in Parliament on an annual basis;
- At least 40% of commissioners should be from civil society with relevant experience in the fight against corruption. IACC commissioners will be selected by the Parliamentary Select Committee on Corruption and appointed by the PSC; and
- All commissioners have security of tenure from dismissal like that of a Judge of the Federal Court. The removal of any commissioner is by a special tribunal drawn from the Parliamentary Select Committee on Corruption.

Apart from the existing functions under Section 7 of the MACC Act 2009, there should be also general functions given to the ACA such as:

- To promote values of honesty and integrity in the operations of the State;
- To identify the sources of the different types of corruption existing against the backdrop of the country's socio-economic conditions and propose recommendations for appropriate action; and
- Operational matters: detection and investigation with a view to recommending prosecution.

**Financial Independence of IACC and ACA:** There should be a separate fund that Parliament would annually determine and designate for the purposes of the IACC. The other option is to rely on the Service Commissions Act 1957. It is to be noted that remuneration for members of the current service commissions is contained in the Service Commissions Act 1957. Thus, remuneration for Commissioners of the IACC and staff of the ACA could also be charged to the Consolidated Fund.

**Appointment of the New MACC Chief Commissioner:** The importance of sustaining a strong and independent MACC which is allowed to undertake its functions independent of political interference rests on an equally independent process on the appointment of the Chief Commissioner of MACC. It is a matter of significant national interest and whoever is appointed must meet public expectations that the nominee can do his or her job as a professional.

It is in the public domain domestically and internationally that Malaysia is losing ground on sustaining its strong institutions, a position Malaysia was seen as a leader. We can redress this perception in the appointment of the Chief Commissioner of MACC, to be a person, not only highly qualified, but able to exercise integrity and manage the operations of MACC with a high degree of independence and accountability in administering all the powers accorded to MACC by the Malaysian Anti-Corruption Commission Act 2009.

In the medium-term, G25 proposes that the government put in place a more open and transparent selection process for leadership in key agencies, including the MACC. This process should be based on best practices in the developed world and now adopted by emerging economies, whereby key appointments are made in a public manner through convening a Parliamentary Select Committee with terms of reference to scrutinise the suitability of the candidates nominated for the job. During the select committee hearings, Members of Parliament as committee members representing the voice of the people, will examine whether the government is justified in choosing the most qualified persons based on criteria that is published. The candidates shortlisted and given to the Parliamentary Committee for selection shall include both internal candidates in the MACC as well as candidates from outside the agency. Members of the public including professional and civil society organisations which have specific objections will be allowed to make their presentations to the Parliamentary Select Committee.

It is time for Malaysia to adopt this consultative and open process of making appointments to top positions in the civil administration in view of the need to get a buy-in from the public. Gaining public confidence that the candidate is a professional who can be depended upon to lead key agencies like the MACC without fear and favour in enforcing the law, is most important for providing legitimacy to the appointment.

Adopting this open process will make Malaysia on par with regional countries like Indonesia, where corruption had been a major factor in slowing down economic development. The changes in the Komisi Pemberantasan Korupsi, KPK (Corruption Eradication Commission) and appointment of its Chief Commissioner by a Parliamentary Committee and approved by the President have helped improve Indonesia's ranking in the global measurement of corruption indices. It has also contributed to enhancing investor confidence in the long-term economic potential of Indonesia.

#### **d. Governance for Checks and Balances in the Police Force**

Observations and recommendations on this part were extracted from a policy paper by IDEAS. G25 is supportive of these conclusions and recommendations.

Unlike most Commonwealth countries, the Malaysian Police System is highly centralised and States are not given any police mandate under the Federal Constitution.<sup>6</sup> The Inspector General of Police ("IGP") is only answerable to the Federal Government, specifically to the Home Minister. This centralised position has proven to be detrimental in protecting citizen's rights under the Federal Constitution because of weak governance and the absence of the checks and balances in the leadership of the police force. Although there is a Police Force Commission ("PFC") which exercises disciplinary control over the Police Force, it lacks independence since the PFC is chaired by the Home Minister and the IGP is one of its members and all the other 2-6 members are from the Public Service Commission. The PFC is not independent of the Executive, and IGP's membership compromises the impartiality of the PFC.

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<sup>6</sup> Most Commonwealth countries adopt the more decentralised system, with different police force in charge of legally defined jurisdictions. In India and Australia, each state in the Federation has its own police force and chief of police.

This governance structure which gives concentrated powers to the IGP has been highlighted many times before and raised in the Royal Commission Report to Enhance the Operations and Management of the Royal Malaysian Police (“Dzaiddin Report”). This lack of checks and balances has resulted in the lack of professionalism and impartiality of the police force as well as abuse of power arising from the concentration of authority in the position of the IGP. Accordingly, the Dzaiddin Report called for the setting up of an Enforcement Agency Integrity Commission (“EAIC”) in 2009 to investigate complaints against 21 enforcement agencies, including the Police Force. However, the EAIC has not been effective due largely to the lack of resources as well as insufficiency in powers to compel enforcement agencies to address the complaints filed against them. In addition, the other agencies such as the AG’s Office and the MACC which also are able to check on the police activities, are themselves not independent of the Executive.

Further, latest developments like security threats from terrorism activities have caused further shifts towards authoritarian actions by the IGP being permitted under the National Security Council Act. In addition, several controversial laws give the police extensive powers to infringe on the rights of citizens accorded by the Constitution. These laws include the Sedition Act, Prevention of Terrorism Act (POTA), the Security Offences (Special Measures) Act (SOSMA) and the most recent NSC Act.

### WHAT CAN WE DO?

These trends need to be balanced by greater accountability and integrity on the part the IGP in undertaking its functions. In addition, it is necessary to grant greater independence to the office of the IGP as well as put in governance systems to make the IGP more accountable as well as distance the IGP from the influence of the Executive.

IDEAS in studying the situation in Malaysia and best practices in Commonwealth and regional emerging countries, have made several recommendations to address the structural weaknesses in order to have some level of decentralisation of the powers of the Police Force as well as giving the police greater independence. These recommendations are as follows:

- Address the structural impediments to accountability, through reforms which decentralises and separates police powers according to several key areas of competencies and thereby provide the checks and balances to each other and promote greater accountability;
- An oversight body be established such as the Independent Police Complaints and Misconduct Commission (IPCMC) as recommended in the Dzaiddin Report, with mandatory investigative powers on police misconduct and the authority to recommend disciplinary actions; the IPCMC reports to Parliament and is independent of the Executive.



### ■ Raising Standards for the Civil Service

#### Civil Service Reforms and Diversity

Our civil service ought to be bench marked against the best in the world like in the UK, France and Japan. It is time a thorough review be undertaken in terms of its recruitment, training, career progression and performance. This is in line with the upward revision in remunerations approved by the government a few years ago.

The civil service should be able to attract the best candidates. A certain percentage of the JPA scholarships should be allotted to attract the best students to join the civil service. Their career progression will be based on merit whereby high flyers will be fast tracked. For job satisfaction areas like work place environment, image and recognition must be looked into.

The role of the civil servant should also be examined. They should not be a jack of all trades anymore by being seconded all over the place. Greater focus needs to be placed on having subject matter experts in the career track of selected personnel. Their functions and responsibilities must be optimised by using technology. This will also reduce manpower costs.

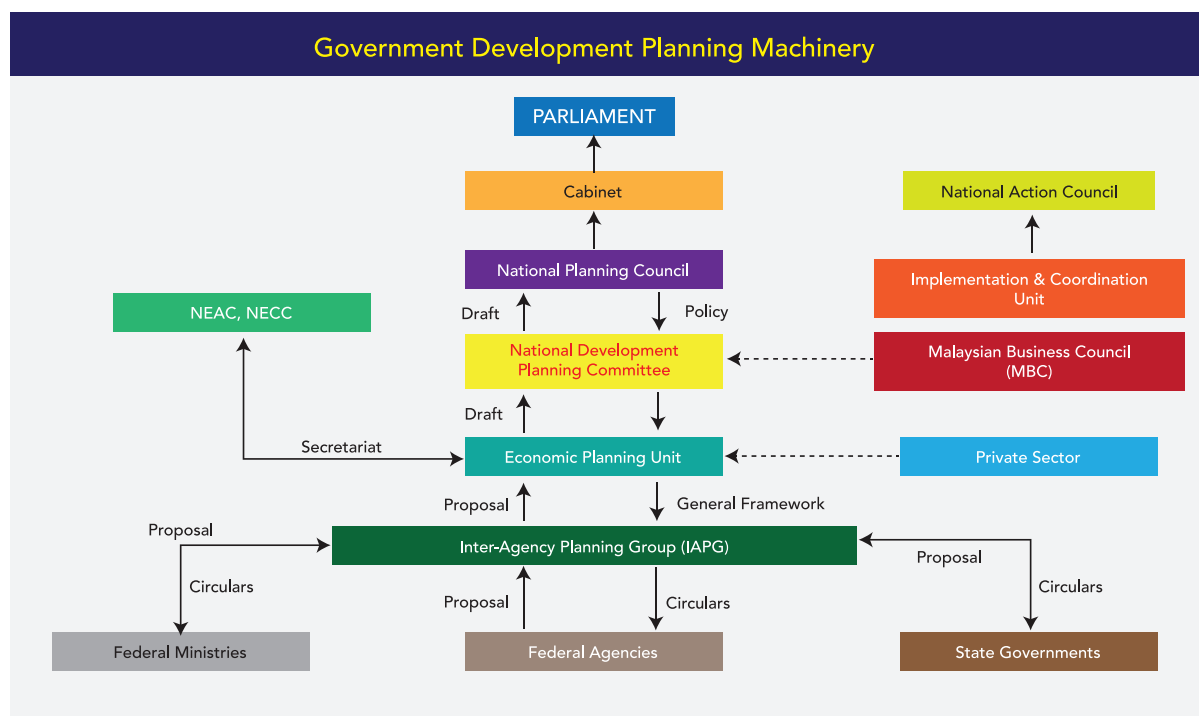
The current situation of race discrimination in the civil service should be redressed. Discrimination against non-Malays in the civil service reinforces discrimination of Malays in the private sector. The public sector should revert to employment of best and brightest regardless of race. Many Malaysian institutions have a multicultural workforce and Malays have been able to compete very well in these multicultural settings. Denying other races a place in the civil service is denying the high capacity of Malays to be able to compete with those who are highly qualified for the job. The time has come for the Malaysian civil service to adopt practices to raise the quality and capacity of its staff and not practice racial discrimination which has led to the current state of uncompetitive recruitment.

#### Structural Reforms in Public Sector Governance for Sound Decision Making

Countries which prioritise good governance practices in the design of governance structures, procedures and processes have achieved strong growth. Such structures, procedures and processes have enabled sound decision making on financial and economic policies. Malaysia had, in the past, in place a good structure and processes which promoted economic thought leadership and innovation in development policies. New initiatives were initiated and teams within the Inter-Agency Planning Group ("IAPG") ensured thorough research, analysis and debates on policy initiatives prior to their submission to the National Development Policy Group ("NDPC") well before decisions are made, with all parts of government and the private sector having opportunities to provide input and criticism. All this contributed to sound decisions on policy choices and the good implementation of projects with successful outcomes. Most importantly, Cabinet was always kept abreast of the status of policies implemented and monitoring of development projects and Ministries were aware of their respective roles in implementation of policy decisions and projects. The Economic Planning Unit ("EPU") played a critical role in the coordination of policy and project design while the Implementation and Coordination Unit ("ICU") ensured proper implementation within the allocated budget and within the rules and regulations in public sector management (see Figure 1 on page 55).



Figure 1



Weakening governance in the public sector has been driven by a breakdown of both the previous well-functioning organisational structures on decision-making and the implementation processes. Over time, the successful structures and processes were eroded as the government adopted a more centralised decision making approach and the NDPC ceased to be the main body to debate policies and projects before they are sent to Parliament for debate and approval. While it was good to have the Economic Council with a few key Ministers and the private sector chiefs providing advice to the Prime Minister, this Council unfortunately evolved to become the main decision making body at the expense of intensive debates and analysis previously practiced at the NDPC. The setting up of other units outside the civil service prompted by growing inefficiencies at some government departments, further weakened governance in public sector policy formulation and decision making.

## WHAT CAN WE DO?

The following are proposals to improve the governance structure in the civil service aimed at restoring the effectiveness of the structures and processes for policy and project formulation and implementation lost over the intervening years:

- Review current structures and consider reinstating the NDPC and IAPG as these have been tested as successful mechanisms suitable in the context of the Malaysian civil service. In addition, the experiences gained from the operations of PEMANDU in implementing Entry Point Projects to drive growth can be usefully deployed to re-engineer the Implementation and Coordination Unit within the PM's portfolio of institutions. The new ICU should also adopt

best practices in other models such as the Economic Development Board of Singapore.

- The Economic Council, chaired by the Prime Minister should remain as an advisory Council to the Prime Minister, but all decisions on policy and development projects should revert to the NDPC after vetting by the IAPG. Departments can implement their own decisions within policies set by the NDPC. Independent institutions such as BNM and MACC operate within their own statutes and report to Parliament directly.
- There must be separation of powers in ministerial portfolios to ensure no conflict of interest and appropriate checks and balances. The Prime Minister cannot assume the post of Minister of Finance. This must be legislated.
- Strengthen the office of the Chief Secretary to exercise independence as provided by the Constitution. Recommendations in the NEM on strengthening the civil service should be revisited and implemented.
- The Integrity Institute be tasked as the Independent Evaluation Oversight Office for the civil service. The Institute will put in place a continuous and transparent process which systematically evaluates the performance of the civil service, based on best practices in the OECD and multilateral institutions. (See Section below on Strengthening the Integrity Institute).
- Overall, an environment should be created which incentivizes public sector officials to exercise integrity in the conduct of their duties. There is a need for a better system of checks and balances, access to relevant information and a more objective system of reward for good practices, especially in improving integrity in the judiciary and the police.
- There must be adequate protection against victimization and whistleblowing regulations must be honoured by the leadership (see recommendations on public sector corruption below).

### Other Structural Changes in the Civil Service

Other proposals already in the public domain for a more effective, efficient and transparent public service should be considered. These include:

- A more inclusive and diverse composition of the workforce in the civil service;
- Enhancing the quality of civil service outputs by leveraging on the improving technical expertise in the civil service, and move away from appointing generalists into leadership positions within technical departments;
- Avoid creating parallel units whenever government departments fail to perform; rather, these departments as well as all other departments should be restructured and made to operate within a performance driven and result-oriented culture;
- There should be a plan to downsize the civil service as its size is too big in an age where most routine office functions can now be automated by using technology. Redundant staff should be offered voluntary separation schemes that encourage them to leave government service and look for other jobs in

the private sector or start their own business. They should be fairly compensated and given government assistance on training and placement service as done by Khazanah for the employees retrenched by Malaysia Airlines (“MAS”) under its restructuring plan and by Bank Negara when it downsized following greater investments in technology. Over 85% of the retrenched MAS employees have been placed in jobs with other employers.

### Openness and Transparency in Leadership Appointments

Civil service reforms should place strong emphasis on meritocracy and personal integrity. This is particularly crucial for the appointments to top posts such as secretary generals and director generals as their leadership effectiveness will be compromised if they are suspected as being less than honest. There should be a special committee under the Public Services Commission to screen the nominees to these posts, so that they can be thoroughly and transparently examined before their appointment. Disciplinary procedures should be tightened to facilitate fast action but within the principles of fair practice as in the law. The Integrity Institute should play a key role to ensure persons of integrity are appointed for key positions.



## D. Reforms for Clean Government

### ■ Closure of the 1MDB Case

One of the most important steps is to have closure of the 1MDB issue. Even if the authorities do not intend to prosecute for any wrong doing as recommended by the Investigation Task Force, it will quell all concerns if the government were to release a full comprehensive transparent report on the official status of 1MDB, particularly on its financial position. This should contain reasonable explanations about the planned management and proposed credible direction towards meeting its financial commitments and ultimately achieve its corporate objectives. This report should, where appropriate be consistent with and reflect the findings and court documents already in the public domain in the US, Switzerland, Singapore, etc. and the actions taken by authorities in these countries.

In addition, a good outcome that can be achieved in this report is a commitment to implement the recommendations below, to demonstrate that government views improper financial activities as a serious infringement of the fiduciary obligations of government officials. Going forward, the government will ensure that current regulations are strengthened to prevent a recurrence of such activities.

Closure can put to rest lingering concerns on the transactions and more so on the losses and contingent liabilities to the Federal Government. Currently, it is reported that RM42 billion in debt has been incurred by 1MDB with representations that these liabilities are covered by holdings of financial and real assets on its books. The auditing of 1MDB accounts are outstanding and in dispute. Moreover, reporting of its financial status have not been readily made available. However, there are concerns that contingent liabilities to be borne by government could amount to as high as 15% of the GDP, presumably this includes 1MDB borrowings. Without a closure report on 1MDB, analysts, rating agencies and other interested parties will continue to make all kinds of estimates which can be detrimental to investor confidence.

Fundamentally, the 1MDB event has highlighted the severe lack of governance and accountability in government investment agencies. The closure report can address how governance is being improved and how 1MDB as a government agency will be subject to accountability like all government companies.

### WHAT CAN WE DO?

Prepare a fully transparent report of the current asset and liabilities position of 1MDB which will put to rest the amount of expected losses and the steps on how these will be covered. The report should also include restructuring of the organisation and governance structure of 1MDB and procedures and processes to be put in place for 1MDB to be fully accountable to the public. This closure report should be submitted to Parliament and made available to the public.

A closure report will once and for all lay to rest the matter and will not cause the recurring demands for a report on 1MDB every year in the future, as is the case of the foreign exchange losses incurred by BNM in 1992-93. Such a report will allay investor concerns on the impact of 1MDB on the government's financial conditions. The improvement to governance structure, procedures and processes on sound decision making and proper checks and balances to ensure accountability, will all contribute to investor confidence that Malaysia is taking the bull by the horns and moving forward.

## ADDITIONAL RECOMMENDATIONS IN THE 1MDB CLOSURE REPORT

These recommendations are extracted from the C4 report on the 1MDB case:

There are significant regulations which when implemented together could have constrained the activities of 1MDB. At the same time, absolute implementation of these regulations is constrained by three factors:

- a. That regulated entities observe the regulations imposed and provide accurate information;
- b. Transactions are cross border, but laws and regulations are domestic; and
- c. Although Malaysia has regulations which meet international standards of best practices, full implementation of these regulations by competent authorities are constrained by the most important provision of the law, namely that only the Attorney General (AG) can decide on prosecutions (see recommendation under Part B above on separation of powers of the AG).

At the international level, while countries are required to observe international principles of detecting and preventing money laundering and financing of terrorism, prosecutions can only be undertaken by domestic courts under domestic regulations. In addition, while there are international obligations on mutual legal assistance, there is no cross-jurisdiction application of AML/CFT laws. The fact that illicit money transfers are generally cross-border and facilitated by international banks, makes the outreach by domestic competent authorities to prevent such cross border transactions very difficult.

Nevertheless, the international community is active in efforts to assist countries to recover illicit money transfers through various initiatives such as the Stolen Assets Recovery (StAR) initiative by the WB, and the Working Group on Corruption set up by the G20. The Financial Action Task Force ("FATF") continues to strengthen its principles on AML and CFT as well as updating its assessment methodologies, while supporting the WB and the IMF in providing training and support to countries to strengthen their domestic regulations and bank supervision on AML/CFT transactions. In its 2012 enhancement of the AML principles, FATF also ruled that it would be working more with Civil Society Organisations in the fight against money laundering, especially of corruption proceeds.

The following is recommended:

- a. BNM and other investigative agencies should be asked or granted the authority to release reports of investigations into accusations of financial deception such as has been the perception affecting the case of IMBD as part of checks and balance in the system. Transparency principles can be effective in promoting early corrective pressures.
- b. The main barrier of prosecuting offences must be removed. In the case of IMBD, the conflict presented by the powers of the AG as legal advisor to the government as well as the final arbiter in decision to prosecute cases involving public sector officials, must be removed (recommendation in Part B above).
- c. A parliamentary select committee should be established within Parliament for high-level monitoring of government institutions responsible for enforcing on

money transactions involving corruption and other illegal activities, as another avenue to establish a checks and balances system. All regulatory institutions should be required to submit reports of their investigations to the select parliamentary committee to facilitate parliamentary debate and comments by those called to testify and give their professional views before the committee. The report by the Select Parliamentary Committee should be made public. Over the longer-term, the committee's deliberations should be open to the public through direct telecast.

d. BNM and agencies in studying the typologies of the IMDB case should tighten domestic regulations and processes. A better tracking and checks and balances system is needed to sanction money deposits and outflows from accounts of Politically Exposed Persons ("PEPs") maintained with banks in Malaysia. In a particular, a system within BNM is needed to prevent self-censuring of due diligence on accounts of PEPs, especially of senior ministers.

### International Standards and Oversight Bodies

a. BNM and relevant agencies should work together with the World Bank and the Corruption Working Group in the G20 and other agencies for greater penalties for international banks which facilitate transfers of proceeds of corruption. Penalties should exceed income generated by banks from such transactions.

b. Civil Society Organisations should work with FATF and the Corruption Working Group in the G20 to ensure all those involved in the use of corruption proceeds in other jurisdictions will be charged in their respective courts. Civil society can share information with FATF and the World Bank to facilitate FATF and other international bodies to penalize countries supporting flows of corruption proceeds into their financial systems. This sanction should not await results of assessments under AML/CFT. In this work, it is necessary that both FATF and World Bank are seen as even-handed in their treatment of all FATF members as well as members of FATF Style Regional Bodies. In fact, FATF needs to impose even higher standards on FATF members within the principles of leading by example.

c. FATF should be asked to develop a case study from the experience with IMDB and this should form the basis for improvements in its oversight of compliance with international standards. Greater emphasis should be given to FATF standards and its assessment methodologies on implementation of laws and regulations and on effective prosecutions.

### Preventing Corruption in the Public Sector

The Integrity Unit was introduced to ensure that each ministry and department conducts its own internal checks in compliance with financial and administrative procedures on spending its budgetary allocations, particularly on the procurement of supplies and services. In addition, the Unit is expected to serve as the eyes and ears for reporting on the personal conduct of the officers. The Integrity Unit can easily check from the declaration of assets such as bank balances, number of cars and houses owned and income tax returns to form an opinion on the character of the senior officers.

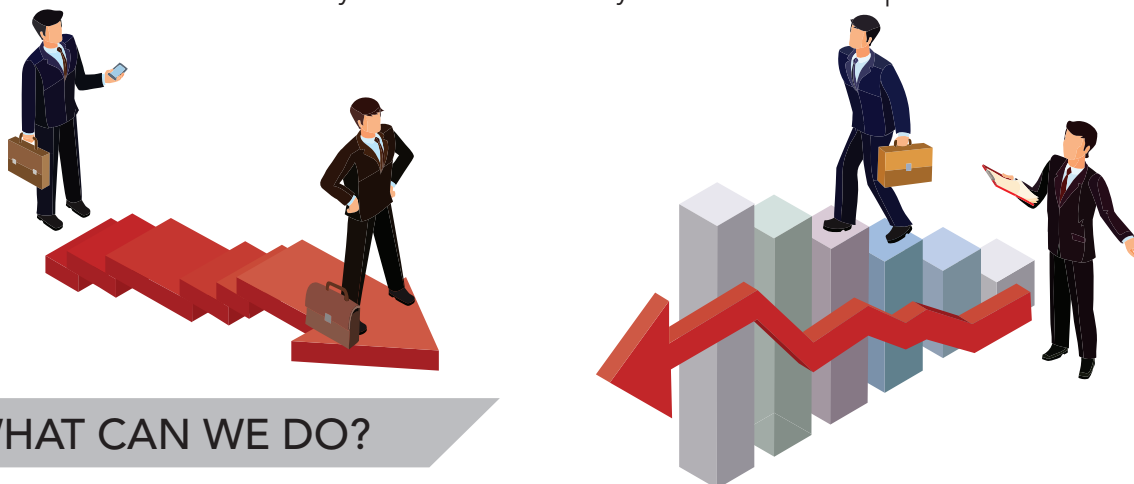
The idea behind the Integrity Unit is that it is an independent unit not answerable to the KSU so that it is free to file a report with the MACC, JPA or Ministry of Finance if it has reason to believe that there is unethical behaviour in the ministry, or if there are officers not following

Treasury instructions on financial management. The KSN should send an instruction to all KSUs that they should respect the independence of integrity units to file reports on officers for disciplinary action or investigation by the relevant agencies under the law.

In the corporate and financial sectors, guidelines on good governance practices require that the internal audit and compliance unit within the company or the bank is independent of the CEO and its findings must be reported direct to the audit and risk committees of the board, which will have the final say on whether any disciplinary action should be taken.

It is regrettable that while there has been a major improvement in the standards of governance in the corporate and financial sectors, and a corresponding increase in confidence on the local capital and financial markets, the civil service has lagged behind in adopting the same principles of checks and balance on the powers of government officers and the ministers, creating a trust deficit on the administration of the country. The reputation of the civil service has taken a hard knock with the unresolved issues surrounding 1MDB. The recent arrests of senior civil servants have created further concerns on honesty and accountability at the top levels of the civil service.

The KSUs are top civil servants who are extremely powerful as they are designated under the Financial General Orders as the controlling officers of the budget in their ministries. They have to sign the approval to authorise the expenditures and therefore, they are accountable for any mismanagement of the ministry budget. As their personal qualities are essential to uphold the good reputation of the civil service in managing the federal ministries, it is absolutely essential that the KSN look into the procedures of checking on their wealth and private life to ensure that only the most trustworthy are considered for promotion.



### WHAT CAN WE DO?

Ministers and senior officials employed in the public sector should be subjected to an enhanced Asset Declaration System (“ADS”) to fulfil the objective of safeguarding against conflicts of interest (a high risk whenever public officials hold varied positions) and illicit enrichment (gains in wealth beyond what is reasonable for that public office position). Compulsory public declaration of assets and business interests by Ministers prior to appointments should be made mandatory. Declarations must be done periodically on a regular basis and cover all branches of the public sector. The ADS must be more stringent for public officials who are more exposed to conflict of interest. The ADS must also have processes and procedures for verification of assets. While secrecy of tax information is necessary to encourage tax submissions, some form of secured exchange of information with tax authorities may be required.

A legal framework that governs the ADS as well as provide oversight on the ADS must be established. The legal framework must also include offences by the private sector individuals or entities offering bribes or other incentives to public sector officials.

An independent audit firm should be tasked with collecting, maintaining the records as well as evaluating the integrity of the declaration by using internationally benchmarked principles. The independent audit firm will report directly to the new ACA (reformed MACC) and the Integrity Institute with findings which show evidence of conflict of interest or illicit funds.

Appropriate sanction mechanisms must be established upon completion of the process for findings of illicit funds or deliberate involvement in conflicts of interest situations.

Integrity checks should be undertaken prior to points of promotion of public officials to senior levels. Systems and processes for upholding the integrity of public officials should be well publicised and periodic awareness raising events should be undertaken.

Strategic programs to explain the importance of providing information by participation in whistle-blowing practices should be organized and the protection for participants strengthened. In particular, protection against victimization must be highlighted by public leadership in developing a culture which honours whistle blowing activities and those that provide information, unless anonymity is requested. These programs are necessary to reverse and eliminate the deepening of corrupt activities within government and the civil service and thereafter to prevent their reoccurrence.

The ADS must be developed transparently and in a manner which will enable Malaysia to adopt the UN Open Government Partnership system, which will enable the authorities to leverage on contributions by civil society towards making government more responsive and with greater accountability.

### Preventing Corruption in the Public-Private Space

The root of corruption in Malaysia emerged from practices of money politics-particularly disguised patronage through payment for votes to sustain political dominance. The reduction and eventual elimination of corruption requires putting in place legislation, regulations and monitoring processes to address the financing of political parties which forms one of the most critical enabling anti-corruption measures.

#### WHAT CAN WE DO?

The following proposes to put an end to corrupted practices by political parties while restoring transparent and sound financial activities within all political parties. These recommendations should be pursued as they address the critical issues and are more comprehensive than the current proposals set forth in the Report by the National Consultative Committee on Political Financing (led By Minister Dato' Paul Low). Shortcomings in the latter report can be seen as tantamount to legalising the current corrupt practices which are detrimental to good governance in the political leadership. Further, this report, while acknowledging institutional changes are necessary, does not push appropriately for essential actions which are the most important success factors for reforms in political financing to be effective, and to form the basis for addressing endemic corruption in the country.





## Better Regulations on Access to Political Financing

A three-pronged approach is proposed to achieve a transparent and accountable financing framework for Malaysian political party funding, which will in addition ensure that the party that forms the government will not be captured by vested interest. Money politics can no longer be allowed to dominate the electoral process to ensure that the winning political party is selected through fair elections on a level playing field. An environment must be fostered which is free of money-based factionalism, rent-seeking and patronage which undermine the integrity of political parties. Meeting this objective requires: a review of relevant laws to provide a framework for better regulation of political financing; the reform of public institutions (read election commission) to enable adequate autonomy and powers to monitor and enforce the laws and regulations on political funding; and putting in place a mechanism for monitoring political party elections and their functioning.

**Specific reforms under this three-pronged pillar to foster transparent and accountable political financing are:**

- Creating equitable access to funding for all political parties and developing the framework for audited standardized dissemination of information on expenditures.
- Regulate private funding through: 1) limits on corporate and individual contributions to political parties so that governing parties will not be subservient to large contributors; 2) disallow foreign donations for independent democratic system to prevail; 3) disallow contributions from GLICs and GLCs for a level playing field in access of funding from public sector sources; 4) regulate party ownership of businesses.
- Provide balanced access to public funding: Funding from the National Budget based on accepted global best practices.
- Set limits on political parties' expenditures.
- Strengthen reporting of contributions and expenditures by political parties.
- Establish a system of public disclosure of donations and other funding of political parties, balanced with regulations to prevent victimization of donors.
- Regulate financing of internal party elections to prevent factionalism and rent-seeking.

## Legislative Framework for Political Financing

Regulations on political financing are only meaningful if they are transparently and appropriately enforced by public institutions fully empowered to ensure compliance by all political parties and with the authority to impose sanctions for non-compliance. For this purpose:

- The Election Commission needs to be reformed and strengthened by: 1) protecting its autonomy and impartiality; 2) ensuring it is fully independent and reports to Parliament and not the PM; 3) adding to its functions for registering and overseeing the activities of political parties. The Registrar of Societies will no longer license political parties; 4) granting it adequate resources for monitoring and sustaining enforcement capabilities.

- The independence of the Election Commission is ensured through a transparent process of appointments of its Commissioners and cultivating a staff complement which enables independence to be fully exercised. Composition of members of the Election Commission must include the Chief Justice, the Human Rights Commission, the Bar Council, SUHAKAM and a representative of civil society. Appointment of Election Commissioners will be undertaken through a transparent process of public hearings for selection from highly qualified candidates. Approval of appointments of commissioners will rest with the Parliamentary Committee.
- To assist Parliament in its oversight of the work of the Election Commission, a permanent Select Committee should be set up (see recommendations on parliamentary committees as a mechanism for Parliament to exercise oversight).
- Independence for pursuing prosecution for election and party financing and management offences will be ensured as part of the functions from the creation of a public prosecution office (see reforms of the civil service—separation of powers of the Attorney-General).

The current legal framework must be revamped to strengthen the oversight of political parties, to ensure fair and equitable access to political funding which avoids rent seeking and to eradicate corruption in financing political activities and parties. It is proposed that a new law, the Political Parties Act be enacted which will:

- Determine the overall oversight on governance of political parties;
- Enable creation of an independent Election Commission with all the powers to register, supervise and sanction political parties, impose regulations on funding of political parties and their expenditure, oversee party affairs and election processes, oversee disclosure of information on activities and funding of political parties and ensure appropriate protection of persons and corporations against victimization by any party;
- Enable imposition of regulations on limits on political funding and expenditure;
- Ensure an appropriate level playing field for access to funding by all political parties;
- Provide for reporting requirements by all political parties;
- Provide for adequate public disclosure of funding and expenditures of political parties;
- Put in place provisions to ensure protection against victimization of donors to political funding.

With the New Political Parties Act, relevant provisions of Societies Act 1966 and the Election Commission Act will be repealed.

### Other Enabling Measures

- Calls for a Freedom of Information Act should be recognized and the government should pass legislation to enable greater access to information. Secrecy should be replaced with freedom to share information. Greater access

and transparency of information is also to the advantage of government as it prevents media sources from spreading wrong or fake information and making inaccurate analysis.

- Greater action on reducing licensing and regulatory burden. Malaysia still has many onerous (and sometimes overlapping) regulatory and licensing requirements at various levels of government, which increases compliance costs and deters private sector innovation and investment. Malaysia must continue efforts to reform its regulatory framework taking into consideration best practice principles of proportionality and consistent with global developments aimed at reducing business costs and complexity, while enhancing the country's productivity and international competitiveness. All new regulations must be subjected to a mandatory Regulatory Impact Assessment, which assesses the impact and expected outcome of new rules and regulations before they are promulgated. Planned reduction in the regulatory burden must be given enhanced prominence.
- Consider an Equal Opportunity Commission ("EOC") to eliminate discriminatory and unfair practices. The proposed EOC will be tasked with the responsibility of monitoring and considering cases of discrimination and unfair treatment in society covering the actions and activities of both the public and private sectors. The EOC will focus on the implementation of government measures as well as business and civil society practices that give rise to discrimination in their many forms and abuses which may appear and must be explicitly managed and eliminated. Checks and balances against unwelcome tendencies in abuses, discrimination and unfair treatment would be facilitated by the presence of the EOC.

### Strengthen the Role of the Integrity Institute of Malaysia

The Integrity Institute should be assigned the role as the Independent Evaluation Oversight Office for the civil service. The Institute will put in place a mechanism for systematically evaluating the performance of the civil service, based on best practices in the OECD and the multilateral institutions. The evaluation will cover project design and implementation, as well as policy formulation and implementation. This evaluation is to meet the objectives of tracing the source of problems when the public sector underperforms as well as to continuously assess that the civil service is on track in undertaking their functions without fear or favour. Evaluation reports usually provide good feedback for improvement in government procedures. At the same time, meaningful evaluation requires that officials must be sanctioned for non-observance of government regulations and procedures to avoid corrupt practices.

The work of the Independent Evaluation Office will complement the Auditor General's annual reports on financial management.



