

Chapter 7

International Regulatory Cooperation in Malaysia – Regulatory Interoperability through Regional and Multilateral Linkages

Dato' Abdul Latif Hj Abu Seman and Shahriza Bahari

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CHAPTER 7

International Regulatory Cooperation in Malaysia – Regulatory Interoperability through Regional and Multilateral Linkages

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1. Introduction

Malaysia is a middle-income country with a diverse economy. Trade is very important, with exports and imports of goods and services equivalent to about 130% of gross domestic product (GDP). For the past 4 years, real GDP growth has averaged nearly 5% despite a number of external and domestic shocks, including global commodity price and financial market volatility, weak external demand, and domestic political controversy. Growth has been based on domestic demand and helped by the diversified production and export base, a flexible exchange rate, responsive macroeconomic policies, and strong financial markets. The country's long-term economic policy is set out in Vision 2020, which includes the objective of achieving high-income country status by 2020, by, amongst other things, sharply accelerating the growth of labour productivity. In addition, the Eleventh Malaysia Plan and sectoral plans, such as the National Agrofood Policy 2011–2020 and the National Commodity Policy 2011–2020, emphasise the importance of productivity, innovation, and trade in achieving economic growth (World Trade Organization [WTO], 2017).

Malaysia has been an active member of the Association of Southeast Asian Nations (ASEAN) since its establishment on 8 August 1969. ASEAN remains the cornerstone of Malaysia's foreign policy, and the establishment of the ASEAN Economic Community (AEC) in 2015 significantly elevated Malaysia's approach and engagement at the regional level. Concurrently strengthening bilateral and multilateral aspects of Malaysia's engagement with the world will remain an important focus. The nation's well-being is founded on its strong and friendly relations with other countries and its commitment to the multilateral system (Ministry of Foreign Affairs, 2019). As a member of ASEAN, Malaysia has played a pivotal role in facilitating and shaping the overall progress and development of ASEAN over the 5 decades since its inception. Various programmes and incentives have been proposed, launched, and executed by Malaysia at the ASEAN level, as evidence of their participation in the organisation.

It is important for Malaysian businesses to go beyond their borders, explore more opportunities, and expand markets. The free trade agreements (FTAs) that the Government of Malaysia has signed can help companies to export goods, services, investments, and economic cooperation through international agreements between countries to reduce or remove trade barriers, bring closer economic integration, and have preferential market access. FTAs help to enhance the country's competitive advantage, strengthen investors' confidence, and to a large extent build Malaysia's sustainable development (Malaysia External Trade Development Corporation).


Malaysia is committed to international and intergovernmental agreements (e.g. the WTO Agreement, WTO Technical Barriers to Trade Agreement, and Sanitary and Phytosanitary Agreement), other regional agreements (e.g. the AEC), and bilateral agreements (Malaysia and Thailand have enjoyed a 61-year diplomatic relationship) that complement the country's multilateral approach to trade liberalisation. International regulatory cooperation (IRC) in trade agreements requires governments to institutionalise voluntary or mandatory arrangements through which public servants in different countries can and in some cases must work together, usually in close collaboration with industry, to reduce or eliminate differences in domestic laws, policies, standards, regulations, and testing procedures, including health, environmental, and consumer protections that are said to impede trade (Trew, 2019).

ASEAN offers an integrated market, closely linked economy, improved business environment, and enhanced connectivity. The AEC Blueprint aims to narrow the development gap and promote equitable development in the region. Under the AEC 2015, intra-ASEAN import tariffs have been virtually eliminated and formal restrictions in the services sector gradually removed (WTO, 2017). Another important mechanism on which ASEAN is currently working is enhancing internal integration through developing trade facilitation by harmonising standards and technical regulations within ASEAN. Efforts by ASEAN leaders to improve internal integration also involve reducing trade and investment barriers, especially those often referred to as 'behind the border measures', as well as burdensome regulatory procedures (International Monetary Fund, 2007).

Crucially, Malaysia's import barriers are aimed at protecting the domestic market and strategic sectors as well as maintaining cultural and religious norms.

Technical barriers such as halal certification for the importation of meat and poultry are regulated through licensing and sanitary controls. An example of a regional initiative involving Malaysia is the ASEAN Regulatory Cooperation Project (ARCP), which aims to address non-tariff barriers due to the divergence of chemical management regulations by encouraging regulatory cooperation and convergence. This initiative is spearheaded by the International Council of Chemical Associations' Global Regulatory Cooperation Task Force under the auspices of the International Council of Chemical Associations Chemical Policy and Health Leadership Group. Based on the global principles for regulatory cooperation, the ARCP initiative is aligned with the AEC directive promoting the use of good regulatory practice (GRP) to help establish regulatory environments that encourage free and open trade and investment while protecting human health, safety, environment, and security. The ARCP is led by the American Chemistry Council, the European Chemical Industry Council, Japan Chemical Industry Association, and Singapore Chemical Industry Council in a joint effort to advance chemical regulatory cooperation in the ASEAN region (Singapore Chemical Industry Council).

IRC takes a wide variety of legal forms ranging from regulator-to-regulator agreements (transgovernmental networks), to formal governmental agreements such as regional trade agreements with regulatory provisions (intergovernmental), to supranational arrangements involving international organisations. FTAs currently pursued with selected countries are not confined to liberalisation and market-opening measures, but are comprehensive and include investment, trade facilitation, and intellectual property rights, as well as economic cooperation in areas such as competition policy, standards and conformity assessment, information and communication technology, science and technology, education and training, research and development, financial cooperation, small and medium-sized enterprises development, and paperless trading (Malaysian Timber Industry Board).



Examples of FTA that include regulatory provisions include the ASEAN Trade in Goods Agreement, Agreement on Subsidies and Countervailing Measures, Intellectual Property Rights Agreement, and multilateral environmental agreements under the dispute settlement mechanism.

As Malaysia seeks to sustain the dynamism of its economy and recalibrate its strategy towards becoming a developed country, there is a greater need to strengthen public sector delivery to ensure that milestones towards this goal are achieved effectively and efficiently, and are guided by principles of good governance. Effective regulatory frameworks enhance productivity through healthy, market-driven competition that drives businesses to improve their processes, products, and services continuously. Since 2007, Malaysia's ongoing reforms under the Special Taskforce to Facilitate Business have represented a joint effort between the government and private sector to streamline regulatory frameworks, reduce business licensing requirements, and promote information technology use by government agencies (WTO, 2017).

Further to this, the launch of the National Policy on the Development and Implementation of Regulations (NPDIR) on 15 July 2013 marks a change in the government's approach to regulatory reform, from deregulation to a whole-of-government approach on GRP. The NPDIR aims to promote a regulatory process that is effective, efficient, and accountable, and that supports greater policy coherence. The NPDIR's objective is to ensure that Malaysia's regulatory regime effectively supports the country's aspirations to be a high-income and progressive nation with a competitive economy that subscribes to sustainable development and inclusive growth (Organisation for Economic Co-operation and Development [OECD], 2015). Malaysia's adoption of an explicit regulatory policy (and the policy's contents) are broadly in line with the Recommendation of the OECD Council on Regulatory Policy and Governance (OECD, 2012) and international good practice.

At the international level, Malaysia's reforms promote regulatory cooperation and convergence, in line with ASEAN and Asia-Pacific Economic Cooperation objectives to support regional integration and institutional connectivity. Regulatory harmonisation of standards, technical regulations, conformity assessment procedures, and regulatory frameworks of selected priority sectors were identified as key to the realisation of a single market and production base under the AEC in 2015. Regulatory reform is also key to supporting the achievement of the 2009 ASEAN Leaders' Statement on Connectivity and 2010 Master Plan on ASEAN Connectivity, especially related to institutional connectivity. Key elements of institutional connectivity include trade liberalisation and facilitation, investment and services liberalisation and facilitation, mutual recognition agreements (MRAs), and cross-border procedures.

Attention to regulatory reform within ASEAN is likely to continue to grow in the future. ASEAN and the World Bank (2013) found that trade and investment liberalisation remain areas for improvement, and the overall integration agenda should also now include regulatory measures that remain largely unaddressed. Non-tariff measures (NTMs) and barriers, red tape and transaction costs, and foreign direct investment policies all have a common important regulatory agenda that affects international trade and needs to be addressed.

Moving forward, on 8 May 2017 the Prime Minister launched the Malaysia Productivity Blueprint (MPB), a new milestone and national strategy to drive productivity. The National Productivity Council (NPC) provides leadership and direction at the national level for the MPB. The MPB defines five key strategic thrusts, supported by 10 national-level initiatives to roll out these initiatives. The NPC has been given the mandate to forge a robust ecosystem, with a specific focus on the MPB's Key Activity 13 (a priority area): 'Remove non-tariff measures

that impede business growth and improve efficiency of the logistics sector'. This will require the implementation of clear and effective regulation across multiple government ministries and agencies throughout the nation. A robust ecosystem is critical to improve the efficiency, adaptability, and accountability of governance systems in supporting enterprises to increase their productivity and competitiveness.

The review will focus on removing non-tariff measures that impede business growth will help to identify areas where regulation can be improved, consolidated or simplified to reduce unnecessary burdens without compromising underlying policy objectives. As Malaysia is heavily involved in both internal and external trade, trade flows between nodes must be efficient. With the country moving towards a vision to become an advanced economy and inclusive nation by the year 2020, restructuring NTMs will strongly enable trade by ensuring streamlined processes and regulations for export and import permits and regulations. The most common NTMs in which Malaysia is currently engaged are sanitary and phytosanitary measures; technical barriers to trade; pre-shipment inspection and other formalities; and other non-automatic licensing, quotas, prohibitions, and quantity control measures (other than technical barriers to trade or sanitary and phytosanitary measures).

Recently, the Securities Commission Malaysia and China's Ministry of Finance signed a memorandum of understanding for cross-border regulatory cooperation on accounting and audit matters under their respective oversight. The signing was witnessed by Prime Minister Tun Dr. Mahathir Mohamad and Chinese Premier Li Keqiang. The signing of the memorandum will enable both countries to benefit in areas of mutual interest relating to accounting and auditing.

Malaysia is also actively involved in a banking and financial integration bilateral agreement with Indonesia, under the ASEAN Framework Agreement on Services signed in 2016. It is envisaged that the implementation of this agreement will enable both Malaysian and Indonesian banks to play a greater role in facilitating cross-border trade and investment. The increased banking and financial integration will further deepen the potential for mutually reinforcing growth and greater shared prosperity between both countries and within the region.

This report offers a snapshot of Malaysia's IRC environment. It focuses on the extent to which IRC facilitates cross-border access, cooperative activities, and international trade. The report uses ERIA's IRC definition and framework to examine five aspects of IRC in Malaysia. These aspects of IRC include: the 'pervasiveness' of different forms of IRC, the 'persuasiveness' of the case for IRC, the 'willingness' of Malaysia to engage, factors that are 'imperatives' and 'blockers' of IRC, and the governance of IRC. The chapter uses ERIA's framework, the survey results, and the context in which Malaysia operates to provide insights on IRC in this country.

1.1. Research Approach

As there was no official inventory of IRC in Malaysia, our approach was based on a survey and selected interviews with a small sample of government officials and a few prominent industry players with a good overview of IRC. We identified government officials with a good understanding and knowledge of IRC from the members of the Special Task Force to Facilitate Business. This high-powered task force consists of 23 highly respected individuals from both the private and public sectors. Some of the respondents are from the ministries and agencies directly involved in some IRC projects. The individuals who contributed by answering the questionnaire on the government side are from the Ministry of Agriculture and Agro-Based Industries, Ministry of International Trade and Industry, Ministry of Health, and Royal Malaysian Customs Department. While six individuals are from the same ministry (Ministry

of International Trade and Industry), they are from different departments directly involved with IRC: the Investment Policy and Trade Facilitation Section, ASEAN Economic Integration, Strategic Planning Division, Legal Advisor, Senior Federal Counsel of Legal Advisor's Office, and the Office of the Secretary General. The contributors from the private sector include individuals from the engineering sector, manufacturing sector, and audit and taxation sector, as well as a building surveyor.

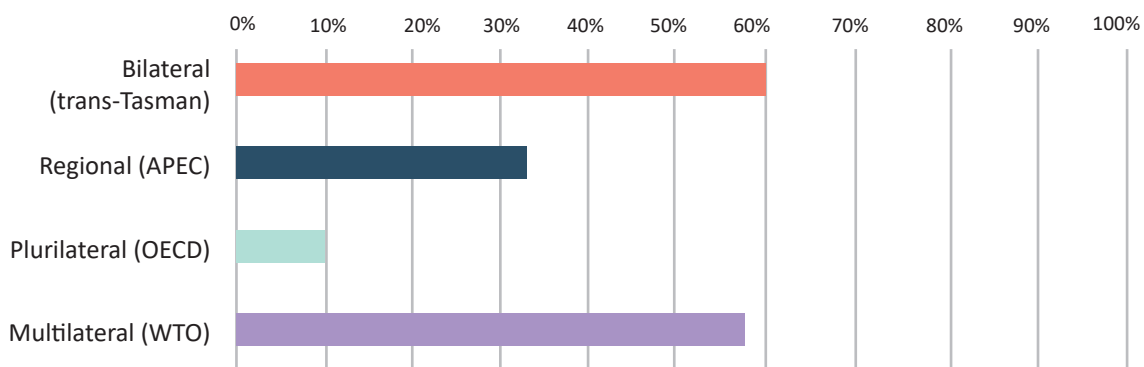
The semi-structured interview format began with a discussion of an IRC example with which the respondent was most familiar. Some of the respondents met face-to-face with the research team, while some of the interview sessions were done by telephone. The completed survey was then entered into Survey Monkey. Most of the respondents were male (60%) while 40% were female. They were drawn from a wide range of sectors, and 56.25% had been involved in IRC for more than 5 years. There was a noticeable difference between those whose experience was limited to one sector (12.5%) and those with wide-ranging views (87.5%) across the Malaysian regulatory system. Most of the respondents were mainly involved in regional engagement, and there was an even split between those involved in bilateral areas and those involved in multilateral areas.

With that background on the overall approach, we turn now to the questions of how widespread IRC is (pervasiveness) and enablers and facilitating factors in effective IRC (willingness and persuasiveness). We explore the findings from the survey and insights from the interviews in the next five sections on pervasiveness, willingness, persuasiveness, barriers to, and evolution of IRC. The last section focuses on the IRC governance system in Malaysia and offers some concluding comments.

1.2. Types of International Regulatory Cooperation

The survey asked respondents about the relative frequency of different types of IRC. One question explored whether IRC was 'mainly bilateral, regional, plurilateral or multilateral' (respondents could select one or more options). The results (n = 16) revealed that most respondents selected 'regional' (e.g. ASEAN) (Figure 7.1).

Figure 7.1: Main Forms of International Regulatory Cooperation in Malaysia



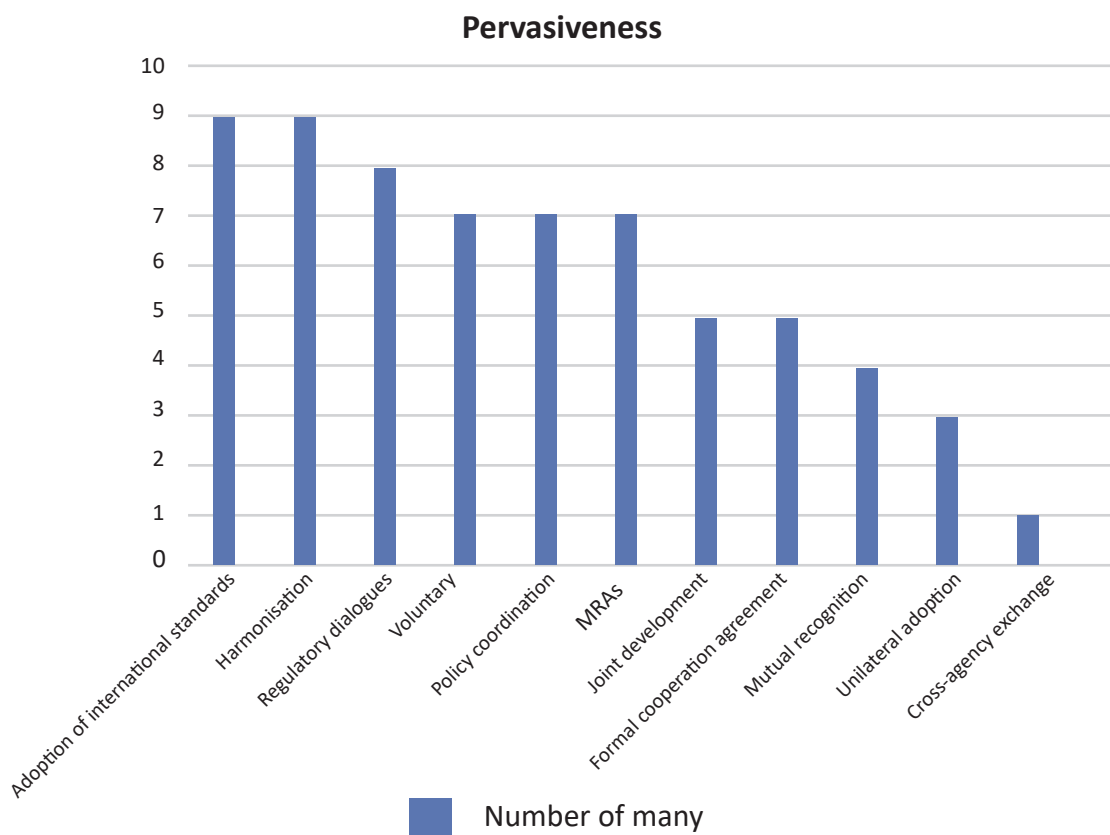
ASEAN = Association of Southeast Asian Nations, GMS = Greater Mekong Subregion, OECD = Organization for Economic Co-operation and Development, WTO = World Trade Organization.

Source: Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey, Question 41.

2. Pervasiveness of International Regulatory Cooperation

In section 3 of the survey, respondents were asked about their perceptions regarding the pervasiveness of different types of IRC. IRC can take many forms ranging from the unilateral recognition or adoption of another country's regulatory settings or standards at one end of the spectrum, through to harmonisation through the convergence of policies and practices at the other. For each type of IRC, interviewees were asked whether there were 'none (that I know of)', 'one or two', 'few (between three and five)', and 'many (more than five)'. Figure 7.2 ranks the types of IRC from high to low based on the number of respondents who selected 'few' and 'many'. The survey results for 'few' and 'many' were combined because the research team felt that this was more meaningful to analyse and understand the pervasiveness of IRC in Malaysia.

Figure 7.2: Ranking of Most Common Types of International Regulatory Cooperation in Malaysia



MRA = mutual recognition agreement.

Source: Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey, Questions 26–39.



The most common types of IRC were:

- (i) the adoption of international standards developed by international standards setting bodies (e.g. the International Organization for Standardization and Global Standards One barcodes);
- (ii) regulatory dialogues and the exchange of information with another country or regionally (e.g. ASEAN);
- (iii) the harmonisation of technical regulations (involving specific products) with another country or regionally (e.g. ASEAN); and
- (iv) MRAs with other countries or region-wide (e.g. ASEAN) on conformity results, which allow specifications (e.g. qualifications of professionals and products) gained in one country to be recognised in another (e.g. ASEAN MRAs on engineering and architecture).

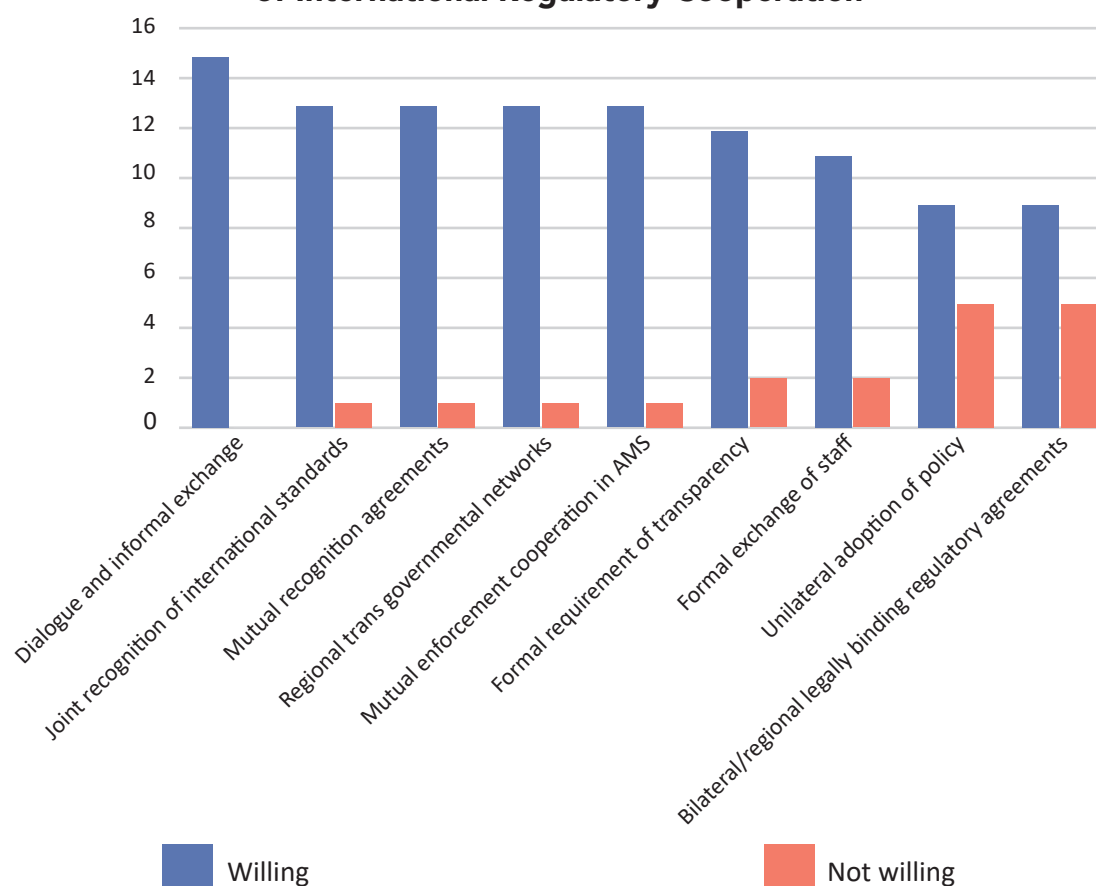
The results show that most respondents agree that IRC in Malaysia is mostly influenced by the adoption of international standards developed by international standards setting bodies. International standards in particular help make the development, manufacturing, and supply of goods and services safer and more efficient. It also makes trade between countries easier and fairer because the same specifications are adopted for use in different countries as national or regional standards. Many regulations in Malaysia align and comply with international standards, such as electrical regulations and toy safety standards.

The survey results are consistent with Malaysia's goal in reviewing regulatory regimes to identify areas where regulation can be improved, consolidated, or simplified to increase regulatory effectiveness and reduce unnecessary burdens related to NTMs without compromising underlying policy objectives. It will also examine regulations and enforcement practices that might impede competition and productivity in trade-related business. It is important to harmonise technical regulations between countries to avoid unnecessary regulatory burdens, which adversely affect global and regional production and supply chains and increase the cost of doing business. The results also show that Malaysia welcomes a platform to exchange information with other trading countries through regulatory dialogues.

3. Willingness to Develop International Regulatory Cooperation

Section 5 of the survey asked respondents about their perceptions of the willingness to develop and strengthen different types of IRC. Respondents had four options: 'strongly not willing', 'not willing', 'willing', and 'strongly willing'. In Figure 7.3, 'strongly willing' and 'willing' were added together, as were 'strongly not willing' and 'not willing'. Figure 3 shows the total willingness to undertake particular types of IRC and contrasts this with 'not willing'.

Figure 7.3: Malaysia's Openness to Different Types of International Regulatory Cooperation



AMS = Association of Southeast Asian Nations member state.

Source: Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey, Questions 26–39.

The types of IRC where willingness was highest were (i) dialogue and informal exchange of information on policy, enforcement, and other regulatory practices; (ii) joint recognition of international standards; (iii) MRAs; (iv) regional transgovernmental networks amongst regulators; and (v) mutual enforcement cooperation. There was least support for (i) the unilateral adoption of policy or regulatory practices of others; and (ii) bilateral or regional legally binding regulatory agreements and/or harmonisation, with oversight enforcement by a supranational regional body.

Again, this reflects respondents' perceptions that Malaysia is willing to develop and strengthen IRC. There was consensus on almost all forms of IRC as the respondents are well aware that Malaysia is an open economy where trade plays a very significant role and is a key driver of economic growth. Malaysia is integrated into the global trading system as a member of the WTO, ASEAN, and other international organisations, as well as through bilateral arrangements. Notwithstanding this openness, Malaysia does have a few protected sectors and sensitive areas that influence its options for deeper liberalisation.

Malaysia, along with other ASEAN Member States (AMS), is engaged in discussions with the European Union on intellectual property, normally with a focus on efforts to improve intellectual property protection and enforcement. The Securities Commission also keeps in touch with priority countries through informal meetings and exchanges of information. The respondents' perceptions are consistent with Malaysia's active participation in formal and informal dialogue on various platforms, particularly ASEAN, discussing and debating various and broader issues, such as biodiversity, economic surveillance, strategic policy, and finance.

Respondents reported the least support for bilateral or regional legally binding regulatory agreements and/or harmonisation, with oversight enforcement by a supranational regional body, perhaps because of concerns about giving up part of the country's sovereignty. As former ambassador and former Secretary General of ASEAN, Rodolfo C. Severino Jr. rightly observed,

ASEAN is an inter-governmental organisation where decisions are based on consensus of all the member countries. It is not, and was not meant to be, a supranational entity acting independently of its members. It has no regional parliament or council of ministers with law-making powers, no power of enforcement, and no judicial system. Much less is it like NATO, with armed forces at its command, or the UN Security Council, which can authorise military action by its members under one flag. (Severino, 1999)

Box 7.1 below offers a glimpse of Malaysia's approach to the international trade landscape, which set the tone for this study.

Box 7.1: Malaysia's Attitude to International Trade

Malaysia is a founding member of the World Trade Organization (WTO) by virtue of its membership in the General Agreement on Tariffs and Trade (GATT) since 1957. As a WTO member, Malaysia accords high priority to the rules-based multilateral trading system under the WTO, and has continuously been voluntarily reducing and eliminating tariffs to enhance Malaysia's competitiveness. Over the years, the country has adopted open and transparent trade policies and measures. In addition, Malaysia is committed to building regional and bilateral trade arrangements with individual regional groupings and countries.

At the regional level, Malaysia is part of the Association of Southeast Asian Nations (ASEAN) Free Trade Area (AFTA) together with other ASEAN Member States (Brunei Darussalam, Cambodia, Indonesia, the Lao People's Democratic Republic, Myanmar, the Philippines, Singapore, Thailand, and Viet Nam), creating a complete free trade area amongst them. ASEAN presently has AFTA free trade agreements (FTAs) with China, Japan, the Republic of Korea, India, Australia, and New Zealand. Through AFTA, Malaysia has also entered into the ASEAN Trade in Goods Agreement and, together with Brunei Darussalam, Singapore, and Thailand, embarked on a self-certification pilot project on 1 November 2010 aimed at facilitating an enhanced environment for trade. Malaysia has also developed significant relations economically and politically with the Gulf Cooperation Council and is keen to have strong bilateral trade ties with the council through future FTAs. As a member of the Organisation of the Islamic Conference (OIC), Malaysia has actively supported and promoted intra-OIC trade and has ratified the Framework Agreement on Trade Preferential System amongst the OIC countries. On 4 February 2016, Malaysia signed the Trans-Pacific Partnership (TPP) Agreement, an FTA initiative with Australia, Brunei Darussalam, Canada, Chile, Japan, Mexico, New Zealand, Peru, Singapore, Viet Nam, and the United States.

Although the United States subsequently withdrew from the TPP under the Trump administration, the other members of the TPP have agreed to pursue the trade deal without the United States. On 9–10 November 2017, the TPP was renamed the Comprehensive and Progressive Agreement for the Trans-Pacific Partnership (CPTPP) and was signed by the remaining 11 member countries on 9 March 2018 after eight rounds of negotiations. The CPTPP also highlighted regulatory coherence. This refers to the use of good regulatory practices in the process of planning, designing, issuing, implementing, and reviewing regulatory measures to facilitate the achievement of domestic policy objectives, and in efforts across governments to enhance regulatory cooperation to further those objectives and promote international trade and investment, economic growth, and employment. With the installation of the new Government of Malaysia following national elections on 9 May 2018, Malaysia will continue their commitment to the CPTPP trade pact and agenda.

Source: Trade and Customs (2018), 'Getting the Deal Through (August)'. <https://gettingthedealthrough.com/area/51/jurisdiction/55/trade-customs-malaysia/> (accessed 13 June 2020); The Straits Time (2018), 'Malaysia to go ahead with Asia-Pacific trade pact CPTPP, says PM Mahathir', 27 August. <http://bilaterals.org/?malaysia-to-go-ahead-with-asia> (accessed 13 June 2020).

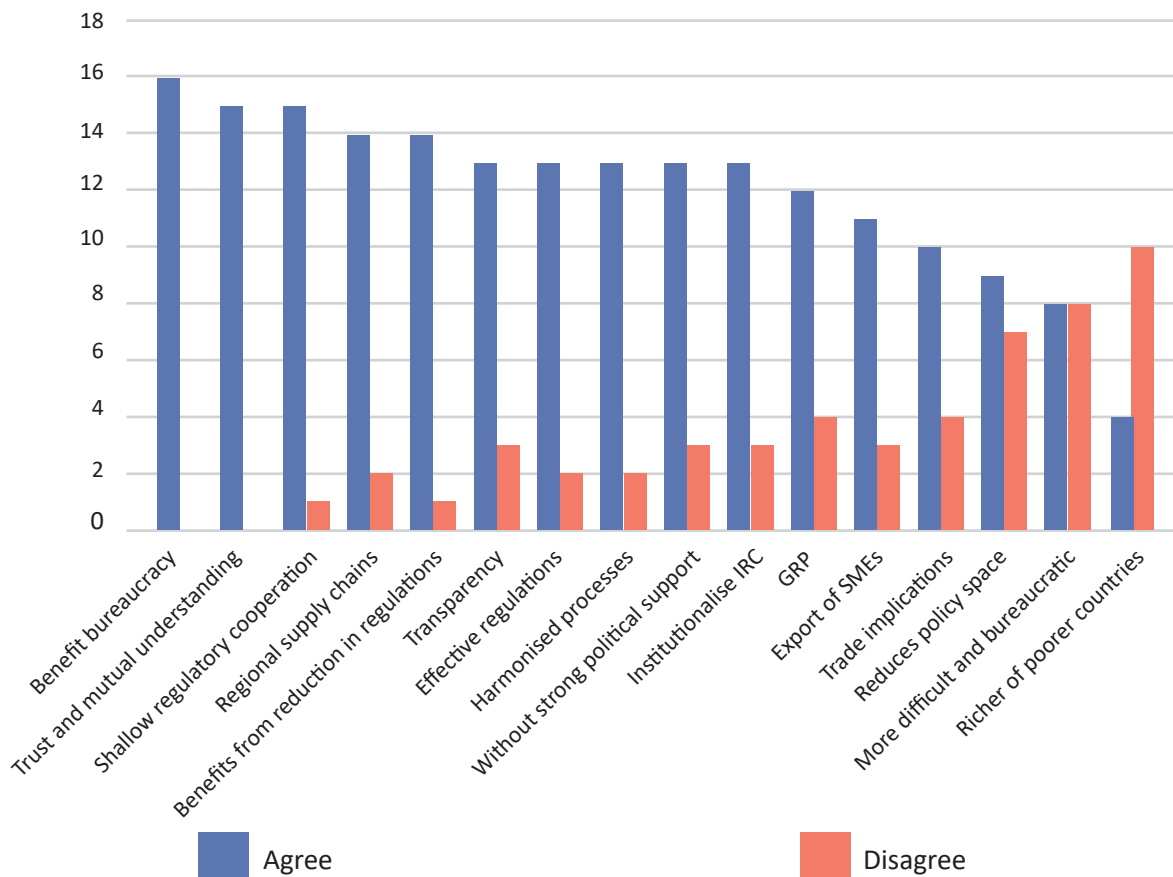
4. Imperatives and Blockers of International Regulatory Cooperation

Section 2 of the interview asked respondents about their views on a series of propositions about IRC. There were five options: 'strongly disagree', 'disagree', 'agree', 'strongly agree', and 'don't know'. The survey questions generally expressed the propositions about IRC in the positive. Three propositions were expressed as negatives in the questionnaire: IRC reduces policy space to a country's disadvantage, benefits richer countries more than poorer, and makes life more difficult. In the following Figure 7.4, we have reversed the display of agree/disagree to these three questions to make it easier to compare them with the other questions. The graph ranks the types of IRC from high to low by adding together 'strongly agree' and 'agree', and 'strongly disagree' and 'disagree'.

There was reasonably strong agreement with all of the propositions except for the following:

- (i) IRC benefits richer countries much more than poorer countries (62.50% disagree),
- (ii) IRC adds an additional layer of coordination and makes life for administrators and regulators even more difficult and bureaucratic (50.00% disagree),
- (iii) IRC that requires treaties and protocols reduces the policy space of a country to the disadvantage of the country (43.75% disagree), and
- (iv) IRC needs GRP (e.g. stakeholder consultation) to make regulations more effective and beneficial to firms and citizens (25.00% disagree).

Figure 7.4: Views on International Regulatory Cooperation



GRP = good regulatory practice, IRC = international regulatory cooperation, SMEs = small and medium-sized enterprises.

Source: Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey, Questions 11–26.

On the positive side, the survey results found that all respondents agree that IRC can benefit the bureaucracy through enhanced knowledge flows about technical issues and options, and about the policy experiences of other countries. Moreover, almost all agree that IRC builds trust and mutual understanding amongst institutions in countries in the region. Almost all agree that in the ASEAN region, where member states are at widely varying levels of economic and institutional development and have diverse cultures, it is best to start with shallow regulatory cooperation that applies to all members and deep (high-level) cooperation for those who are willing and/or interested.

These results show the consistency of the responses. It is imperative to know that there are challenges that Malaysia faces in negotiating or entering trade agreements. According to the Khazanah Research Institute (KRI), the non-profit organisation that carries out research on pressing issues of the nation, the government faces challenges in negotiating international trade agreements as it must strike a balance between domestic policies and liberalising selected sectors.

The KRI highlighted that international trade limits countries' ability to regulate their own people, and that such international trade agreements are always a matter of 'give and take'. Some elements, such as intellectual property rights, tariffs, government procurement, and the movement of human capital, may limit government health and education policies. Therefore, those formulating trade policies must find a balance between the interests of the government, foreign companies, and the people (Ho, 2017). As Malaysia aspires to become the preferred logistics gateway to Asia, efficient and high-performing logistics and trade facilitation are

important determinants. One of the focus areas of the Eleventh Malaysia Plan (2016–2020) is unleashing growth in logistics and enhancing trade facilitation. This will be achieved through various strategies, including the strengthening of the institutional and regulatory framework.

Box 7.2 below provides an example of multilateral agreements subscribed to by Malaysia. It shows that a stringent policy on biodiversity introduced to protect the environment, like several other NTMs with primarily non-trade objectives (in this case the protection of public health and the environment), may affect trade and represents a major challenge for exporters, importers, and policymakers. Although many NTMs aim primarily to protect public health or the environment, they also substantially affect trade through information, compliance, and procedural costs.

Box 7.2: Multilateral Environmental Agreements Subscribed to by Malaysia

INTERNATIONAL OBLIGATIONS

On the global front, Malaysia is party to various biodiversity-related multilateral environmental agreements, such as the Convention on Biological Diversity. Malaysia is also a party to agreements covering a wide range of subjects, including trade in endangered species, protection of important wetlands, biosafety, climate change, transboundary movement of hazardous wastes, haze, and laws of the sea. Malaysia's obligations are numerous, and the country needs to strengthen its policy framework to enable it to fulfil its responsibilities.

In addition to the Convention on Biological Diversity, Malaysia also participates in various other biodiversity-related multilateral environmental agreements, including the following:

- i. Association of Southeast Asian Nations Agreement on Transboundary Haze,
- ii. Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal,
- iii. Cartagena Protocol on Biosafety,
- iv. Convention on International Trade in Endangered Species of Wild Fauna and Flora,
- v. Convention on Wetlands of International Importance (Ramsar Convention),
- vi. Kyoto Protocol to the United Nations Framework Convention on Climate Change,
- vii. Montreal Protocol on Substances that Deplete the Ozone Layer,
- viii. Rotterdam Convention,
- ix. Stockholm Convention on Persistent Organic Pollutants,
- x. United Nations Framework Convention on Climate Change,
- xi. United Nations Convention on the Law of the Sea,
- xii. Vienna Convention for the Protection of the Ozone Layer, and
- xiii. World Heritage Convention.

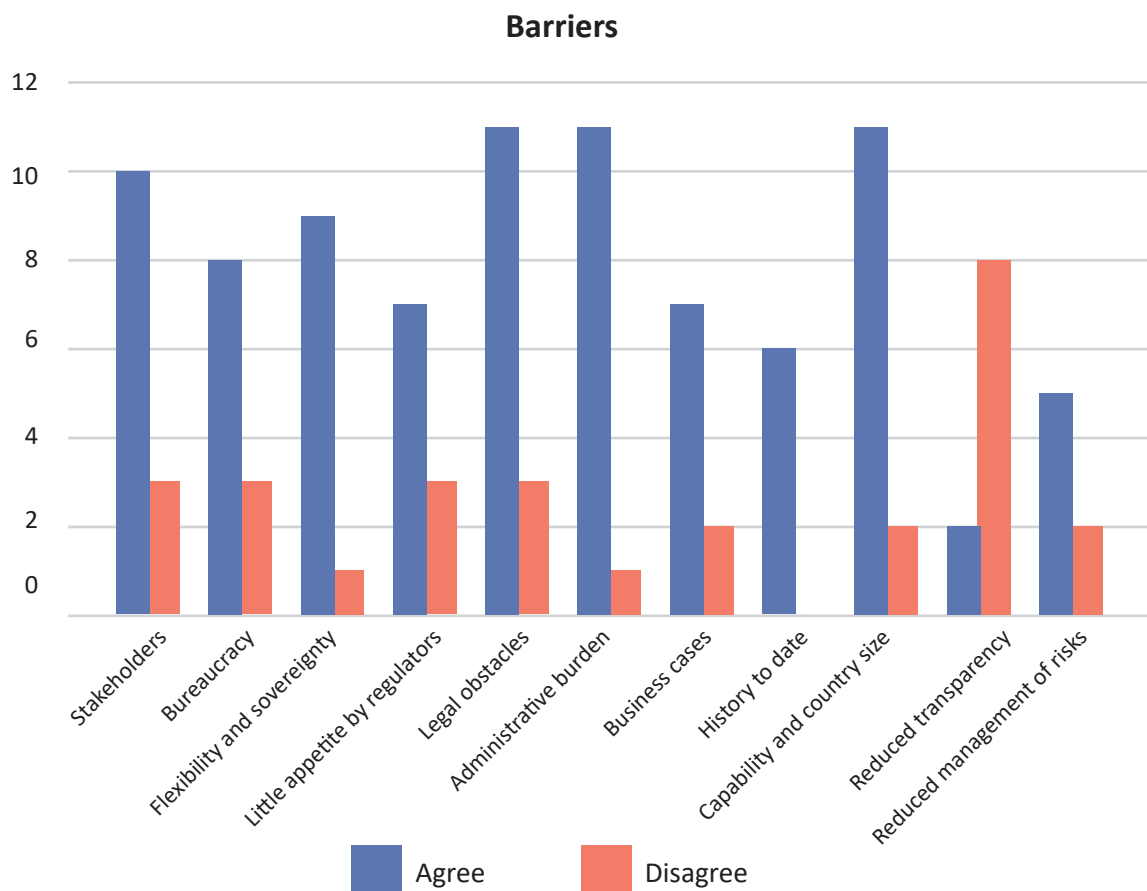
These multilateral environmental agreements complement and mutually reinforce each other in defence of the broad environment, including measures needed for national and international biodiversity management.

Source: Malaysia Biodiversity Information System (MyBIS), 'Multilateral Environmental Agreements Subscribed by Malaysia'. <https://www.mybis.gov.my/art/19> (accessed 11 November 2018).

5. Persuasiveness of International Regulatory Cooperation

Section 4 of the interview asked respondents about their views on a series of propositions about the factors that most restrict or inhibit the growth of IRC. There were five options: 'strongly agree', 'agree', 'disagree', 'strongly disagree', and 'don't know'. Two propositions were expressed as negatives (IRC reduces transparency and reduces management of risks at the border). In Figure 7.5 below, we have reversed the display of agree/disagree for these two questions for ease of comparison. The graph shows the types of IRC from high to low by adding 'strongly agree' together with 'agree', and 'disagree' together with 'strongly disagree'.

Figure 7.5: Barriers to International Regulatory Cooperation in Malaysia (Agree/Disagree)



Source: Economic Research Institute for ASEAN and East Asia International Regulatory Cooperation Survey, Questions 65–75.

Respondents mostly disagree (or are neutral) that 'IRC has led to reduced transparency between countries' (50%), while nobody disagrees that 'the history to date – with mixed experience' is a barrier. There is the least concern (6.25%) about the lack of regulatory flexibility and sovereignty arising from IRC and the increased administrative burden of IRC. The most agreement was reported for the following barriers:

- (i) legal obstacles to IRC (e.g. restrictions on information sharing/confidentiality rules) (11 agree, three disagree, three neutral);
- (ii) concern regarding the increased administrative burden of IRC on the country (11 agree, one disagree, two neutral); and
- (iii) differences in capability and country size create uneven trust in other countries' systems (11 agree, two disagree, one neutral).

The results show that most respondents agree that there are legal obstacles to IRC, most notably restrictions on information. In fact, all three statements that garner the highest number of 'agree' responses are interrelated where confidentiality and trust issues are the main concern. Trading countries understand that different regulatory authorities have different approaches. All regulatory authorities in any jurisdiction will be bound by secrecy or confidentiality restrictions of some kind, since such restrictions are required by international standards. Equally, there will be hardly any regulatory authorities whose confidentiality restrictions are not subject to some exemptions (or gateways), again, as required by international standards (International Monetary Fund, 2007).

Another lesson with regard to implementing IRC is the challenge of overcoming legacy baggage and cultural bureaucracy. Poor knowledge of other countries' regulatory setups and a lack of competency must also be addressed. ASEAN has incredible diversity in terms of religion, language, ethnicity, and culture; several different forms of government; and different interpretations of the proper relationship between the individual and the state. However, until we can achieve a better understanding of what these differences are, how they can be lessened, and the commonalities that we can hope to achieve (including the establishment of commitments, such as reducing discriminatory regulatory barriers and creating a more transparent regime), our diversity will be a weakness, not a strength (Sathirathai, 2018).

6. The Governance of International Regulatory Cooperation in Malaysia

The Malaysia Productivity Corporation (MPC), an agency under the Ministry of International Trade and Industry (MITI), is responsible for overseeing GRP and specifically responsible for promoting overall regulatory quality. The directive was highlighted in the 10th Malaysia Plan (2010–2015), which states that the 'MPC [is] to spearhead a comprehensive review of business regulations and improve processes and procedures to increase productivity and competitiveness of major economic sectors' (Chapter 3, pp.73–74). The MPC was mentioned again in the 11th Malaysia Plan (2016–2020), which stated that 'comprehensive and integrated governance reforms will be pursued to ensure a thriving and competitive environment for the services sector. The National Policy on the Development & Implementation of Regulations (NPDIR) to modernise the current regulatory regime will be fully implemented to include states and local governments' (Chapter 8, p.16).

Although the MPC is the lead body for GRP, the agency's role does not include oversight for IRC. In fact, there is no particular lead body in the government that assumes that role; instead, each ministry and agency is responsible for the international regulatory activities in their respective sectors (see Box 7.3). However, the MITI oversees, develops, and implements policies with regard to industrial development, international trade, and investment; formulates industrial development, international trade, and investment policies; and makes policy in consultation with relevant stakeholders including the Economic Planning Unit (EPU), which is responsible for developing Malaysia's 5-year development plans. As one of its functions is to attract quality foreign and domestic investments, the MITI promotes and increases Malaysia's exports of high value-added goods and services by strengthening bilateral, regional, and multilateral trade relations and cooperation.

While there is no explicit government policy on IRC, the principles of the NPDIR, a policy that embeds GRP in the formulation of new regulations or amendments to regulations, clearly states that all federal regulators (i.e. ministries, departments, statutory bodies, and regulatory commissions) must ensure that regulations are consistent with Malaysia's commitments in international and intergovernmental agreements. In addition, the NPDIR acknowledges the role of the Attorney-General's Chambers in offering legal advice to the cabinet or any minister on the development of laws and regulations. The Attorney-General's Chambers may provide

legal opinions on regulatory solutions, the drafting of regulations, the harmonisation of regulatory requirements, and Malaysia’s compliance with obligations of international treaties and relevant agreements.

The NPDIR supports domestic reforms of regulatory settings at the whole of-government and sector-specific levels, as well as those related to public governance and Malaysia’s commitments to regional cooperation and convergence. The table below demonstrates the link between regulatory reform and the government’s New Economic Model, Economic Transformation Programme, and Government Transformation Programme, as well as ASEAN and the Asia–Pacific Economic Cooperation.

7. Concluding Comments

Table 7.1: Link Between Malaysia’s Domestic Policies, Regional Commitments, and Good Regulatory Practice

| | ASEAN / APEC | New Economic Model | Economic Transformation Programme | Government Transformation Programme |
|---|--------------|--------------------|-----------------------------------|-------------------------------------|
| Regulatory co-operation & convergence | ++ | | | |
| Whole-of-government regulatory settings | | ++ | | |
| Sectoral regulatory settings | | + | ++ | |
| Regulatory governance | ++ | + | + | + |

ASEAN = Association of Southeast Asian Nations, APEC = Asia–Pacific Economic Cooperation.

Note: ++ = strong emphasis, + = general emphasis.

Source: OECD (2015), *Implementing Good Regulatory Practice in Malaysia*. Paris: Organisation for Economic Co-operation and Development Publishing.

BOX 7.3: Lead Ministries and Agencies Overseeing Malaysia’s Interests

In terms of trade agreements, the Ministry of International Trade and Industry has been championing free trade agreements, which have traditionally been confined to trade in goods. However, since the establishment of the World Trade Organization, trade in services and other areas such as investment, intellectual property protection, competition policy, and cooperation measures have been included. The table below shows the areas and the lead ministries and agencies responsible for safeguarding Malaysia’s interest in each area.

| AREA | LEAD MINISTRIES/AGENCIES |
|-----------------------------|--|
| Market access in goods | Ministry of International Trade and Industry |
| Technical barriers to trade | Standards Malaysia |
| Sanitary and phytosanitary | Ministry of Agriculture and Food Industries |

| | |
|-----------------------------------|---|
| Customs cooperation | Royal Customs Department |
| Rules of origin | Ministry of International Trade and Industry |
| Trade remedies | Ministry of International Trade and Industry |
| Investment | Ministry of International Trade and Industry |
| Services | Ministry of International Trade and Industry |
| Non-conforming measures | Ministry of International Trade and Industry |
| Financial services | Central Bank of Malaysia |
| Telecommunication | Ministry of Communications and Multimedia |
| E-commerce | Ministry of Communications and Multimedia |
| Business mobility | Ministry of International Trade and Industry |
| Government procurement | Ministry of Finance |
| Competition policy | Ministry of Domestic Trade and Consumer Affairs |
| Intellectual property rights | Ministry of Domestic Trade and Consumer Affairs |
| Labour | Ministry of Human Resources |
| Environment | Ministry of Environment and Water |
| Cooperation and capacity Building | Ministry of International Trade and Industry |
| Cross-cutting/horizontal issues | Ministry of International Trade and Industry |
| Legal | Attorney-General's Chambers |

Source: Free Trade Agreement, https://www.miti.gov.my/miti/resources/fileupload/FAQs_BI.pdf (accessed 11 November 2018).



This chapter has summarised the key findings from a small group survey of eight government officials and eight private sector players. Given the small sample size, care is required in interpreting the results. The survey results reflect a small sample of individuals' views on various forms of IRC based on their own experience, and may not reflect the views of the wider population of the country as a whole.

The respondents' feedback shows strong agreement on the benefits that IRC has to offer. They agree that IRC could promote trade and business relations amongst participating countries while streamlining internal processes with international agreements. Trade facilitation can be improved and there will be a free flow of goods and human resources; a decrease in unnecessary regulatory burdens; greater freedom and ease of doing business; greater market efficiency; improved competition and competitiveness; improved safety, health, and environment issues; and improved use of natural resources. Laws between countries have been monitored accordingly to ensure full compliance with international obligations, and more professionals and expatriates are enabled to do business anywhere in ASEAN.

The survey also asked respondents about the major problems facing the initiation and implementation of IRC, and how those problems could be addressed. The factors highlighted include a lack of support or advocacy in individual AMS, different levels of economic development in member countries, and the lack of a regulatory mechanism in certain countries, all of which make regulatory harmonisation difficult. Some of the respondents believe that a reluctance to open up to other AMS perhaps stems from a desire to protect local expertise; this could eventually be solved by a political will to educate the public on the benefits that can be gained from a more open economy. All of these issues could potentially be reduced if a central coordination committee were established to oversee Malaysia's IRC.

A key lesson is the need to adopt other countries' best practices in regulating certain sectors and in terms of coordinating and establishing a central body to supervise the development of IRC in Malaysia. Political will is seen as vital to push the IRC agenda; otherwise the implementers will face resistance from all levels, which will scuttle the initiatives. Regulatory prediction and certainty could elevate the confidence of others to do business in Malaysia, which in turn will increase foreign direct investment and benefit the population in the long run.

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