

Addressing Gaps in Transparency and Government Guarantee: Lessons from Malaysia's Four Case Studies

June 2022

Prepared by :





The Institute for Democracy and Economic Affairs (IDEAS) is a nonprofit research institute based in Malaysia dedicated to promoting solutions to public policy challenges.

IDEAS work is independent of vested interests and partisan influences. IDEAS have also expanded our work into new areas focussing on our three overarching missions – advancing a competitive economy, ensuring trust in institutions and promoting an inclusive Malaysia. IDEAS act as an intellectual centre creating space for cross partisan principles-centric and results-oriented dialogue.



Sri Murniati Yusuf is the Senior Manager of the Public Finance Unit at IDEAS. Her research interests include government procurement, budget and fiscal transparency, and governance of extractive industries. She is the author of IDEAS Policy Paper “Generating best value for taxpayers’ money: how to improve transparency and accountability in Malaysia’s public contracting system”.

She completed her MA in Political Science at the Ohio University, USA and is pursuing a PhD on Elite Unity, Patronage and Durability of Dominant Party Regime at the University of Nottingham under IDEAS scholarship.



Julia Desiree Merican is a senior research executive at IDEAS. She believes that by depolarising political discourse and renouncing ethnonationalism in public policy, Malaysia has the potential to become an unequivocally inclusive multicultural society. Her interests lie in unlikely spaces of reconciliation; she is particularly drawn to how countries can preserve their cultural integrity while effectuating socio-economic progress.

Julia holds a Master of Studies in post-1900 English literature from the University of Oxford, where she was a Yayasan Khazanah Merdeka scholar. She is also a writer, dipping her pen—or, more accurately, tapping her keys—into subjects that range from the complex nature of domestic servitude in contemporary South Asian literature to the exclusionary politics of cosmopolitanism and commodified country living.

This brief provides an overview of the four case studies that IDEAS undertook for the BRI Monitor Project and discusses two major issues identified in the case studies: transparency and the unfavorable terms of Chinese loans guaranteed by the Malaysian government. The brief also identifies inadequate legal frameworks and oversight in guaranteed loan governance as well as gaps in Malaysia's regulatory framework that exacerbate these issues. It concludes by providing recommendations to address these gaps.

BRI and Chinese Investment in Malaysia

Malaysia was one of the first countries to respond positively to the BRI, which it saw as an opportunity to sustain future growth. To secure BRI investments, the Malaysian government launched several major infrastructure projects executed through Government-Linked Companies and State-Owned Enterprise (GLC-SOE) joint ventures. At the time, these were the most expensive projects undertaken by Chinese and Malaysian entities. These state-to-state projects included big-ticket initiatives such as the Malaysia-China Kuantan Industrial Park and the East Coast Rail Link.

In November 2016, the United Malays National Organization (UMNO)—Malaysia's longest-standing ruling political party since 1957—signed a memorandum of understanding (MOU) with China,¹ agreeing to Malaysia's participation in the BRI and the commencement of a slew of new megaprojects in the nation. Since then, Chinese investment in Malaysia has significantly increased.

In 2020, China was ranked as Malaysia's top source of foreign direct investment (FDI) for the fifth consecutive year, making up approximately 31 percent of foreign investments in Malaysia's manufacturing sector.² Increased Chinese investments in Malaysia were a point of contention in the 2018 general election, with opposition leaders insinuating that under Najib's premiership these investments in Malaysia posed a threat to national sovereignty.³ These concerns were linked to

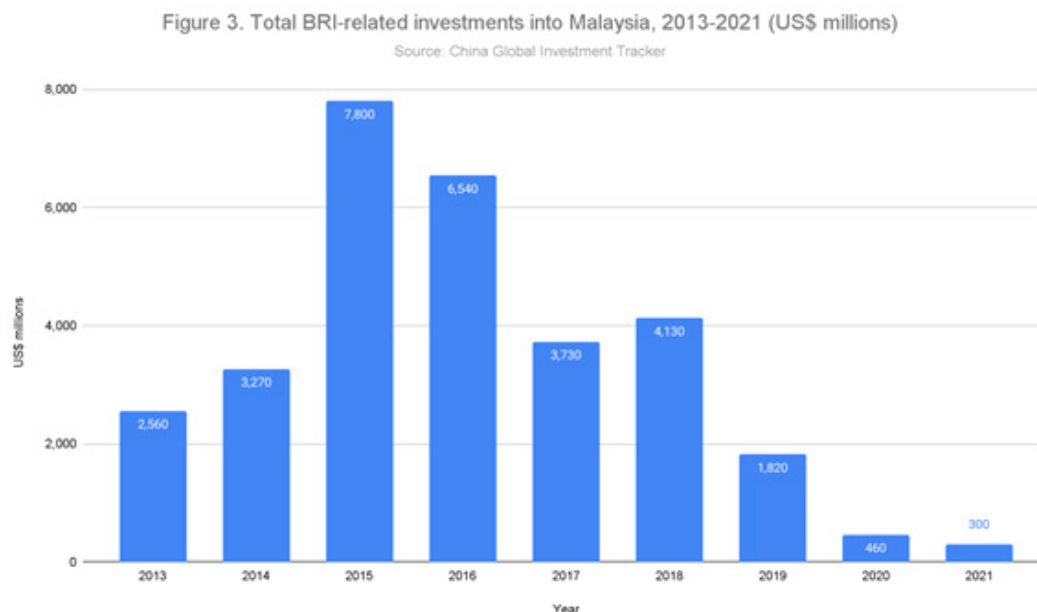


¹ "Malaysia, China sign 14 MOUs worth RM143.6b", Malaysiakini, November 2, 2016, <https://www.malaysiakini.com/news/361327>; Tham Siew Yean, "Chinese Investment in Malaysia: Five Years into the BRI," ISEAS Yusof-Shafak Institute: Perspective 11, February 27, 2018, 4, https://think-asia.org/bitstream/handle/11540/8046/ISEAS_Perspective_2018_11-50.pdf?sequence=1

² "China becomes largest FDI source for Malaysia in 2020", Xinhuanet, March 2, 2021, http://www.xinhuanet.com/english/2021-03/02/c_139778143.htm

³ Benjamin Blythe, "Malaysia's New Prime Minister and the Future of Chinese Investment," Council on Foreign Relations, December 10, 2021, <https://www.cfr.org/blog/malysias-new-prime-minister-and-future-chinese-investment>

the 1 Malaysia Development Berhad (1MDB) financial scandal of 2016, and China's support of the kleptocratic sovereign national fund.⁴



There is still no official list of BRI projects between China and Malaysia⁵—there is, in fact, no constituted definition for what qualifies a project as “BRI” in any of the countries participating in the initiative,⁶ exposing it as more of a “loose brand than a program with strict criteria.”⁷ Because of the lack of clarity regarding what can be defined as a “BRI project”, the official number of BRI investments in Malaysia varies across different sources.⁸ According to data collected by the China Global Investment Tracker (a joint initiative between the U.S.-based American Enterprise Institute and the Heritage Foundation), BRI-related investments into Malaysia between January 2013 and March 2021 totalled US\$30.6 billion. When broken down by year, 2015 saw the highest inflow of BRI-related investments into Malaysia, totalling US\$ 7.8 billion.⁹ However, all the data suggest that 2015-2017 represent the peak years for BRI-related investments and that investment has decreased in subsequent years. During this period, Malaysia was preparing to face the 14th General Election which was considered to be the most challenging election for the ruling party. The timing seems to confirm accusations from many quarters that Chinese investments, particularly related to the BRI, have been misused to shore up political support, with some of the funding diverted for political financing purposes.

⁴ *Ibid.*

⁵ Tham, “Chinese Investment in Malaysia: Five Years into the BRI,” 4; “The Belt and Road Initiative in ASEAN: Malaysia,” UOB, December 2020, 11, <https://www.uobgroup.com/web-resources/hk/pdf/hk/foreign-direct-investment/hkustiemis-uob-bri-malaysia.pdf>

⁶ onathan E. Hillman, “China’s Belt and Road Initiative: Five Years Later”, Centre for Strategic and International Studies, January 25, 2018, <https://www.csis.org/analysis/chinas-belt-and-road-initiative-five-years-later-0>

⁷ *Ibid.*

⁸ Bhavan Jaipragas, “11 projects that show China’s influence over Malaysia—and could influence its election,” South China Morning Post, August 5, 2017, <https://www.scmp.com/week-asia/politics/article/2105440/11-projects-show-chinas-influence-over-malaysia-and-could>; “CDR - The Belt and Road Initiative,” September 29, 2021, <https://iclg.com/cdr-essential-intelligence/1100-cdr-the-belt-and-road-initiative-2021/malaysia>

⁹ China Global Investment Tracker, American Enterprise Institute and Heritage Foundation, Ammar A. Malik, Bradley Parks, Brooke Russell, Joyce Jiahui Lin, Katherine Walsh, Kyra Solomon, Sheng Zhang, Thai-Binh Elston, and Seth Goodman, “Banking on the Belt and Road: Insights from a new global dataset of 13,427 Chinese development projects,” AidData, September 2021, 19,

An overview of the case studies

Research conducted in Malaysia focused on four BRI projects: the East Coast Rail Link (ECRL), the Gemas-Johor Bahru Electrified Double-Tracking Project (GJBEDTP), the Melaka Gateway, and the Trans-Sabah Gas Pipeline (TSGP). Almost all the case studies are part of Malaysia's transportation sector, apart from the Melaka Gateway, which is a coastal property development intended to host a Special Economic Zone (SEZ).¹⁰ The ECRL and GJBEDTP are still ongoing, with targeted completion in 2026 and 2023, respectively. While both the Melaka Gateway and TSGP were initially shelved, both have been revived under the Perikatan Nasional-led government. In February 2021, the revival of TSGP was announced to much controversy.¹¹ In March 2022, the Melaka Gateway was also surprisingly reinvigorated: it was returned to its private developer by the state government as an "amicable solution" to a series of lengthy legal disputes.¹²

Most of the case study projects were initiated during Prime Minister Najib Razak's official visit to Beijing in November 2016, a year after the UMNO-led government signed the MOU that allowed the commencement of BRI projects in Malaysia. The ECRL and Melaka Gateway were part of the fourteen business-to-business MOUs¹³ (many of which were agreed upon well before their showcase in Beijing)¹⁴ that Najib signed on the first day of his visit, while the TSGP was included in another sixteen government-to-government agreements signed later.¹⁵ The GJBEDTP, however, was one of many long-standing infrastructure projects in the country predating Beijing's initiative that had undergone "a casual rebranding" as BRI for "political or monetary advantage."¹⁶ Although it was labeled as a BRI project by the Chinese Ambassador to Malaysia,¹⁷ it remains fully funded by the federal government.¹⁸ As stated earlier, there is still no official list of BRI projects between China and Malaysia.¹⁹ Nevertheless, all four of these projects have been included as case studies because they have ubiquitously come to be known as Malaysian flagships of the BRI, and are all examples of major Chinese-backed projects in Malaysia.

Only two out of four projects are financed by Chinese loans. China's Export Import Bank (China EXIM Bank) funded 85percent of the project costs for the ECRL and the TSGP on a 20-year loan facility with an interest of 3.25 percent.²⁰ Both loans are guaranteed by the Malaysian government. The financing

https://docs.aiddata.org/ad4/pdfs/Banking_on_the_Belt_and_Road__Insights_from_a_new_global_dataset_of_13427_Chinese_development_projects.pdf

¹⁰ MSI Global Alliance, "Melaka Gateway: Integrated World-Class Development," MSI Global, May 2017, 6, https://www.msiglobal.org/wp-content/uploads/2019/12/Investment-Book_-9Sept-5.pdf

¹¹ "Finance Ministry reveals Muhyiddin-led PN revived TSGP pipeline project," Malaysia Kini, October 20, 2021, <https://www.malaysiakini.com/news/596173>.

¹² RSN Murali, "Melaka Gateway project goes back to developer," The Star, March 9, 2022, <https://www.thestar.com.my/news/nation/2022/03/09/melaka-gateway-project-goes-back-to-developer>

¹³ Cassey Lee, "Deepening of Malaysia's Economic Ties to China: What Are the Implications?," ISEAS-Yusof Shafak Institute: Perspective 69, December 2016, 6, https://www.iseas.edu.sg/images/pdf/ISEAS_Perspective_2016_69.pdf

¹⁴ *Ibid.*, 2.

¹⁵ "PM Najib Razak hails groundbreaking China visit outcomes," NST Online, November 4, 2016, <https://www.nst.com.my/news/2016/11/185849/pm-najib-razak-hails-groundbreaking-china-visit-outcomes>

¹⁶ Lee Jones & Shahar Hameiri, "Debunking the Myth of 'Debt-trap Diplomacy:'

How Recipient Countries Shape China's Belt and Road Initiative," Chatham House, August 19, 2020, 22, <https://www.chathamhouse.org/2020/08/debunking-myth-debt-trap-diplomacy/5-malaysia-and-bri>

¹⁷ Bai Tian, "China-Malaysia Cooperation Sails Fast and Far with the wind of Belt and Road," New Straits Times, April 23, 2019, <http://my.china-embassy.org/eng/sgxx/dsjh/t1657041.htm>

¹⁸ "BRI Monitor: Gemas-Johor Bahru Electrified Double-Tracking Project (GJBEDTP)," Institute for Democracy and Economic Affairs (IDEAS), 2021, 13, <https://www.brimonitor.org/wp-content/uploads/2021/11/GemasJB-2.pdf>

¹⁹ Tham, 4; "The Belt and Road Initiative in ASEAN: Malaysia," UOB, 11

²⁰ Bernama, "ECRL — A Game Changer for Malaysia," The Malaysian Reserve, August 10, 2017, <https://themalaysianreserve.com/2017/08/10/ecrl-game-changer-malaysia/>

for the remaining 15 percent of the project²¹ was meant to be covered by the Malaysian government through a sukuk issuance, an Islamic financial certificate that complies with Sharia.²²

Chinese companies—all either state-owned or direct SOE subsidiaries—serve as the contractors on all four projects. Both projects financed with Chinese loans (the ECRL and TSGP) used Chinese contractors as a condition of the loan. The Malaysian government awarded the ECRL's engineering, procurement, construction, and commissioning (EPCC) contract to China Communications Construction Company (CCCC),²³ a state-owned enterprise, and its local subsidiary, China Communications Construction Company (M) Sdn Bhd (CCCCM).²⁴ CCCC is the project's main contractor and joint venture (JV) partner operator. In 2016, the Malaysian government granted a Chinese consortium, comprised of the China Railway Construction Corp (CRCC), China Railway Engineering Corp (CREC), and CCCC, a contract for the GJBEDTP's "design, construction, supply, installation, completion, testing, commissioning and maintenance."²⁵ For the Melaka Gateway, Malaysia-based KAJ Development partnered with a trio of Chinese companies in 2017: the state-owned Chinese energy firm PowerChina International, Shenzhen Yantian Port Group, and Rizhao Port Group, all of whom agreed to support the US\$10.5 billion project.²⁶ PowerChina signed an RM30 billion agreement with KAJ Development for the "investment, development and construction of Melaka Gateway" in 2016, but it remains unclear to what extent—or even if—the Chinese companies were supporting the project financially.²⁷ The TSGP's contractors were the China Petroleum Pipeline Engineering Company Ltd (CPPE) and Huanqiu Project Management (Beijing) Co Ltd (HQPMC).²⁸

The four case studies identified several key issues across all projects, including concerns over project feasibility, environmental and social impacts, the limited degree of local contractor involvement, unfavorable loan terms, and lack of transparency. This brief focuses on the latter two concerns. Lack of transparency was highlighted mainly because limited information is available publicly about the other concerns, such as project viability and social and economic impacts. In many cases, lack of transparency underlies these concerns: lack of transparency provides the public little opportunity for input regarding infrastructure that meets their needs and affected populations may not have avenues to express concern about projects' potential impact. and the issue of unfavorable loan terms was chosen for being one of the most politically contentious issues within Malaysia regarding the BRI projects.

²¹ *Ibid.*

²² Akhilesh Ganti, "Sukuk," Investopedia, October 17, 2020, <https://www.investopedia.com/terms/s/sukuk.asp>

²³ Jennifer Fei, "Bridging Regions, Strengthening Ties: The East Coast Rail Line (ECRL) in Malaysia," Leadership Academy for Development, Undated, 8, https://fsi-live.s3.us-west-1.amazonaws.com/s3fs-public/east_coast_rail_line_in_malaysia_0.pdf

²⁴ "BRI Monitor: East Coast Rail Link (ECRL)," IDEAS, 5, https://www.brimonitor.org/wp-content/uploads/2021/07/CS_ECRL.pdf

²⁵ Sharen Kaur, "EDTP: A Game-Changer for Johor", New Straits Times, April 5, 2019, <https://www.nst.com.my/property/2019/04/476538/edtp-%E2%80%94game-changer-johor>

²⁶ P. Prem Kumar, "Canceled \$10.5bn Malaysia port project plays down China role", Nikkei Asia, December 3, 2020, <https://asia.nikkei.com/Business/Transportation/Canceled-10.5bn-Malaysia-port-project-plays-down-China-role>

²⁷ P"Press Release: KAJ Development Sdn Bhd signs RM30 billion agreement with PowerChina International for Investment, Development and Construction of Melaka Gateway," KAJ Development Sdn Bhd, September 1, 2016, https://melakagateway.com/wp-content/uploads/2016/09/Joint-Media-Release_MoA-KAJ-Powerchina_01September2016.pdf

²⁸ Syndicated News, "Multi-Product, Trans-Sabah Gas pipeline projects terminated," The Mole, May 26, 2019, <https://www.mole.my/multi-product-trans-sabah-gas-pipeline-projects-terminated/>



Transparency in the procurement process

The BRI Monitor Project uses a transparency assessment to evaluate the transparency level of each case study. The assessment is based on the Infrastructure Data Standard (IDS) for proactive disclosure developed by the Construction Sector Transparency Initiative (CoST). The standard requires the disclosure of 38 data points in five key stages of the infrastructure project cycle: identification, preparation, procurement, implementation, and completion.²⁹

A general pattern seen across the four case studies is an overarching lack of transparency, particularly at the procurement stage, where information about the procurement process, the number of firms participating in tendering, and basic contract details such as awarded price and scope are not available.³⁰ Lack of information stems from the bidding process: the projects were not competitively awarded. The contractors for the ECRL and the TSGP (CCCC and consortium of CREC, CCCC, and CRCC, respectively) were appointed as part of the loan agreement.³¹ There is no indication whether the Ministry of Finance subsidiaries Malaysia Rail Link Sdn Bhd (MRL) and Suria Strategic Sendirian Berhad (SSER), which served as project owners of the ECRL³² and TSGP³³ and respectively—were directly involved in the procurement process. The GJBEDTP contractor, a consortium of three Chinese state-owned companies, was appointed after the government considered proposals from other companies, but the rationale for awarding the project to the Chinese consortium was not adequately disclosed.³⁴ The developer of the Melaka Gateway, KAJ Development Sdn Bhd (KAJD), was controversially granted freehold status by the Malaysian transport minister at the time to develop the reclaimed islands and port.³⁵

In accordance with the Ministry of Finance's government procurement regime, Malaysia's principles for public procurement include transparency and fair, open competition.³⁶ Despite these objectives, however, poor procurement practices in Malaysia have hindered competition and transparency in BRI-related projects.³⁷ Although traditional government procurement (as in the case of GJBEDT) requires open or limited tender, the Malaysian government often directly negotiates with contractors³⁸ for these

²⁹ To capture different practices, qualities and levels of transparency, researchers are asked to answer six related questions for each data point. A score of 1 will be assigned if the answer is “yes”. Each data point will, therefore, have a score between 0-6, where “0” means no information available (not transparent) and “6” means full transparency.

³⁰ “BRI Monitor Heatmap,” BRI Monitor, <https://www.brimonitor.org/heatmaps/>²⁷ “Corruption Perception Index 2008,” Transparency International, accessed October 5, 2021, <https://www.transparency.org/en/cpi/2008>.

³¹ Tony Pua Kiam Wee, “Is Our National Interest Now Subject to Foreign Terms and Conditions?,” DAP Malaysia, 30 March, 2017, <https://dapmalaysia.org/Kenyataan-Akhbar/2017/03/30/24758/>

³² “BRI Monitor: East Coast Rail Link (ECRL),” IDEAS, 4

³³ “BRI Monitor: Gemas-Johor Bahru Electrified Double-Tracking Project (GJBEDTP),” IDEAS, 7

³⁴ Francis E. Hutchinson, “The Melaka Gateway Project: High Expectations But Lost Momentum?,” ISEAS-Yusof Shafak Institute: Perspective 78, September 30, 2019, 4, https://think-asia.org/bitstream/handle/11540/11322/ISEAS_Pers3pective_2019_78.pdf?sequence=1; Adam Aziz, “Port projects under scrutiny,” The Edge Financial Daily, July 13, 2018, <https://www.theedgemarkets.com/article/port-projects-under-scrutiny>

³⁵ “Malaysia's government procurement regime,” Ministry of Finance Malaysia, 2010, https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup4/2016-August-22-24/Contributions_NV/Malaysia_EN.pdf

³⁶ Sitti Hasinah Abul Hassan, Suhaiza Ismail and Hawa Ahmad, “Public procurement in Malaysia: objectives and procurement principles,” *Journal of Economic and Administrative Sciences* 37.4, December 2020, 695, <https://doi.org/10.1108/JEAS-03-2020-0033>

³⁷ In direct negotiation, a procuring entity can appoint a contractor/supplier to deliver goods, services or works without calling for bids from other contractors/suppliers. A more detailed explanation can be seen here: Sri Murniati and Danial Ariff, “Improving Direct Negotiation Rules in Malaysia: Learning from Current Practices and International Laws,” IDEAS: Policy Ideas No. 68, November 2020, 4, https://www.ideas.org.my/wp-content/uploads/2021/04/P_68_Procurement_V5-1.pdf

projects.³⁹ Authorities also rarely inform market players if procurement procedures have changed. Additionally, procurement processes are not open to scrutiny by interested stakeholders because of the absence of a review system⁴⁰ —a practice that improves transparency and accountability⁴¹ —and the lack of Freedom of Information legislation, which would create a supportive environment for more robust oversight and transparency in procurement legislation.⁴²

As evidenced in the case of the ECRL and TSGP, there are no uniform official requirements for conduct in the SOE procurement process (such as publishing tender and award notices).⁴³ While publicly-listed SOEs, such as the utility company Tenaga Nasional Berhad, publish tender notices and procurement processes on their website, such practices are not common among non-publicly listed SOEs.⁴⁴

Issues with Chinese loans and governance gaps

Another issue worth highlighting is the unfavorable terms of Chinese loans. Both Chinese-funded projects (the ECRL and TSGP) have high interest rates and require the government to issue advanced payment to contractors. In 2018, the then-new Pakatan Harapan (PH) government formed a Commission of Eminent Experts (CEE) to study the country's financial and economic situation and look into several high-profile projects. The CEE's June 2018 report proposed two options for the ECRL: cancel the project and pay the termination cost of RM21.72 billion or suspend the project and try to negotiate a better deal with China⁴⁵, due to its “unjustified, hefty lump sum price which lacked clarity in terms of technical specifications, price and, by extension, economic justification.”⁴⁶

The ECRL loan has a 3.25 percent interest rate and a 20-year repayment period. This rate is higher than nine other BRI railway projects, including the Jakarta-Bandung High-Speed Railway, the Kunming-Vientiane Railway, and the Abuja Light Rail.⁴⁷ The Pakatan Harapan government's renegotiation efforts for a more equitable ECRL deal with China in 2019 did not seem to address this issue, and to this day, the interest rate has not been amended.⁴⁸ The interest rate for the TSGP loan was also 3.25 percent per annum over 20 years.⁴⁹

³⁹ David Seth Jones, “Key failings in the Malaysian public procurement system and how they can be addressed by greater transparency,” IDEAS: Policy Ideas No. 7, October 2013, 3, <https://www.ideas.org.my/wp-content/uploads/2021/04/Brief-IDEAS-No7-Chinese-Investments-in-Malaysia-1.pdf> ; Nile Bowie, “Mahathir sets tone for renegotiating with China,” Asia Times, April 17, 2019, <https://asiatimes.com/2019/04/mahathir-sets-tone-for-renegotiating-with-china/>

⁴⁰ Jones, “Key failings in the Malaysian public procurement system and how they can be addressed by greater transparency,” 5

⁴¹ Wee Shu Hui, Radiah Othman, Normah Hj Omar, Rashidah Abdul Rahman and Nurul Husna Haron, “Procurement issues in Malaysia,” *International Journal of Public Sector Management* 24.6, August 2011, 575, <https://doi.org/10.1108/09513551111163666>

⁴² Sri Murniati Yusuf, “Procurement Legislation, Compliance, Transparency and Accountability in Malaysia: A Final Report of IDEAS Procurement Research and Roundtable Series 2020,” IDEAS, 2020, 5, <https://www.ideas.org.my/publications-item/procurement-legislation-compliance-transparency-and-accountability-in-malaysia-a-final-report-of-ideas-procurement-research-and-roundtable-series-2020/>

⁴³ “Malaysia's Government Procurement Regime,” United Nations https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup4/2016-August-22-24/Contributions_NV/Malaysia_EN.pdf

⁴⁴ “Suppliers,” Tenaga Nasional Website, <https://www.tnb.com.my/doing-business-with-tnb/suppliers/>

⁴⁵ “BRI Monitor : East Coast Rail Link”, IDEAS, 11

⁴⁶ Tun Dr. Mahathir bin Mohamad, “Press Statement by YAB Prime Minister Tun Dr. Mahathir bin Mohamad on East Coast Rail Link (ECRL) Project”, Prime Minister's Office, April 15, 2019, https://www.pmo.gov.my/wp-content/uploads/2019/04/Press-Statement-by-PM-on-ECRL_15April2019.pdf

⁴⁷ “BRI Monitor : East Coast Rail Link”, IDEAS, 17

⁴⁸ Mahathir, “Press Statement by YAB Prime Minister Tun Dr. Mahathir bin Mohamad on East Coast Rail Link (ECRL) Project”

⁴⁹ Bernama, “RM10b EPCC, associated contracts for pipeline contracts terminated: Guan Eng,” Bernama, May 25, 2019, <https://www.malaysiakini.com/news/477406>

Both loans require the government to issue advanced payment to the contractors, despite concerns over the projects' progress and quality—in 2018, while only 15 percent of the ECRL project was completed, 33 percent of its initial cost had already been paid to the contractors. Similarly, for the TSGP, the PH government reported that only 13 percent of the pipeline's construction had been finished when 88 percent of the project's cost had already been paid to the contractors.⁵⁰ These advances illuminate how upfront payments to the contractors can drastically reduce their incentive to complete high-quality work. Then-Finance Minister Lim Guan Eng expressed frustration with the lack of progress with the pipe-laying and preliminary works on the TSGP, despite the exorbitant amount that had already been paid, and criticized the project's opacity.⁵¹ During his brief reinstatement as Prime Minister in 2018, Tun Dr. Mahathir raised the issue of a RM3.1 billion (US\$743.31 million) advance payment to the CCCC for the ECRL.⁵² In 2019, there was a renegotiation to retrieve part of this sum,⁵³ but as of November 2021, it is not clear whether the agreed amount was fully refunded before the initial ECRL agreement was replaced in March 2020, or if this advanced payment requirement is still part of the new ECRL agreement. The TSGP faced a similar issue of advance payment to the Chinese Petroleum Pipeline Engineering Corporation (CPPE).⁵⁴

These loan issues are important as both loans are guaranteed by the government, meaning that the Malaysian government—and ultimately, the Malaysian taxpayers—will carry the burden of the loan if the entities are not capable of meeting the loan obligation.⁵⁵ Malaysian entities with government-guaranteed loans—GLCs, statutory bodies, and SOEs among them—have already received allocations from the annual budget and are likely receiving government assistance in meeting their loan obligations. These loans are classified as “committed guarantees” in the budget document instead of regular “guaranteed loans” because they are awarded to entities which “require financial assistance from the government” to assist them in “carrying out projects, particularly during the construction phase and at the beginning of operations.”⁵⁶ Malaysia's Fiscal Outlook for 2021 highlights that “the financial performance and subsequent development plans of these entities are reviewed regularly and placed under scrutiny in efforts to manage the downside risks to the Government,” but BRI projects such as the ECRL and the TSGP have demonstrated that in practice those reviews are not always stringent or frequent.⁵⁷ As of September 2020, Malaysia's committed guarantee is 12.3 percent of its GDP.⁵⁸ The loans for the ECRL and TSGP (made by the MRL and SSER, respectively) are part of this committed guarantee (see Table 2). Together with federal government debt, other liabilities, and 1MDB related commitments, the total debt and liabilities that the Malaysian government is responsible for comprises 87.3 percent of its GDP (see Table 1), an inordinately high level.

⁵⁰ Alifah Zainuddin, “What Happened To China's BRI Projects in Malaysia?,” *The Diplomat*, October 5, 2021 <https://thediplomat.com/2021/10/what-happened-to-chinas-bri-projects-in-malaysia/>

⁵¹ Bernama, “Daim leading negotiations with China to recoup RM8.3b payment for pipeline projects, says finance minister,” *Malay Mail*, October 2, 2019, <https://www.malaymail.com/news/malaysia/2019/10/02/daim-leading-negotiations-with-china-to-recoup-rm8.3b-payment-for-pipeline/1796360>

⁵² Mahathir, “Press Statement by YAB Prime Minister Tun Dr. Mahathir bin Mohamad on East Coast Rail Link (ECRL) Project”

⁵³ *Ibid.*

⁵⁴ Bernama, “Daim leading negotiations with China to recoup RM8.3b payment for pipeline projects, says finance minister,” *Malay Mail*, October 2, 2019, <https://www.malaymail.com/news/malaysia/2019/10/02/daim-leading-negotiations-with-china-to-recoup-rm8.3b-payment-for-pipeline/1796360>

⁵⁵ *2020 Fiscal Outlook and Federal Government Revenue Estimates*, Malaysian Ministry of Finance, 2020, <https://www.mof.gov.my/portal/arkib/revenue/2020/section5.pdf>. For discussion on committed guarantee, please refer to p. 5.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

Table 1: Federal Government Debt and Liabilities Exposure (2018-2020)

| COMPONENT | RM BILLION | | | SHARE OF GDP (%) | | |
|------------------------------------|----------------|----------------|----------------|------------------|-------------|-------------|
| | 2018 | 2019 | 2020 | 2018 | 2019 | 2020 |
| Federal government debt | 741.0 | 793.0 | 874.3 | 51.2 | 52.5 | 60.7 |
| Committed guarantees | 132.7 | 162.1 | 177.0 | 9.2 | 10.7 | 12.3 |
| IMDB | 32.2 | 31.9 | 32.3 | 2.2 | 2.1 | 2.3 |
| Other liabilities (PPP, PFI, PBLT) | 184.9 | 182.2 | 173.3 | 12.8 | 12.1 | 12.0 |
| Total | 1,090.8 | 1,169.2 | 1,256.9 | 75.4 | 77.4 | 87.3 |

Source: Ministry of Finance, Fiscal Outlook 2020⁵⁹ and 2021⁶⁰

Table 2: Committed Guarantees (2018-2020)

| ENTITY | RM BILLION | | | SHARE OF GDP (%) | | |
|--|----------------|----------------|----------------|------------------|--------------|--------------|
| | 2018 | 2019 | 2020 | 2018 | 2019 | 2020 |
| Danainfra Nasional Berhad | 52,740 | 63,820 | 71,620 | 39.7 | 39.4 | 40.4 |
| Prasarana Malaysia Berhad | 31,414 | 32,264 | 37,914 | 23.7 | 19.9 | 21.4 |
| Malaysia Rail Link Sdn. Bhd. | 18,862 | 18,506 | 21,016 | 14.2 | 11.4 | 11.9 |
| Urusharta Jamaah Sdn Bhd | - | 19,600 | 19,600 | - | 12.1 | 11.1 |
| GovCo Holdings Berhad | 7,300 | 7,200 | 7,200 | 5.5 | 4.4 | 4.1 |
| Suria Strategic Energy Resources Sdn. Bhd. | 7,925 | 6,708 | 6,904 | 6.0 | 4.1 | 3.9 |
| Jambatan Kedua Sdn. Bhd. | 5,751 | 5,648 | 5,561 | 4.3 | 3.5 | 3.1 |
| MKD Kencana Sdn. Bhd. | 3,500 | 3,500 | 3,500 | 2.6 | 2.2 | 2.0 |
| SRC International Sdn. Bhd. | 3,600 | 3,485 | 2,485 | 2.7 | 2.2 | 1.4 |
| Sentuhan Budiman Sdn. Bhd. | 800 | 800 | 800 | 0.6 | 0.5 | 0.4 |
| TRX City Sdn. Bhd. | 485 | 372 | 313 | 0.4 | 0.2 | 0.2 |
| Asset Global Network Sdn. Bhd. | 228 | 177 | 126 | 0.2 | 0.1 | 0.1 |
| K.L. International Airport Bhd. | 94 | 40 | - | 0.1 | 0.0 | - |
| Total | 132,699 | 162,120 | 177,039 | 100.0 | 100.0 | 100.0 |

Source: Ministry of Finance, Fiscal Outlook 2020⁶¹ and 2021⁶²

⁵⁹ *Ibid.*

⁶⁰ 2021 Fiscal Outlook and Federal Government Revenue Estimates, Malaysian Ministry of Finance, 2021, 155, <https://www.mof.gov.my/portal/arkib/revenue/2021/section5.pdf>

⁶¹ 2020 Fiscal Outlook and Federal Government Revenue Estimates, 5

⁶² 2021 Fiscal Outlook and Federal Government Revenue Estimates, 155

A country's debt-carrying capacity depends on many factors, including the quality of its financial institutions and its economic policies.⁶³ Malaysia carried out a Debt Sustainability Analysis (DSA) in 2019 to assess its capacity to service its debt and finance policy objectives, and its debt level—federal government debt, not including liabilities—was at 52.6 percent of GDP.⁶⁴ The DSA suggested that Malaysia's debt level until 2024 remains sustainable, below the 70 percent to GDP debt burden benchmark for Emerging Market countries and below the self-imposed limit of 55 percent.⁶⁵ However, the DSA also shows that the debt level may not be sustainable if there are shocks to GDP growth, contingent liabilities (liabilities which have the potential to occur, depending on the outcome of an uncertain event), and combined macro-fiscal shocks.⁶⁶ In fact, the DSA shows that if the country had a contingent liability shock in 2020 (one year after the assessment), the debt to GDP ratio would go up to 59.5 percent.⁶⁷ The DSA shows that contingent liability shock should be taken seriously, otherwise the sustainability of the debt level may not be maintained. These case studies have shown, worryingly, that Malaysian companies are joining these projects without a proper consideration of their repercussions because their loans are guaranteed—in the event that they default, they can be assured that the Malaysian government will take responsibility. The OECD has cited “underdeveloped institutional settings such as the lack of transparent approval process and reporting requirements” as reasons for the amplified risk of contingent liabilities.⁶⁸

Malaysia's Loans Guarantee (Bodies Corporate) Act 1965 (Act 96) governs loan guarantees.⁶⁹ This Act allows the government to guarantee loans raised by certain entities. If a liability is incurred and the government pays it, the guaranteed entity should “repay that sum (together with interest) thereon at the same rate as that payable on the loan under the agreement” to the government.⁷⁰ However, the Act seems to provide the minister in charge of loan guarantee wide discretion to decide which entity is given a guarantee. Parliamentary oversight only takes place after the guarantee is given (Subsection 2.3). The Act also exempts agreements containing “confidential matters” from such oversight (Subsection 2.4). Unlike other developing countries such as India, Armenia, Bosnia and Herzegovina, and Montenegro, Malaysia does not place a limit on outstanding guarantees.⁷¹

⁶³ Dalia Hakura, “What is Debt Sustainability?”, IMF Finance & Development, 2020, <https://www.imf.org/external/pubs/ft/fandd/2020/09/what-is-debt-sustainability-basics.htm>

⁶⁴ *2020 Fiscal Outlook and Federal Government Revenue Estimates*, 3

⁶⁵ “Staff Guidance Note for Public Debt Sustainability Analysis in Market Access Countries,” International Monetary Fund, 33, May 9, 2013, <https://www.imf.org/external/np/pp/eng/2013/050913.pdf>; *2020 Fiscal Outlook and Federal Government Revenue Estimates*, 127

⁶⁶ Caroline Banton, “Contingent Liability,” *Investopedia*, February 26, 2021, <https://www.investopedia.com/terms/c/contingentliability.asp>

⁶⁷ *2020 Fiscal Outlook and Federal Government Revenue Estimates*, 127

⁶⁸ “OECD Economic Surveys: Malaysia,” OECD, July 2019, 39, <https://www.oecd.org/economy/surveys/Malaysia-2019-OECD-economic-survey-overview.pdf>

⁶⁹ The Commissioner of Law Revision, “Loans Guarantee (Bodies Corporate) Act, 1965”, *Laws of Malaysia*, 2006, <https://simplymalaysia.files.wordpress.com/2011/10/act-96-loan-guarantee-bodies-corporate-act-1965.pdf>

⁷⁰ *Ibid.*, 7

⁷¹ Lilia Razlog, Tim Irwin, and Christ Marrison, “A Framework for Managing Government Guarantees,” *World Bank Group*, May 2020, <https://documents1.worldbank.org/curated/en/444621590552809834/pdf/A-Framework-for-Managing-Government-Guarantees.pdf>

Recommendations

These four case studies under the BRI Monitor raise several issues regarding procurement rules in Malaysia, particularly SOE procurements and governance of loan guarantees. Asymmetrically, the current management of SOEs does not require them to comply with the same disclosure agreements and public procurement regulations that private firms are subject to.⁷² In 2019, the OECD reported that the Malaysian government had plans to address this issue by creating a specific oversight authority for SOEs, to ensure more transparent governance.⁷³ As of today, this governing body still has yet to be established.⁷⁴ To move forward, the government should push for the establishment of this independent oversight authority over SOEs, and aim to implement stronger rules on procurement transparency, procurement by SOEs, and loan guarantees.

One of the ways to address limitations in the current procurement rules is to pass comprehensive procurement legislation that will cover traditional procurement, procurement by SOEs, public-private partnership, and concessions. Basic transparency measures in international procurement legislation should be adopted in Malaysia's future procurement legislation. Among them are: (1) Disclosure standards for procurement plans, and tender notices and award notices, should be on par with international standards, (2) Subject any non-competitive methods to discipline and rules, with the requirement to thoroughly justify why a non-competitive procedure was used, and (3) Implement an independent domestic review system and/or clear proceedings to challenge non-competitive bids.

The loan guarantee process can also be improved by setting limits on the federal government's outstanding guarantees to a certain percent of its net current revenues, as Brazil does, or by halting or limiting the annual issuance of guarantees to a low number permanently—Georgia, for example, did not issue any guarantees between 1998 and 2013.⁷⁵ These limits would encourage prioritization and require the government to be more selective before it issues guarantees.

The government should also employ more stringent oversight mechanisms on the authorization of guarantees, such as legally requiring the government to seek parliamentary approval before providing loan guarantees to state-owned companies on special purpose vehicles (SPVs) that manage major infrastructure projects. This will require the government to improve and adhere to the guidelines in the decision-making process of awarding guarantees. Firstly, the government should have a clear view of the purpose of the guarantees, analyzing the net benefits of granting the guarantee. According to the World Bank, this would ideally include a “rigorous social-cost benefit analysis.” However, given the difficulty of conducting such analysis, it offers less ambitious but still effective advice: forging guidelines that award guarantees in only specific circumstances (such as for projects that are included in the government's public investment plan), restricting guarantees only to certain borrowers or debt contracts, and explicitly imposing conditions on the borrowers who benefit from guarantees “to reduce the risks of default.”

⁷² “OECD Competitive Neutrality Reviews: Small-Package Delivery Services in Malaysia,” OECD, 2021, 21 <https://www.oecd.org/competition/fostering-competition-in-asean.htm>

⁷³ “OECD Economic Surveys: Malaysia,” OECD, 39

⁷⁴ “OECD Competitive Neutrality Reviews: Small-Package Delivery Services in Malaysia,” 27

⁷⁵ Razlog, Irwin, and Marrison, “A Framework for Managing Government Guarantees”

⁷⁶ *Ibid.*, 9

⁷⁷ *Ibid.*, 10

Conclusion

In conclusion, the current issues identified in Malaysia's four case studies include a lack of transparency in the procurement process, high-interest and debt-related concerns with Chinese loans, and governance gaps on the part of the Malaysian parties overseeing these projects. Respectively, these issues have led to a muddled and opaque procurement system that has paved the way for cronyism and corruption, the incurrence of national debt due to project delays and substandard construction work, and poorly-managed large-scale projects that have had to be shelved or renegotiated by new governments.

Our recommendations aim to amend these issues by advocating transparency and clarity in the procurement process, using greater foresight and management before engaging in foreign loan agreements, and promoting a consistent and rigorous oversight of all large-scale projects in Malaysia. To ensure a better adherence to procurement specifications and to incentivize contractors, open competitive tendering should become the modus operandi, and a stringent system of reviewing contractors' progress should be executed by the government. Before agreeing to foreign loans, we recommend a thorough and considered governmental assessment of the loan offer, and firm negotiation if the deals do not suit their long-term national interests. Better legislation and upstanding management of large-scale infrastructure projects would ensure continuity in project governance, creating procedures that would survive political upheaval or changes in government. The ultimate aim of this report is to propose a more transparent and effective regulatory framework for future large-scale projects in Malaysia.

BRI MONITOR



What is BRI Monitor?

BRI Monitor is a collaborative effort by five civil society organizations in Southeast Asia and the Pacific: the Institute for Democracy and Economic Affairs (IDEAS) of Malaysia, Stratbase Albert Del Rosario Institute (ADRI) of the Philippines, Sandhi Governance Institute (SGI) of Myanmar, the Institute of National Affairs (INA) of Papua New Guinea and the Future Forum of Cambodia to promote transparency and accountability in major infrastructure projects funded through the Belt and Road Initiative (BRI) in the region.

These organizations have studied the regulatory environments governing these large infrastructure projects in respective countries, including public procurement, official development assistance, public private partnership (PPP), and more, to identify regulatory gaps. They have each researched a set of case studies to identify implementation gaps and governance gaps. Each case study assesses the level of transparency based on almost 40 data points, from basic project information to the tendering process to project completion. Last but not least, each organization maps out the structure of the projects in question in order to understand the degree of public financial exposure resulting from each project. (please check our research methodology [here](#)).

This website is intended to be a platform for the publication of our research outputs and as a knowledge repository. We also hope that the website can be used as a platform for knowledge sharing and a tool to advocate better governance of major infrastructure projects in the region.

BRI Monitor is supported by the Center for International Private Enterprise (CIPE).