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Phase 1 Report of Project:

“Supporting and Facilitating the Design of a UI System for Malaysia”

Authors: John Carter, International UI Expert
Michel Bédard, International UI Actuarial Consultant

Reviewed by: Valérie Schmitt, Social Security Specialist,
ILO DWT for East and South-East Asia and the Pacific
Céline Peyron Bista, Chief Technical Adviser,
ASEAN UI, ILO Regional Office for Asia and the Pacific

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EXECUTIVE SUMMARY

The Government of Malaysia embarked on a journey to transform Malaysia to a high income economy by 2020 with the announcement of the New Economic Model (NEM) in 2010. One of the highlights of the NEM is the development of human capital which includes flexible hiring and firing rules for employers and, at the same time, enhancing the workers' safety net through the introduction of unemployment insurance (UI) along with integrated employment services.

In early 2012, the International Labour Organization (ILO) reached an agreement with the Malaysian government to provide expertise on the Project "Supporting and Facilitating the Design of a UI system in Malaysia". The ILO, which is the only tripartite UN agency comprised of government, employers' and workers' representatives, is well positioned to assist countries improve their social security system through consensus building. The project was co-ordinated by a Tripartite Project Committee comprised of representatives from the Ministry of Human Resources (MoHR), Social Security Organization (SOCSO), the Malaysia Employers Federation (MEF) and the Malaysian Trades Union Congress (MTUC). Datuk K. Selvarajah, CEO of SOCSO, heads the TPC and established the focus of the study by making it clear that all stakeholder views must be considered and everyone must benefit from an UI system that is tailored to the needs of Malaysia.

Consensus building is one of the main objectives of the project by facilitating a national dialogue on the suitability of UI for Malaysia. The national dialogue was carried out via a fact finding mission to Malaysia by international and national consultants and meetings with major stakeholders such as employer and workers groups and government officials. The mission concluded with two Regional Tripartite Workshops in Sabah and Sarawak and a National Tripartite Workshop in Kuala Lumpur. This report highlights the findings of the fact finding mission and proposes options for an effective UI system for Malaysia.

Employers are mainly concerned about the costs of a UI system in Malaysia but desirous that its design improve their competitive position as well as their capacity to adjust to fast moving economic and technological changes. Those concerns are heightened by a number of factors, amongst which the implementation of the minimum wage in 2013 and the introduction in January 2012 of an additional 1% employer contribution to the Employees Provident Fund. Workers have been a proponent of a UI system for the past 12 years and continue to support its implementation. However, they also feel that retrenchment benefits should continue in parallel with a UI system (or that at least an acknowledgement of tenure (years of service) within the enterprise should be paid for once the UI system is established).

Significant discussion was carried out at the meetings and workshops with stakeholders on the issue of retrenchment benefits. Legal provisions provide for minimum allowances to be paid to workers who are made redundant due to business closures, technological changes, restructuring and other situations, in the case of those who earned less than RM1,500 per month (RM2,000 per month since April 1, 2012) on the Malaysian Peninsula (RM2,500 per month in Sabah and Sarawak since October 1, 2005). Other workers that do not fall under the Employment Act of 1955 can also receive retrenchment benefits either through individual or group negotiation. Stakeholders feel that, in the past, workers who were retrenched did not always receive the retrenchment benefits to which they were entitled, especially in times of economic or world financial crisis situations. MEF contends that there are higher costs associated with firing workers when compared to other countries.

Retrenchment benefits seem to be a complicated and costly issue yet, contrary to concerns, Malaysia does not fare badly in comparison to other countries. Amongst ASEAN nations, it ranks as the sixth most expensive country. Only Cambodia, Singapore and Brunei require lower retrenchment benefits. On the world stage, Malaysia ranks 48th on the average amount of the retrenchment benefits to be paid. In addition, within Malaysia, statistics indicate about 70% of Malaysian workers are impacted by the laws governing retrenchment benefits but these workers only account for about 30% of private sector wages, since they are low income workers.

Another aspect of hiring and firing is the length of the notice period that must be given before letting go of an employee. Malaysia ranks 57th out of 181 countries on the average length of this notice period. Compared to ASEAN countries, the required notice period in Malaysia is the second longest of the 9 countries for which information is available (information is not available for Myanmar), with all ASEAN countries except Cambodia requiring shorter notice periods.

After the completion of the fact finding mission, a survey of stakeholders attending the Tripartite National Workshop in Kuala Lumpur yielded majority opinion that UI was necessary for Malaysia (86% of respondents) and that the most viable systems were the mandatory insurance system (for 47% of respondents) along with measures supporting return to work such as vocational training (for 41% of respondents).

After the National Tripartite Workshop and subsequent to receiving a first draft of this report, the TPC reached a consensus on a proposed mandatory social unemployment insurance system which will embrace the following agreed objectives:

1. Provide adequate protection for those who lose their job and contribute to poverty eradication;
2. Give flexibility to enterprises in adjusting to economic changes and in reorganizing their business (e.g. in the case of the introduction of new technologies) - UI would therefore contribute to the protection of businesses and not only of employees;
3. Facilitate mobility of labour force through income security and re-employment measures;
4. Be associated with job retention measures;
5. Support job search and placement, training and retraining.

The TPC also attained consensus on elements of the UI system such as: 1) coverage - all private sector salaried employees and apprentices under a contract of service of any type or duration; 2) qualifying conditions – 12 months of contributions in the last 24 months and termination must be involuntary; 3) a benefit rate of 40 to 50% and a duration of 3 to 6 months; 4) entitlement conditions – job seekers must register at the employment office upon termination and report monthly on their job search activities. Also, there would be a phasing out retrenchment benefits while introducing unemployment benefits: workers would remain entitled to the retrenchment benefits accrued up to the effective date of implementation of UI system but no further retrenchment benefits would accrue for work commencing after the effective date of UI system.

At issue is the type of system which would be most suitable and affordable for Malaysia, to both provide adequate coverage to unemployed workers and assist employers in maintaining a competitive and flexible work force. The TPC also stressed that existing retrenchment system entailed two functions - the protection for the loss of income in case of loss of employment and the acknowledgement of tenure– which should be to the extent possible reflected in the future design of the scheme. The report has included four unemployment benefits scenarios. The first three scenarios, in agreement with the TPC, build cumulatively on the following three pillars:

Pillar One: Compensation for Loss of Income (a 50% benefit rate, paid for 3 to 6 months, according to previous contributions of at least 12 out of last 24 months, under strict conditions of unemployment and job search);

Pillar Two: Active Labour Market Policies (such as counselling, placement, mobility assistance, vocational training and retraining); and

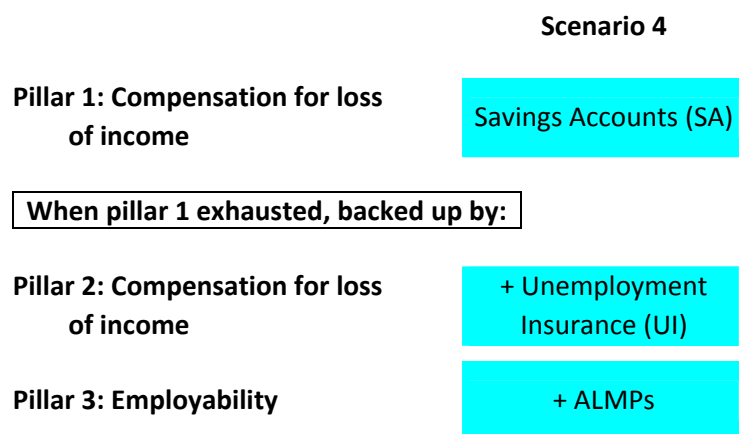
Pillar Three: Acknowledgement of Tenure (individual savings accounts providing severance at end of employment, the employer share only to be paid in cases of retrenchment).

Those three scenarios can be presented as follows:

	Scenario 1	Scenario 2	Scenario 3
Pillar 1: Compensation for loss of income	Unemployment Insurance (UI)	Unemployment Insurance (UI)	Unemployment Insurance (UI)
Pillar 2: Employability & Business Protection		+ ALMPs	+ ALMPs
Pillar 3: Acknowledgment of tenure			+ Savings Accounts (SA)

As requested, a fourth option is also presented. It is based on the model that has been called Unemployment Insurance Savings Accounts (UISA), the example of which is found in Chile. In this fourth scenario, the savings component would come first and be used primarily to compensate for the loss of income during a period of time which would vary according to the cumulated amount of savings. If the savings amount is less than three months of previous earnings (or six months at 50% rate) and if the savings account is exhausted before the completion of the entitlement period of six months, the worker would be entitled to a supplementary social unemployment insurance system which would provide the same benefits as those provided under scenarios 1 to 3 for the remaining period of time (until the completion of the six months).

For instance, for a worker with a savings of two months of salary (i.e. 4 months at the benefit rate of 50%), the maximum duration of UI would be two additional months at the benefit rate of 50%. In addition, the proposed model would impose the same strict conditions of unemployment, reasons for separation and job search as scenarios 1 to 3, and include the same ALMP pillar as in scenarios 2 and 3, whereas Chile allows workers to access their savings even on voluntarily leaving, being fired for misconduct or immediately returning to work:



Scenario 4 is thus seen to be an adaptation of the Chilean model, but the proposed adaptation for Malaysia would provide constant benefits of 50% of previous earnings for maximum of six months (the Chilean system provides low and reducing benefits to permanent workers and only two months of very low benefits to temporary workers). The basic UISA concept is nevertheless maintained, namely the notion that job seekers may be more strongly motivated in their job search if they must count on their own savings as their first line of income protection.

However, during the TPC meeting in July 2012, ILO Officials have formulated concerns regarding the performance of such a model to provide adequate protection to the unemployed in accordance with ILO standards. The ILO’s technical assistance and advisory services to countries are guided by a set of Conventions and Recommendations which are instruments drawn up by the ILO’s constituents (governments, employers and workers) and setting out basic principles and rights at work, including on social security.

In particular, scenario 4 may be “weaker” than scenario 3 since under scenario 4 both the savings account (pillar 1) and the UI component (pillar 2) would be used to compensate for the loss of employment, with consequentially higher costs, potential competitiveness impacts and limited room for ALMP measures and eventual benefit adjustments in crisis situations. Nor would scenario 4 have the same benefit of lessons learned and international experience as scenario 3.

Scenario 3, on the other hand, provides a similar protection for the loss of income (with the UI component - pillar 1), an adequate complement of ALMP measures (pillar 2) and an additional acknowledgement of tenure (with the savings account – pillar 3), all at a lower cost and with the benefit of international experience and lessons learned.

The final item is the rate of contributions needed to finance the above four scenarios.

While no definitive costing can yet be provided, pending a comprehensive actuarial evaluation based on a complete definition of all the consequential design details, it is estimated for now that scenario 1 might be financed by combined worker and employer contributions of about 0.5% of wages, to be shared equally.

The costing of scenario 2 would depend on the extent of the measures to be provided under the ALMP Pillar. For now, we assume that funding for this Pillar might be set at approximately 0.2% of covered wages, equally shared between employers and the government, but authorities could choose a different level of funding. Our recommendation is to be cautious in regards to such spending, based on our assessment of international experiences.

For scenario 3 (which includes savings accounts recognizing tenure), in addition to the preceding contributions, although yet no rate was discussed among the TPC, we could propose an initial employer and worker contribution of 1% each.

Finally, scenario 4 would require higher contributions than scenarios 1 to 3, to support the presumed incentive effects linked to individual savings. Our assumption at this time is that the combined employer and worker contributions should be in the order of 4% (this compares to a combined rate of 3% in Chile, under a system characterized by low benefits). The Insurance component would require its own contribution, unless it was financed by government, and we assume for now that this contribution would be in the order of 0.3% of covered wages. The ALMP pillar could be financed, as under scenario 3, by an additional contribution of about 0.2% of covered wages, equally shared between employers and the government and integrated with the Human Resource Development Fund (HRDF).

Table 0: Illustrative contributions for each scenario, subject to an actuarial assessment

	Scenario 1	Scenario 2	Scenario 3	Scenario 4
Pillar 1	UI: 0.5% equally shared by employers and workers	UI: 0.5% equally shared by employers and workers	UI: 0.5% equally shared by employers and workers	SA: 4% equally shared by employers and workers
Pillar 2		ALMPs: 0.2% of wages shared by employers and government	ALMPs: 0.2% of wages shared by employers and government	UI: 0.3% equally shared by employers and workers
Pillar 3			SA: 2% equally shared by workers and employers	ALMPs: 0.2% of wages shared by employers and government
Total	0.5%	0.7%	2.7%	4.5%

A decision will now be required regarding which of the four preceding scenarios, or any modification thereof, should be carried forward for detailed assessment in Phase II of the project. Phase II should include legal, actuarial, institutional and operational assessments, along with a determination of timelines and next steps to be taken regarding the adoption of UI protection for Malaysia. It should include proposed linkages with employment and skills development programs along with recommendations for the development of the UI performance management system.

Given the focus placed on helping unemployed workers back to work and on supporting employers in their objectives of building a flexible and competitive workforce, the TPC has considered that the proposed UI system could advantageously be designated "Employment Insurance". This suggestion could indeed be acted upon when drafting the enabling legislation.

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- Mr. Mohd Sahar bin Darusman, Deputy Secretary General (Policy and International), MoHR
- Ms. Betty Hasan, Principal Assistant Secretary (Labour Standards), Labour Policy Division, MoHR
- Mr. Ong Kim Seng, General Manager, Risk and Security Division, SOCSO
- Mr. Arif Aziz, Administrative Officer, Risk and Research Division, SOCSO
- Mr. Michael Chiam Tow Hui, Vice President, Malaysian Employers Federation (MEF)
- Mr. Abdul Halim bin Mansor, Secretary General, Malaysian Trades Union Congress

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ACRONYMS

ASET	Accelerated Skills Enhancement Training
DIR	Department of Industrial Relations
DoL	Department of Labour
DoS	Department of Statistics
DSD	Department of Skills Development (also known as SkillsMalaysia or JPK)
EI	Employment Insurance
EPU	Economic Planning Unit
EPF	Employees Provident Fund
FMM	Federation of Malaysian Manufacturers
Form PK1	Employment Retrenchment Notification Form
HRDF	Human Resources Development Fund (managed by PSMB)
ILO	International Labour Organization
IMF	International Monetary Fund
IRET	Industrial Relations Act 1967
LFS	Labour Force Survey
MEF	Malaysian Employers Federation
MITI	Ministry of International Trade and Industry
MoF	Ministry of Finance
MoHR	Ministry of Human Resources
MTUC	Malaysian Trades Union Congress
NEAC	National Economic Advisory Council
NEM	New Economic Model
NGO	Non-Government Organization
OECD	Organisation for Economic Co-operation and Development
PEMANDU	Performance Management and Delivery Unit
PEMUDAH	Taskforce to Facilitate Business-Government Dealings
PSMB	Pembangunan Sumber Manusia Berhad (manages the HRDF)
RB	Retrenchment Benefits
RBGF	Retrenchment Benefit Guarantee Fund
RM	Malaysian Ringgit (currency), RM1 = 0.314 US dollar on July 24,2012
RTW	Return to Work unit (SOCSO)
SME Corp.	Small and Medium Enterprises Corporation
SMI Assoc.	Association of Small and Medium Enterprises
SOC SO	Social Security Organization (also known as PERKESO)
SRI	Strategic Reform Initiative
TPC	Tripartite Project Committee
UI	Unemployment Insurance
UISA	Unemployment Insurance Savings Accounts
UK	United Kingdom
UN	United Nations
US	United States
VSS	Voluntary Separation Scheme (also known as Mutual Separation Scheme or MSS)

Phase 1 Report of Project:

“Supporting and Facilitating the Design of a UI System for Malaysia”

A) INTRODUCTION

The New Economic Model (NEM), unveiled on 30 March 2010, is a government initiative to transform Malaysia from a middle to a high-income country by 2020¹. A number of strategic reform initiatives were proposed that “emphasize high-skilled human capital, efficient public services, a reinvigorated private sector and equal opportunity for all Malaysians.” Regarding the development of human capital, NEM includes various policy measures that will contribute to increased flexibility in hiring and firing workers. To mitigate the impacts of the flexible hiring/firing rules, NEM also recommends enhancing the workers’ safety net through the introduction of unemployment insurance (UI) along with integrated employment services.

The government, through the Ministry of Human Resources (MoHR), initiated an eight month study on UI (ending in October 2012) and requested technical assistance from the International Labour Organization (ILO) to facilitate the study with a view to consensus building and to propose the design of a UI system suitable to Malaysia. The ILO, which is the only tripartite UN agency comprised of government, employers’ and workers’ representatives, is well positioned to assist countries improve their social security system through consensus building. On December 23, 2011, an agreement between the Government of Malaysia and the ILO was signed launching the implementation of the Project “Supporting and Facilitating the Design of a UI System in Malaysia (the Project)”.

Its objectives were, first, to deploy a fact-finding mission to Malaysia and to support a national dialogue on the suitability of UI for the country and, subsequently, to provide a comprehensive analysis of potential UI systems for the country along with appropriate recommendations. The work is to be completed by the fall of 2012, with the expectation that the ILO mission could help to iron out some of the disagreements and misunderstandings that had arisen between Malaysian stakeholders during previous discussions on this subject, in order to achieve an acceptable degree of consensus on the question.

The present document is to report on the fact finding mission which, from May 5 to May 25, 2012, involved meetings and workshops with tripartite stakeholders, the government, employer and worker representatives. Second, the report seeks to propose suitable UI options for Malaysia, which would need to be developed and assessed in detail in the second phase of the Project.

The report was prepared by the international consultants based on the information obtained while in Malaysia, on preparatory research, analyses done by the international consultants, input from the national consultants and comments made by TPC members on an initial draft submitted in late June 2012.

Following release of the Phase 1 report to the TPC, a decision will be needed on whether to proceed to more detailed feasibility and implementation analyses, as described below for Phase II of the Project.

¹ Details on the NEAC website: <http://www.neac.gov.my/>

B) BACKGROUND AND CONTEXT

Background

Phase I of the Project aims at facilitating the national consensus on the introduction of the unemployment insurance in Malaysia. The first phase involves identifying, documenting and analysing advantages and disadvantages of UI international experiences. Against a review of the labour market and economic indicators, as well as existing measures to protect the unemployed in Malaysia, the project will then examine the implications for the design of an unemployment insurance system in the country. Several options will be proposed and discussed in Regional and National Tripartite Workshops² with government agencies, social partners and experts to reach a consensus on the introduction of UI and determine the main characteristics of the future system.

During **Phase II**, a feasibility study will be conducted to define the parameters of the UI system based on actuarial and legal assessments, as well as the proposed institutional set-up for implementation, including linkages with employment and skills development programs. The study will also include recommendations for the development of the UI performance management system which will not only monitor the UI system performance but also provide regular updating of labour market and key economic indicators. Findings of the feasibility study will be presented and discussed in a tripartite forum before the report is finalized and submitted to the government.

Throughout the project, specific activities seek to build capacity of the stakeholders on UI management via participation to national tailor-made training sessions (for actuary specialists), regional expert meetings and study visits to selected countries, and separate meetings for workers' and employers' groups.

At the national level, the project implementation is coordinated by a Tripartite Project Committee (TPC) composed of representatives of the Ministry of Human Resources (MoHR), Social Security Organization (SOCSCO), Malaysia Employers' Federation (MEF) and Malaysian Trades Union Congress (MTUC). The TPC is chaired by SOCSCO. The TPC was formed with the objective of defining what UI model if any could be appropriate for Malaysia. MEF would be the employers' focal point for the project and channel the views of all different employer organizations while MTUC would be the workers' focal point and route the views of all affiliated worker associations. The government would channel the views from the civil society, NGOs, academia, consumer groups, politicians, the Federal Treasury, Economic Planning Unit, Central Bank, EPF and more.

Attempts at reaching a consensus on a comprehensive system to assist the unemployed have been unsuccessful in the past. During the inception meetings, the government firmly expressed its intention of ensuring a participatory process that would take all minority views into account, acknowledging that TPC members as well as other stakeholders may have divergent views on the philosophy and design of UI.

The TPC initially met to develop a plan to support the consensus building exercise which is critical to the success of the project. Satellite meetings were planned to allow employer and worker groups to gain greater knowledge of the principles of UI and to facilitate the development of position papers by MEF and MTUC. Two regional workshops and one national workshop were conducted with participants from government, employer and worker groups (over 300 overall). Workshop participants were divided into discussion groups to foster the expression of views by stakeholders. The TPC also met with ILO representatives as well as international and national consultants during Phase I and provided direction concerning the fact finding mission and the workshops.

² Two regional workshops and the national workshop were held on May 21, 22, and 24, 2012, as described further on.

The unique tripartite structure of the ILO gives an equal voice to workers, employers and governments to ensure that the views of all are reflected in shaping policies and programmes. In regards to unemployment insurance, ILO interventions are guided by two international standards, namely the Social Security (Minimum Standards) Convention, 1952 (No. 102) and the Employment Promotion and Protection Against Unemployment Convention, 1988 (No. 168).

ILO Convention No. 102 is in particular considered “the flagship of all ILO social security Conventions, as it is the only international instrument, based on basic social security principles, that establishes worldwide-agreed minimum standards for all nine branches of social security.”³ ILO Convention No. 168 and its Recommendation No.176 set higher standards regarding unemployment benefits, mainly but not only applicable to industrialised countries.

Methodology

Prior to the field mission which commenced on May 5, the two international consultants completed an international comparison and benchmarking study on UI/employment insurance (EI) compiling an analysis of 14 countries and their UI/EI experiences. This study served as a basis for ensuing discussions as well as for presentations at 3 regional and national workshops, mainly addressing the situation of six specific countries (Thailand, Japan, South Korea, Germany, Canada and Chile).

The field trip consisted of meetings with a cumulative total of approximately 500 stakeholders in Kuala Lumpur, Sarawak and Sabah from May 5 to May 24 as described in detail in Appendix 1 (the three national consultants attended the meetings in Kuala Lumpur only). During the field trip, three tripartite workshops were held, first in Kota Kinabalu and Kuching (about 50 participants each time) then a National Tripartite Workshop attended by over 200 delegates in Kuala Lumpur, on May 25, 2012.

The purpose of those meetings and workshops was twofold: to build capacity and understanding about UI concepts and international practices, and to gather information, facts and opinions on the potential UI models that could be deemed suitable for Malaysia.

The present document (a) reports on the facts and opinions collected during the three week mission, with added considerations and analyses supplied by the Study Team (ILO, international and national experts) as well as by TPC members; and (b) proposes three alternative UI models that have been developed on the basis of all of the expressed facts and opinions and expert considerations, which represent a significant degree of emerging – though not unanimous – consensus.

³ Quoted from the ILO website. In 2002, the ILO Governing Body further affirmed that Conventions 102 and 168 were two of the six conventions that could be deemed up-to-date social security conventions. See: “Setting Social Security Standards in a Global Society, An analysis of present state and practice and of future options for global social security standard setting in the International Labour Organization”, ILO, Geneva, 2008, page 6 (link: <http://www.ilo.org/public/english/protection/secsoc/downloads/policy/policy2e.pdf>)

Members of the Study Team

The study team consisted of representatives from the ILO and national consultants from Malaysia. The participants on the study team were as follows:

Valérie Schmitt	Social Security Specialist, ILO Decent Work Team for East and South-East Asia and the Pacific
Céline Peyron Bista	Chief Technical Adviser, ASEAN UI, ILO Regional Office for Asia and the Pacific
John Carter	International Unemployment Insurance Expert
Michel Bédard	International Unemployment Insurance Actuarial Consultant
Rusmawati Said	National Labour Market and Macroeconomic Analyst
Rozanah Ab Rahman	National Legal Expert
Asmaddy Haris	National Statistician

C) UNEMPLOYMENT PROTECTION IN MALAYSIA

The Existing System of Retrenchment Benefits

Interest in adopting a system of unemployment benefits for terminated workers is not new in Malaysia. History finds that the subject of unemployment insurance for the Federated Malay States was broached in 1937, in the Parliament of the United Kingdom.⁴ A rapid search of the debates of the Malaysian Parliament also finds that the matter of UI protection was raised on at least nine occasions from 1959 to 1971. In 1991, the Deputy Minister of Human Resources had even indicated that the government would study the possibility of introducing an UI system. In effect, up until 1980, there existed no statutory protection for employees who lost their employment, and any available compensation was limited to retrenchment agreements made under individual contracts or collective agreements.

Definitions Found in Legislation

Minimum retrenchment benefits have existed in Malaysia since 1980. They were promulgated under the *Employment (Termination and Lay-Off Benefits) Regulations 1980*, pursuant to Section 60J of the *Employment Act 1955*. Those rules were also adopted in Sabah and Sarawak in 2008. The minimum entitlement is indicated in the table below. Alternative, more generous conditions can also be provided by employers, whether agreed to on an individual or collective basis. Incomplete years are prorated to the nearest month. Retrenchments here are those that occur in a redundancy situation, whether due to business closure, restructuring, reduction in production, mergers, technological changes, take-over, economic downturn or other similar circumstances. The normal termination of a fixed term contract is not considered to be due to redundancy and does not entitle a worker to retrenchment benefits.

⁴ Hansard of May 26, 1937, Parliament of the United Kingdom, <http://hansard.millbanksystems.com/commons/1937/may/26/malaysia-unemployment-insurance>.

Table 1: Entitlement to Retrenchment Benefits⁵

Length of service*	Minimum retrenchment benefits
Less than 12 months	None
From 12 months to less than 2 years	10 days per year of service
At least 2 but less than 5 years	15 days per year of service
5 years or more	20 days per year of service

* Service includes employment before the regulations were adopted.

These rules apply to all workers covered by the *Employment Act 1955*, namely all private sector employees earning up to RM2000 per month and all manual workers (and supervisors) irrespective of their wages. The key determinant for coverage is the existence of a contract of service, whether oral or in writing and whether express or implied, on a daily, part-time or any other work arrangement. The earnings limit was RM1,500 per month before April 1, 2012, and has been RM2,500 per month in Sabah and Sarawak since October 1, 2005. Employees not entitled to termination and lay-off benefits are those under a contract of service for less than a year, those who has resigned from employment voluntarily, those who attains age of retirement, those who has been terminated on ground of misconduct, those whose contract of service is renewed or is reengaged by the same employer under a new contract of service, on terms and conditions not less favourable; and the renewal takes effect immediately on the ending of his employment under previous contract. Domestic workers are also excluded but apprentices and foreign workers are covered, even if most foreign workers are covered by fixed term contracts.

It is estimated that, immediately before April 1, 2012, approximately 50% of Malaysian employees were covered by the *Employment Act*, and that coverage has risen to about 70% due to the increase in the earnings threshold. Their covered earnings only represent, however, about 30% of the total employment earnings of Malaysian employees, since these are low income workers. Other workers that do not fall under the *Employment Act 1955* can still be paid retrenchment benefits if their contracts so provide. The Regulations provide that retrenchment benefits must be paid within 7 days of termination.

In addition to the above, laid off employees as defined above are entitled to advance notice if their employment is to be terminated, or pay in lieu of such notice, in accordance with Table 2 that follows.

Table 2: Advance Notice on Termination

Length of service	Minimum notice period
Less than 2 years	4 weeks
From 2 to less than 5 years	6 weeks
5 years or more	8 weeks

⁵ One observation from examining this table is the discontinuity created for a worker whose service tenure increases by one month to reach 5 years: at 4 years and 11 months, the worker's entitlement can be calculated as 73 and $\frac{1}{4}$ days of retrenchment benefits, while at the completion of the 60th month he or she is entitled to 100 days, an increased entitlement of 26 and $\frac{1}{4}$ day gained during that extra month of work.

Planned retrenchments must, since February 1, 1998, be notified one month in advance to the Department of Labour, followed by a report on actual retrenchments within 14 days after they have been carried out, and by a further report within 30 days on the steps taken to assist the terminated workers. Those notices do not however have to be given if the number of retrenchments is less than 5 employees, an exemption which was introduced in August 2009 but seems to have received little publicity. All of the required notices must be given through the filing of Form PK1, parts I to VI, including the full details of the planned and actual actions, the number of employees affected and all of the relevant financial information. The Departments of Labour (of Peninsular Malaysia, Sabah and Sarawak) receive and tabulate the PK1 forms. The same form must also be used by employers to report Voluntary Separation Schemes (VSS, sometimes also called Mutual Separation Scheme, MSS) offered in lieu of retrenchment, layoffs and salary pay cuts.

VSS packages are generally offered to a group of employees, usually many more than actually need to be terminated, leaving it to individuals within that group to accept the employer's offer or not. The employer can in turn choose which and how many of the consenting employees are actually given the VSS package. VSS packages can vary from employer to employer but, subject to meeting statutory minimums, could include: retirement gratuity, an ex-gratia payment in lieu of notice, payment in lieu of balance of annual leave, gratuity payment, housing or car loan repayment deferment, extension of staff purchase scheme, extended medical coverage and assistance, and maternity benefits to expecting female employees.

For the employer, the main advantage of VSS is better employee relations including a decreased likelihood that terminated employees might later claim that they were unfairly dismissed. Its main disadvantage is that it is usually more costly and that employers must give up a measure of control over who will be terminated. There might also be a risk that the number of volunteering employees might not meet the employer's target.

"Layoffs", as defined in the *Employment (Termination and Lay-Off Benefits) Regulations 1980*, refer to situations where the employer does not provide work and the employee is not remunerated for at least twelve normal working days within any period of four consecutive weeks. Such layoffs are deemed to have the same effect as retrenchments and currently give rise to the same benefits. "Salary pay cuts", on the other hand, are periods of non-work, reduced work or regular work when employees agree to receive lower incomes corresponding to decrease number of worked hours, in exchange for not being terminated. The UI system could in these two cases provide compensation for loss of income.

Any amount received by an employee as compensation for loss of employment is subject to income tax, except if it is paid due to ill-health. Since July 1, 2008, an increased exemption of RM10,000 is granted for each completed year of service with the same employer or companies in the same group.

The decision to retrench is made at the discretion of management but the manner in which the retrenchments are carried out should follow sound rules and principles, in order to ensure the fair treatment of workers and to avoid or minimize layoffs. Such rules and principles are contained in the *Code of Conduct for Industrial Harmony*, an agreement struck in 1975 between management and labour. Although that *Code* is not a legally binding document, it is given consideration by judicial authorities when disputes arise between employers and their former workers, a fact which has given it a quasi legal status.

The *Code* provides an order in which retrenchments should be made, starting with foreign workers then national workers on a last-in first-out basis. The relevant details are provided in Appendix 4. Employers may deviate from the *Code* but should have good reason to do so, act in a proper and fair manner and be prepared to defend their actions if necessary before the Industrial Court.⁶

Retrenchment Benefits Legislation

The *Employment Act* of 1955, adopted two years before Malaysia gained its independence, did not provide for minimum retrenchment benefits. Nor did the *Code of Conduct for Industrial Harmony* which, as agreed to by employers and workers in 1975 during difficult economic times, limited itself to specifying the manner in which retrenchments should be carried out (see Appendix 4). In 1980, as the Malaysian economy continued to move towards greater industrialization, the government saw the need to go a step further. In keeping with a national strategy of minimal social intervention and of a limited welfare state, the government did not, however, pursue this objective through a UI pooling mechanism.

Instead, the government adopted the current rules obliging individual employers to pay retrenchment benefits to laid off workers, namely the *Employment (Termination and Lay-Off Benefits) Regulations 1980*, pursuant to Section 60J of the *Employment Act*. However, these regulations only target low income workers, as the *Employment Act* itself does not apply to higher income workers. Rising wages had the effect that, by April 1, 2012, about half of private sector workers were not covered by the *Employment Act*, namely those earning over RM1,500 per month (RM1 = 0.314 US dollar as of July 24, 2012). The proportion of workers not covered dropped to about 30% when the cut-off was raised to RM2,000 effective April 1, 2012⁷, which is still below the RM2,300 level considered as the low-income cut-off for households in Malaysia.⁸ The aggregate earnings of excluded higher income workers now represent about 70% of the aggregate wages paid to Malaysian private sector workers.

A more detailed review on the compliance of retrenchment benefits is provided Section F of this report.

Training Programmes Available to Unemployed

The government emphasizes assisting the unemployed to return to work quickly through job placement and the development of skills training and other active employment measures. There are 10 ministries that oversee skills development including the Department of Skills Development (DSD) and the PSMB (Pembangunan Sumber Manusia Berhad, which translates to Human Resources Development Corporation).

The Human Resources Development Act was passed in 1992 and led to the establishment of The Human Resources Development Fund (HRDF), which is administered since 2001 by PSMB . Because of the emphasis given to retraining and upgrading the skills of the Malaysian workforce in order to achieve the status of developed country by 2020, the HRDF is expected to play a prominent role in achieving the government's goals.

⁶ The Industrial Court, established under the Industrial Relations Act 1967, is the competent body to deal with all labour complaints.

⁷ Limits of RM2,500 per month have applied since 2005 in Sabah and Sarawak, under the respective Labour Ordinances of those two states.

⁸ As indicated on the PEMANDU website:

http://www.pemandu.gov.my/gtp/Raising_Living_Standards_of_Low_Income_Households-@-Raising_Living_Standards_of_Low_Income_Households_Overview.aspx

The government has established a skilled workforce target of 40% by 2020 (the current rate is 28%). Strategic partnerships could be established between the UI program and DSD and HRDF in order to provide unemployed workers with the opportunity to develop new skills or upgrade existing skills.

The unemployed have access to different training and re-training programmes while searching for a new job. One of these programmes is the Accelerated Skills Enhancement Training (ASET) which aims at supporting the development of specialized skills in a short duration. The target groups of the ASET are unemployed graduates, retrenched workers and in-service employees, on the condition that the training provider will provide an intent letter from a potential employer. Trainees who enroll in the course on a full-time basis receive a monthly allowance of RM500 or RM16.66 per day based on the number of days of training. As an incentive for part-time employees who enroll on a part-time basis, a monthly allowance of RM200 or RM6.66 per day is paid.

National Discussions Since 1980

Since 1980, complaints have arisen more than once that some employers, especially during recessionary times, failed to pay retrenchment benefits to their former employees, either due to bankruptcy, insufficient financial resources or corporate negligence. To alleviate this situation, the MTUC had proposed in 1998 a monthly levy of RM2 shared equally by workers and employers, to build a Guarantee Fund for the payment of Retrenchment Benefits to unemployed workers (RBGF), and possibly also provide for a fixed monthly allowance to support them until they found a job.⁹

Though the government was sympathetic to that suggestion, it was eventually rejected in 1999 due to employer objections, its urgency having faded as the economic downturn receded. The MTUC has nevertheless continued to promote its proposal over the years.

In 2009, the ILO, at the request of SOCSO and in collaboration with the Korea Labor Institute, fielded a fact finding mission and two consultation seminars that led to proposing two schemes for retrenched workers: a retrenchment benefit guarantee fund (RBGF) as proposed by MTUC in 1998, and an unemployment insurance system. The actuarial assessment submitted to the Government of Malaysia in 2010 estimated that the proposed UI system, called a "Relief Fund", should cost about 0.2% of covered earnings.¹⁰ The plan would have paid RM600 per month for 6 months to unemployed persons having worked at least 12 of the last 24 months, with any paid retrenchment benefits to be subtracted from those offered by the Relief Fund. Under the Tenth Malaysia Plan, the Government allocated RM80 million for this Relief Fund, over the 2010 to 2012 period.¹¹ However, the Cabinet decided that this sum would be put on hold until a permanent UI system had been decided upon, "as an exit strategy to replace the Relief Fund"¹².

In early 2010, the National Economic Advisory Council (NEAC) released a 350-page report proposing a New Economic Model for Malaysia. That report highlighted the need for an unemployment insurance system in order to deal with the transformations required to support the country's vision of moving from a middle-income country to a high-income country by the year 2020.

⁹ "Memorandum Submitted To The Honourable Prime Minister - Proposed National Retrenchment Scheme", May 26, 1998, Malaysian Trade Union Congress, http://www.mtuc.org.my/mtuc/memo_retrench.htm.

¹⁰ "Malaysia. Report to the Government. Relief fund for the loss of employment. Programme design and actuarial assessment", ILO Sub-regional Office for East Asia, Bangkok and Korea Labor Institute, <http://www.socialsecurityextension.org/gimi/gess/RessShowRessource.do?ressourceId=17799>

¹¹ Tenth Malaysia Plan, 2011-2015, published By The Economic Planning Unit, Prime Minister's Department, Putrajaya, 2010 (page 230).

¹² As stated on page 10 of a presentation made by the Ministry of Human Resources at the National Tripartite Workshop on May 24, 2012.

The following quote reveals the thrust of the NEAC's vision on unemployment protection: "Regarding risk mitigation programmes, Malaysia needs to protect workers, but not jobs. This is where social protection systems, such as unemployment insurance come in. Currently Malaysia's labour market mobility is severely constrained by difficulties of hiring and firing (e.g. large severance payments as well as barriers to redundancy). Reducing these restrictions will improve the productivity of firms (by allowing them to condition wage increases on productivity improvements). The burden of cushioning labour should be shifted more from firms to the state but the private sector also has a role to play."¹³

Following the publication of the NEAC report, the Malaysian government made public its support in principle of the unemployment insurance concept. The Performance Management and Delivery Unit (PEMANDU), an agency established in 2009 under the Prime Minister's office, made the adoption of UI one of its policy objectives, within the Human Capital Development SRI (Strategic Reform Initiative) of the country's Economic Transformation Programme. This was followed by one of the so-called "SRI Lab" sessions¹⁴ organized by PEMANDU, to address the design of a UI system. Its simulations indicated that a combined contribution rate of 1% of covered earnings should be more than sufficient to weather even the most severe recession for Malaysia, assuming a "typical" UI system paying a benefit rate equal to 50% of previous wages for up to 6 months, to unemployed private sector workers with at least 12 insured months in the last 24 months.¹⁵

PEMANDU's plans as reported in its 2011 Annual Report indicated that an enabling study would be conducted during 2012 in order to target the possible implementation of such a UI system in 2013.¹⁶ A technical cooperation agreement was subsequently signed with the ILO in December 2011 to, first, deploy a fact-finding mission and support a national dialogue with regards to the suitability of UI for Malaysia, and second to examine design options and provide comprehensive analysis of potential UI systems for the country.

PEMANDU was also tasked with modernising the country's labour legislation. This undertaking was also seen as crucial in order to adapt existing labour laws to the modern economy, in a holistic fashion, with "the dual objectives of reducing cost to business of labour management and ensuring effective worker protection".¹⁷

Opinion of International Bodies

In the meantime, other recommendations endorsing the applicability of UI for Malaysia emerged from international bodies. The International Monetary Fund concluded in February 2012 that, for Malaysia: "High and stable growth requires sustained structural reforms anchored around medium-term fiscal consolidation. This would help raise productivity and target public assistance to the most needy. To further raise the inclusiveness of growth, consideration could be given to increasing pension benefits and introducing an unemployment insurance system."¹⁸

¹³ New Economic Model for Malaysia, National Economic Advisory Council, Malaysia, March 30, 2010 (page 170).

¹⁴ Intensive consultative, brain-storming, analysis and implementation planning sessions, of which there were 38 during 2009 and 2010.

¹⁵ In: "NEAC Recommendation - Enhancing Labour Safety Net", unpublished 63 slide presentation, PEMANDU, 2011.

¹⁶ Economic Transformation Programme, Annual report 2011, Prime Minister's Department, Malaysia (page 236).

¹⁷ Economic Transformation Programme, Annual report 2011, Prime Minister's Department (page 231).

¹⁸ Contained in IMF Country Report No. 12/43, Malaysia - 2011 Article IV Consultation, Feb. 2012 (page 3).

The World Bank for its part saw the lack of a UI system as a missing component in the social safety net of Malaysia. It stated in November 2010: “The clear benefits of a well-designed unemployment insurance system include supporting a high-income economy and balancing the need for a competitive economy with that of compassionate society.”¹⁹ Again, in April 2012: “The largest gap in social insurance in Malaysia is the lack of unemployment insurance. Increasing flexibility in labor markets and invigorating the forces of competition in product and labor markets also increases the risks of job and income loss for workers and their families. In these circumstances, countries around the world have found it useful to introduce an unemployment insurance system. A system of this kind that covers most or all of the formal labor force can pool risks and cushion the impact of shocks.”²⁰

When recommending UI for Malaysia, the World Bank has seemed to lean towards a system of UI savings accounts (UISA), though noting its shortcomings along with its advantages: “The general operation of UISAs is straightforward, transparent, and less prompt to abuse, although they allow for only limited risk pooling, as savings in the accounts can be depleted faster than what is needed.”

The World Bank has also cautioned that UISAs require relatively high contributions to offer fairly low levels of protection: “At a 3 percent contribution rate, it would take a worker almost five years to accumulate sufficient resources to finance ... five payments of 50 percent, 45 percent, 40 percent, 35 percent, and 30 percent of wages.”²¹

UISAs must at this time be considered as experimental in nature, as the only comprehensive example of such a model has been Chile, since 2002, where the scheme has had mixed results. The Chilean model must be understood as a two-tier system: the first tier rests on savings accumulated in individual accounts while the second tier is a supplementary unemployment insurance system providing limited benefits to unemployed workers, in situations where their accumulated savings are insufficient. A description and assessment of the Chilean model is provided as a Supplemental Appendix to this document.

The protection offered by the Chilean system is low, one of the lowest in the world, only reaching about 10% of unemployed workers and providing meagre benefits to those that it does reach (with decreasing monthly benefit rates for most permanent workers, grading from 50% to 30% of previous earnings over a maximum of 5 months, and only 2 months of even lower benefits for contract workers, at 35% and 30% of last earnings). The Chilean system can also be characterized as an almost totally passive system, since unemployed Chileans are not prompted to find work as soon as possible and given only little help.

The Chilean system has, according to its authorities writing in a World Bank publication, led to moral hazard issues: “The result has been extensive withdrawal of funds when workers (especially fixed-term contract workers) switch jobs, even without an interruption in contributions. This severely limits the capacity of the system to provide reasonable benefits when workers are faced with periods of real unemployment.”²²

¹⁹ Malaysia Economic Monitor, November 2010 - Inclusive Growth, World Bank (page 108).

²⁰ Malaysia Economic Monitor, April 2012 - Modern Jobs, World Bank (page 74).

²¹ Reforming Severance Pay – An International Perspective, World Bank (page 277).

²² "Reforming Severance Pay - An International Perspective", World Bank 2011 (page 279).

The Chilean system, on the other hand, remains very successful in financial terms, as its reserves continue to grow. It also represents a world class model of good governance, as its operations are fully transparent and its funds are held and managed outside the control of government. An effective Committee of Users reports publicly each year on the system's achievements and on potential improvements, regular actuarial valuations are published along with monthly releases of comprehensive statistics on both contributions and benefits, there is prompt annual publication of financial statements, and the system even allows external researchers to access sample databases.

The OECD commented in 2012 that the Chilean system needed to be improved: ““To better protect workers against unemployment and enhance efficiency, Chile should build on recent efforts to strengthen unemployment benefits further... While unemployment benefits can undermine work incentives, this effect is unlikely to dominate in Chile because replacement rates and the duration of benefit receipt are very low... Chile could gradually increase the unemployment benefit duration and/or replacement rates, while carefully evaluating the effect on the quality of job matches and job search intensity.”²³

A pure unemployment savings system (without any insurance component) was proposed to stakeholders at the two Regional Tripartite Workshops in Sabah and Sarawak. Appendix 9 provides the details of the model USA system that was discussed in Kuching and Kota Kinabalu. The overall view of stakeholders was that such an approach would offer little protection to those most at risk of becoming unemployed. It was also perceived to be costly and a duplication of the EPF system.

Summary: UI Not a New Concept

The preceding paragraphs trace some of the history dealing with the protection offered to Malaysian workers in cases of unemployment, including representations made over the years in support of adopting a UI system in Malaysia. In that light, the current study, proposals and fact-finding should be seen as a rekindling of previous examinations and proposals, rather than as a venture into new and unexplored concepts.

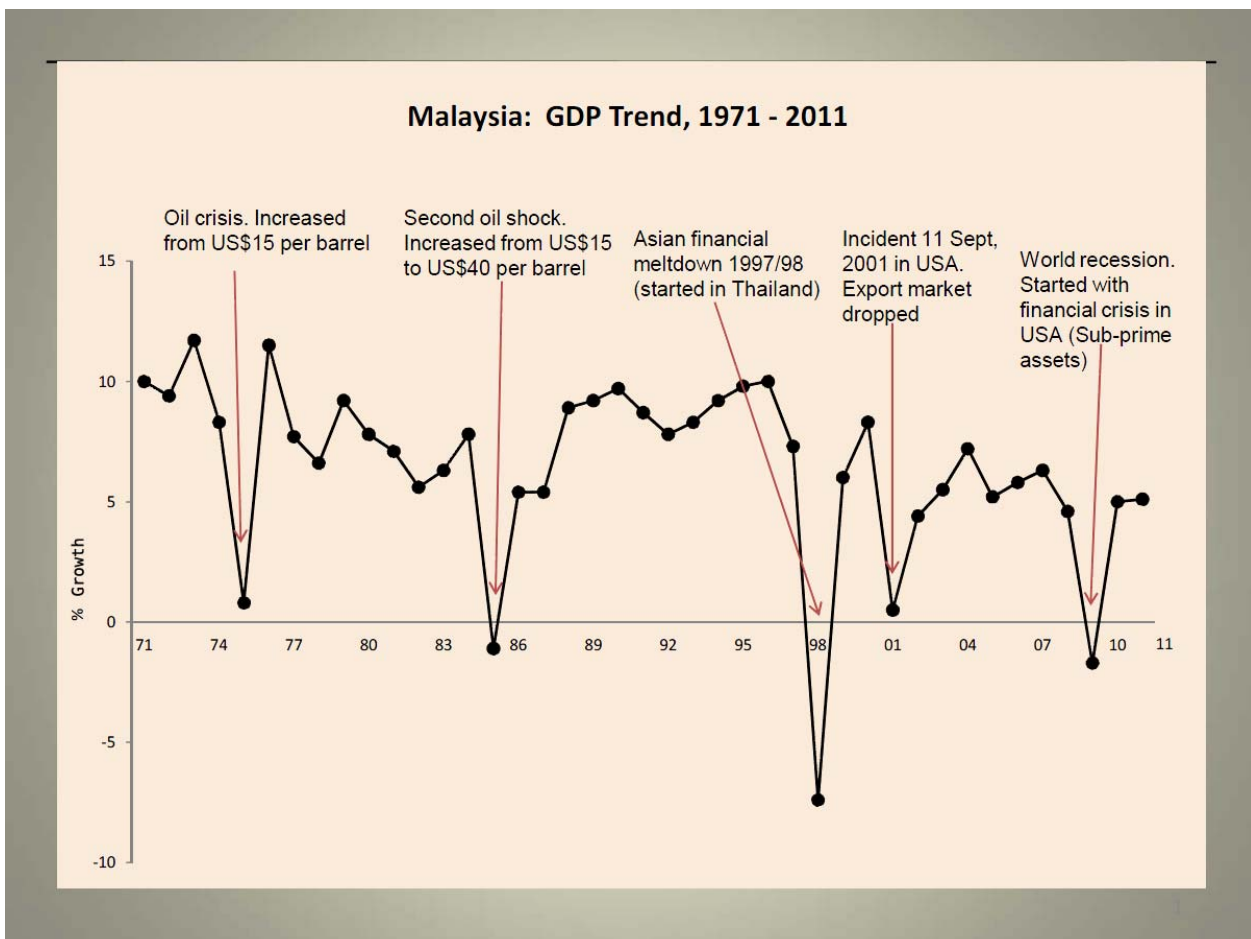
²³ OECD Economic Surveys: Chile 2012 (page 31).

D) ECONOMY AND UNEMPLOYMENT ISSUES

The present section provides an overview of economic developments in Malaysia over the last few decades. More detail and supporting tables are provided in Appendix 2.

Context and Growth Trends

Located in South East Asia, bordered by Thailand in the north and Singapore and Indonesia in the south, Malaysia is classified by the World Bank as an upper-middle income economy. Its land mass is approximately 331,000 square kilometres. As a developing country, it aims to achieve the status of a high income nation by 2020. To encourage the development of its economy, Malaysia has since 1965 mapped out a series of medium to long-term plans and its economy has been in a transitional stage for more than 20 years. Outward oriented industrialization approaches have been a major thrust. In relation to trade, Malaysia has implemented two major policies: export-oriented and import substitution strategies.



Source: Malaysia Economic Crisis: Causes, Implications and Solution, July 23, 2012, by Abdul Aziz Awang (Implementation Control Unit, Prime Minister's Office)

From 1985 to 2011, the Malaysian population increased from 15.8 million to 28.6 million, registering an average annual growth of 2.3%. Economic recession took its toll on the mid-1980s, with heavy industry performing badly during the 1985-1987 recession period. But five years after the economic recession, the economy was growing at rates averaging over 9%, with growth peaking at 10.0% in 1996 and per capita income growth of 7.5%. However, during the Asian financial crisis, GDP growth fell to 4.6% in 1997 and the economy went into sharp decline falling by 9.7% in 1998.

A vigorous recovery programme mounted by the government showed positive results during the second quarter of 1999 and the Malaysian economy began to recover. For the full year, GDP and per capita income growth rates were 6.1% and 3.5% respectively. Even stronger results were posted in 2000, GDP growing by 8.9 percent and per capita income by 6.2%, followed by a setback in 2001 and more modest but steady growth rates thereafter. This came to a halt in 2009, as the global economic meltdown caused negative GDP growth of 1.5%, but the Malaysian economy quickly shook off those difficulties and resumed its growth in 2010 and 2011.

Facts and Trends in the Labour Force

While the unemployment rate had climbed to 5% in 1985 and exceeded 7% during the three ensuing years, from 1986 to 1988, the situation started improving in 1989 and by 1995 that rate had finally dropped below 4%, where it has remained ever since.

The apparent capacity of the Malaysian labour market to shrug off the 1997 and 2009 economic slowdowns – with only a small impact on the unemployment rate – hides a crucial fact, namely that this was achieved in large part by sending thousands of foreign workers back home. Many of those workers did not appear in official statistics or were no longer counted once they had left the country, so that the exact number affected is difficult to establish, though it has been estimated to exceed 100,000 individuals.

The overall labour force participation rate, for its part, generally ranged around 65% until 2003, but started to reduce thereafter, reaching a recent low of 62.% in 2010. This was due to the reduction in labour force participation rates for men, from about 85% in the 1980s to 78.7% by 2010. The rate for women stayed relatively stable at around 46%.

On ILO standardized definitions, women's participation rate for Malaysia remains quite low, ranking 144th out of 189 countries,²⁴ approximately 10 points below the median for all countries. Amongst ASEAN countries, Malaysia has the lowest female participation rate. The country's tight labour market should represent an opportunity for women to improve their level of activity and economic standing, and thus contribute strongly to Malaysia's vision of becoming a high-income country. Women with lower education levels have especially low participation rates. It is expected that this gender gap will gradually be reduced, since the ratio of women to men graduates is reportedly at 60:40.

Overall, almost 90% of the labour force in Malaysia has Malaysian citizenship while about 10% are non-citizens and these percentages have remained fairly stable over recent years. Amongst Malaysian citizens, Malays rank first in number, representing about 47% of the labour force, persons of Chinese origin represent about 25% and Indians are 7%.

The majority of employed persons are employees, 74%. Employers (defined as persons who operate a business, a plantation or other trade and employ one or more workers) count for just below 4% of employed persons. Own account workers (persons who operate their own farm, business or trade without employing any paid workers in the conduct of their occupation) count for 17% of employed persons. The proportion of female employer and own account workers rose slightly between 2006 and 2010, a result which was consistent with Government policy to encourage the participation of women in businesses.

²⁴ According to the ILO KILM database, available on the ILO web site, <http://kilm.ilo.org/kilmnet/>.

Manufacturing employment ranks just before wholesale and retail trade, occupying close to one sixth of workers (with little difference between men and women). Agriculture still occupies a large share of workers, 13% in total and 16% amongst men – which is nearly twice the proportion observed for women. Construction follows at 9%, with only a small percentage of women being active in that group. The accommodation industry attracts a somewhat lower share of men than women, but this is especially observable in the education sector, a phenomenon which is common in most countries.

Per Capita GDP by State and Territory

Large income disparities persist within the country. Per capita income in the federal territory of Kuala Lumpur is almost 7 times that in Kelantan. From 2005 to 2010, the growth in per capita income has been considerable in all states, Sabah showing the highest growth followed by Kelantan, while the territory of Labuan put in the lowest growth though only marginally lower than the state of Perlis.

Unemployment Situation

Based on special tabulations obtained from the Department of Statistics for the years 2010 and 2011, close to 70% or about 270 thousand out of 390 thousand unemployed persons had previous work experience. Only 7 thousand of the unemployed encountered long term idleness. Both of these findings are significant and suggest a positive outlook for the reintegration of unemployed persons into the active workforce, as well as the perspective that an UI system could be of applicability in those circumstances.

The unemployment rate is not highly differentiated by sex, even if it has remained about 10% higher for women than men. This should however be viewed in light of the fact that women have a much lower labour force participation rate, suggesting an important degree of underemployment for them.

A group of prime concern are youths aged 15 to 24, since their struggles at finding and keeping employment can mark them for life. Since at least 2001, the unemployment rate amongst the youths of Malaysia has remained stubbornly high, at over 10% for both young men and young women. Similarly, youth unemployment constituted in 2010 no less than 60% of total unemployment, 57% for young men and 65% for young women.

These percentages have been gradually decreasing over time but remain worrisome. More encouraging is the fact that in 2010 only 4.5% of the total youth population were unemployed, counting both the participant and non-participant population.

An added perspective on unemployment is gained by looking at the distribution of unemployment persons according to their level of education. Close to three quarters of job seekers have only primary or secondary education, except that an increasing proportion of unemployed women have tertiary education, reaching 35% in 2010. Further study would be needed to determine the reasons for this trend, which could relate for example to curricula, quality of education or societal factors.

E) MISSION FINDINGS

Employers' Positions on UI System expressed during the fact finding mission and through the MEF survey (April-May 2012)

Employer positions about UI have over the years often been voiced – as on other labour matters – through the Malaysian Employers Federation, known under its acronym MEF. As stated on its website, MEF “is the central organisation of private sector employers in Malaysia recognised nationally, regionally and internationally.” Established in 1959, MEF sits within the Malaysian delegation at the ILO and is a member of the International Organisation of Employers. It has 4,600 members including 19 trade associations and its employers employ about 2 million workers. Other employer organisations are the Federation of Malaysian Manufacturers (FMM) and Small and Medium Industries Association (SMI Association) .

MEF acted as the focal point for channelling employers' reactions and views about the possible introduction of an UI system to Malaysia. To that end, MEF organized satellite meetings for employers and conducted a survey of its members across Malaysia (receiving 234 responses). There were 5 satellite meetings, all in 2012, held in Kuala Lumpur on February 22, in Johor Bahru on February 27, in Penang on March 12, in Kota Kinabalu on April 2 and in Kuching on April 4. MEF and a number of employers also participated in the two Regional Tripartite Workshops on UI (in Sabah and Sarawak) as well as in the National Tripartite Workshop in Kuala Lumpur. The ILO international experts also had the opportunity of meeting separately and individually with a few employers, 5 in total, and with SMI Association.²⁵

The prevailing opinion amongst employers is one of concern, mainly about the extra costs that a UI system UI could impose on employers. That concern is exacerbated by a number of factors, notably the phasing-in of the new minimum wage in Malaysia over the next year and the additional 1% employer contribution to the Employees Provident Fund that took effect in January 2012.²⁶ The introduction of a minimum retirement age is also mentioned as a factor that employers will have to contend with. MEF insisted on the higher costs of firing workers that prevail in Malaysia as compared to many other countries (although this concern should be nuanced, as noted elsewhere in this report). Also noted was the fact that the Industrial Court can order back wages for up to 24 months if an employer's actions in retrenching an employee are judged to have been unfair or unjustified.

Employers insist on the need for flexibility, to allow enterprises adjust their work force to a changing economy and are reorganize their business, for example through the introduction of new technology. At present, MEF pointed out that the hiring and firing rules are too rigid. UI should contribute to the protection of business, facilitate the mobility of labour force through income security and re-employment measures, and be associated with job retention measures. Overall, employers worry about maintaining productivity levels along with their competitiveness. Related issues that are sometimes mentioned are those of worker absenteeism (for medical reasons) and of job-hopping. It has also been argued that “people will begin to think they don't have to work hard any more, and worker productivity will suffer.”²⁷

²⁵ According to the 2012 Budget of Malaysia, “Small and medium enterprises (SMEs) contribute about 31% to GDP, 56% to the workforce and account for 19% of total export.” (paragraph 30 of Budget presented October 7, 2011)

²⁶ As announced in Budget 2012, paragraph 109: “Currently, retirees have insufficient savings to bear the cost of living upon retiring. The study shows nearly 70% of the retirees used up all their savings within 10 years of their retirement. To increase savings for old age, the Government proposes that the employers' contribution be increased from 12% to 13% for contributors who earn RM5,000 and below. This measure will benefit 5.3 million EPF contributors.”

²⁷ “Employers reject job insurance plan”, in New Straits Times, June 10, 2012, <http://www.nst.com.my/nation/general/employers-reject-job-insurance-plan-1.92838>.

Many employers felt that there was little need for an UI system in Malaysia in view of the country's low unemployment rate and full employment situation which makes everyone willing to work able to find a job though a few agreed with the idea of extending a helping hand to those who were unfortunate enough to lose their employment. In regards to UI as well as to retrenchment benefits, frequent opinion is that good employers should not have to pay for delinquent employers. The argument is also made that the unpaid amounts of retrenchment benefits are relatively small and do not require the imposition of an UI system nor of a retrenchment guarantee fund.

As articulated by MEF at the regional workshops as well as at the national workshop, the official employer position is that, if UI was to be introduced, employers should not be worse off afterwards. In practical terms, any such system should be accompanied by a broad and holistic review of employment protection legislation, notably of the rules governing retrenchment benefits. Other recommended avenues were to make retrenchment benefits a priority debt in cases of bankruptcy and to exempt all such payments from taxation.

Some employer representatives were particularly adamant in their opposition to UI and unwilling to contemplate any compromise, notably SMI Association and FMM, both of which voiced their opposition to an UI system in the media a few days after the national tripartite workshop was held on May 24, 2012.

While everyone agreed on the desirability of good governance, many employers expressed fears about how any new UI system would be administered and whether its management might undertake high levels of building and infrastructure spending.

A few additional observations came out of meetings with 5 individual employers. As a rule, those employers had never made any retrenchments nor did they anticipate that they ever would. They would instead manage fluctuations in production or business activity by increasing or restricting the use of daily workers, by operating more or fewer work shifts or by temporarily increasing or reducing wages or work hours.

MEF came to the National Tripartite Workshop in Kuala Lumpur, on May 24, 2012, with the survey they had conducted amongst their members. Out of 234 respondents, 165 or 71% opposed the adoption of UI. The other 69 respondents were in favour of UI. All of those 69 saw the desirability of covering permanent employees but there were varying views on whether or not to cover other categories, for example contract workers or executives. Eligibility should, according to 80% of the 69 favourable respondents, require a minimum period of employment. Tripartite financing was endorsed by 77% of those 69 respondents. In terms of benefits, 70% of them felt that they should be set as a percentage of former earnings, 29% proposed a flat rate. Concerning retrenchment benefits, 35% wanted to either eliminate or reduce them. Overall governance should be assured by MoHR, for 58% of that group, or by SOCSO, for 52% of the group, with 40% wanting MEF to be also involved. The day-to-day operation of the UI system should be done by SOCSO, according to 86% of the 69 favourable respondents.

There were some 210 participants at the National Tripartite Workshop in Kuala Lumpur on May 24, 2012, including some 43 employer representatives. After the Workshop, in addition to the MEF survey, 36 employers completed a questionnaire to provide their views on UI, representing 19% of the total of 193 survey respondents (the total respondents included 24 members of the general public who apparently completed the survey through the SOCSO web site).

The majority of the 36 employer respondents (22 or 61%) felt that unemployment did not represent a problem in Malaysia and almost the same number (20 or 56%) felt that there was no need to set up an UI system in Malaysia. A variety of views were submitted by some of these employers, for example:

1. As a fast developing country we create enough jobs for people.
2. Because the Employment Act already covers termination benefit, this new system will encourage the jobless to not look for work ASAP. For the country, this is not helpful, unhealthy in terms of development.
3. The policy must not be set in such a way as to encourage people not to work.
4. The increased cost to employers will reduce our competitiveness amongst ASEAN countries. Our hiring & firing is not at all flexible, this not the way to bail out irresponsible employers and penalize good employers.
5. Most of the unemployed could find work but they are too particular to what they call suitable job. If we go for UI, then what happened in the West will happen one day in Malaysia.
6. Most of the unemployment is caused by candidates being too choosy. In cases of retrenchment, the employer should compensate their own staff according to existing laws & regulations.
7. Need to conduct a more in depth study to look into the necessity as well as the implications to employers, employees and people.
8. People are too choosy and only willing to do easy work with high pay.
9. The worker and government should take the initiative.
10. Unemployment is not serious in Malaysia.
11. Unemployment rate is low and will increase cost to employers.
12. The intention is good, but uncertain whether it is really necessary for the country. At this juncture, can't comment much. Need to better understand what UI is about and how it was implemented in other countries.
13. UI will allow more flexibility and better protection of business.

When asked about alternative approaches, employers proposed the following:

1. The Employment Act 1955 should be amended to protect workers earning more than RM2,000 in terms of retrenchment or lay off benefits under article 60J.
2. Focus on creating jobs, focus on productivity and competitiveness rather than unemployment.
3. Instead of a new body, just create a portfolio under SOCSO to handle this unemployment issue.
4. Strategize the education system to ensure our youth are competitive to face the business world.
5. Review our Labour Law: Hiring & Firing.
6. Allow special EPF withdrawals for unemployment.
7. Conduct financial planning workshops.
8. Unemployment benefits to be discontinued if employee makes no effort to seek reemployment.
9. Withdraw from EPF.

When it came to benefits, 16 employers endorsed benefits tied to previous earnings, 7 wanted a flat rate benefit and 6 were in favour of lump sum payments based on savings accounts. 6 employers then proposed to replace retrenchment benefits by an UI system, while 12 proposed return to work measures for the unemployed. Other suggestions received no more than 5 votes each. On eligibility, 14 employers agreed that it should be linked to a minimum duration of work and 18 felt that there should be good reasons for termination of employment. Finally, tripartite contributions received the most approvals, namely 18, while another 9 would only provide for employer and worker contributions. Also notable was the fact that half of these respondents (18) saw SOCSO as the operating agent for an eventual UI system while another 14 proposed MoHR, the results being just about reversed when it came to governance.

Workers' Positions on UI System expressed during the fact finding mission and through the MTUC position paper (April-May 2012)

MTUC, a national trade union centre, has played an active role in the development of a social safety net for Malaysian workers since its inception in 1949. The unions affiliated with MTUC represent the major private sector industries and sectors with approximately 500,000 members. The Malaysian government has recognized MTUC as a legitimate representative of workers and consults with MTUC on a number of important labour issues such as the minimum wage law and a potential unemployment insurance system.

In 1998, MTUC made representations to the Malaysian government on instituting a guarantee fund to ensure the payment of retrenchment benefits as well as to create an UI system. These proposals were prompted by the devastating effects of the Asian financial crisis during which many workers were denied retrenchment benefits by delinquent employers, either due to plant closures or enterprises moving their operations to other countries. In spite of those issues, MTUC's proposed retrenchment scheme failed to materialize due to employer concerns on the costs of doing business. Over the years, MTUC has repeatedly argued in favour of some type of unemployment protection but to no avail up to now.

As a member of the Tripartite Project Committee (TPC), MTUC was asked to develop a position paper to present the views of workers relating to the possible UI system. MTUC conducted a series of satellite meetings in March and May with workers' groups in order to develop an understanding of UI concepts and to determine their positions on the potential design of a UI system. These satellite meetings were conducted in Subang Jaya (March 13/14), Kuala Lumpur, Johor Bahru, Penang (March 15/16), Kuching (May 15/16) and Kota Kinabalu (May 17/18). To consolidate the views expressed in the satellite meetings, a final integrated meeting was held in Petaling Jaya prior to the National Tripartite Workshop of May 24.

The worker position paper was presented at the National Tripartite Workshop in Kuala Lumpur on May 24 by Mr. Mohd Khalid Atan, President of MTUC, along the following lines:

- On the question of coverage, MTUC feels that all workers, irrespective of the type of contract, the economic sector (including domestic maids) or the type of enterprise, should be covered by the UI system. They feel the self-employed should also in principle be covered but acknowledge there are problems in doing so concerning lack of infrastructure on registration, collection and enforcement. New labour force entrants should be covered after contributing for at least 3 months in the most recent 12 month period prior to their termination of employment. UI benefits should be linked to previous earnings. Also, regarding minimum and maximum insured earnings, there should be no ceiling relating to the earnings of a terminated employee.

- In terms of contributions, MTUC states that it should be a tripartite arrangement with workers, employers and government paying premiums on insured earnings. It is their position that workers should contribute 0.5% of earnings and the employer's share should be no less than twice the rate of workers (minimum of 2%). However, they agree that a thorough assessment will be needed via an actuarial study. They also feel that the government should also contribute to the UI fund at the same rate as the employer as well as pay other administrative costs.
- Their starting position on the rate and duration of UI benefits is 100% of last drawn pay for a 24 month period (12+12 months). The rationale for this position is the very low wage level in Malaysia and anything less than 100% might not be adequate for a worker to make ends meet. They rejected the options of a flat benefit rate as well as the lump sum payments under an individual savings account. Also, they consider the reason for losing a job is immaterial. Therefore, anyone who voluntarily or involuntarily leaves their job or are dismissed should be entitled to receive UI benefits.
- From an administrative point of view, MTUC feels SOCSO is in the best position to register employers, collect contributions, process the UI application for benefits and issue UI payments. They suggest a separate UI unit be formed within SOCSO to administer UI claims for benefit. From their point of view, MoHR should be in a position to implement, monitor and enforce the UI laws, policies and procedures of the new UI system. They feel the role of sectoral ministries such as agriculture and industry is to initiate proposals to extend the UI system to the informal sector.
- MTUC has subsequently been inclined to concur with the idea that the UI scheme could also provide benefits to employees when their working hours are reduced (work-sharing principle).
- They also commented on the role of JobsMalaysia and vocational training centres. It should be mandatory for JobsMalaysia to update the registration of employers and all job vacancies. The role of vocational training centres is to provide training and retraining of all workers.
- From the governance perspective, MTUC sees MoHR playing a major role in the adoption of UI and to monitor and enforce the provisions of the act, while SOCSO deals with the administrative aspects of the UI system. MEF should assist in ensuring compliance with the remittance of contributions by employers and workers while MTUC would play a monitoring role with a right to access all data and act as a whistleblower and as a continuing member of the National Tripartite Committee.
- A key element for MTUC is the development of active support measures to assist Malaysians to return to work quickly and maintain employment but not using UI funds. Retraining programmes, employment services, job search skills and placement services should be available to assist the unemployed to find and keep work. They also support measures to create new businesses but not at the expense of the UI fund.

In his remarks at the end of the National Tripartite Workshop, the MTUC president indicated that his organization is willing to be flexible on the design of a proper UI system for Malaysians. This reiterated the position previously taken by fellow unionist Mr. Andrew Lo in the media on April 1, 2012: “.....the NEM had recommended bold, strategic, comprehensive revision of labour legislation with the purpose of reducing the costs to business and to remove the impediments that have deterred investment, fostered work place complacency. This will result in flexibility in the hiring and separation of workers. However, such bold reforms must be accompanied by enhanced safety mechanisms for the workers who are laid off”.²⁸

At the National Tripartite Workshop on May 24, 45 of 210 participants (23%) represented workers. The majority (86%) of the worker delegates had over 5 years of experience working for employee groups. Thirty participants (68%) felt UI was a serious issue, 5 did not and 9 considered themselves neutral. This group overwhelmingly agreed that UI was necessary for Malaysia (43 or 96%). The other two stated the following:

- Pursue transformation to High Income Nation by 2020 & health-wellness nation-wide, including globalization, outsourcing, off shoring, privatization, hiring & firing concept.
- There are many jobs, depends if you are willing to work and accept the offer.

When asked to suggest alternatives, the participants representing workers provided the following:

- Alternatives depend on the level of sickness and penalty;
- Give more practical training and offer more subsidies;
- Entitlement should be similar to Employment Insurance;
- Maintain the current SOCSO enactment whilst adding policies, procedures, guidelines, safety-net, tax waiver and UI in Malaysia for the benefit of workers nation-wide
- Organize more activities for unemployed;
- Pension scheme for employees in private sector;
- Retrenchment benefit;
- Solid enactment act to work out scheme for group currently not covered under act;
- UI is the way to go;
- Withdraw through EPF contribution on a personal basis.

These participants felt that coverage should be considered in light of types of contracts/enterprises and economic sectors and some wanted new entrants (42%) and the self-employed (29%) to be covered under the UI system.

Relating to type of protection plan, the majority of participants favoured an income replacement system (36%) with an active measures component (38%) to help the unemployed find work quickly. Other schemes received less support such as flat rate income replacement (27%), measures supporting the creation of businesses (20%), preventive measures to maintain employment in enterprises (20%), replacing severance pay with unemployment insurance (18%), lump sum under individual savings accounts (4%), maintaining severance pay (in addition to new system) at present level (16%) and maintaining severance pay (in addition to new system) at lower level (11%).

²⁸ “Unemployment insurance must address all concerns for it to be effective”, Andrew Lo, April 1, 2012, <http://thestar.com.my/news/story.asp?file=/2012/4/1/sarawak/11028168&sec=sarawak>

In the opinion of the worker participants, the financing of the UI system should be tripartite (71%) but some also supported bipartite (22%) while 7% offered other options such as:

- Government and employer 50/50;
- Government to contribute but not possible to examine exact rate at the moment;
- Government 1% and employers 1%.

The survey highlighted the worker participants' view of the importance of various ministries and departments in dealing with the administration issues of a UI system (registration, collection of contributions, payment of benefit and monitoring) as follows: SOCSO (73%), MoHR (44%), Job Malaysia and other employment services (36%), vocational training (27%), sectoral ministries – agriculture, fisheries, industry etc (24%) and other organization – EPF, MMF, MNCF and private sector (7%).

In terms of governance, 42% of worker participants felt MTUC should play a role in providing good governance under a UI system.

Government Position on unemployment benefits

As mentioned in the Introduction, in 2010, the government initiated the New Economic Model which recommended enhancing workers' social protection through the introduction of UI along with enhanced employment services. The government places significant importance on strategic policy measures, especially on intensifying human capital development. The NEM proposed a comprehensive revision of labour legislation including the development of flexible hiring/firing rules for business and enhancing the social safety net for workers who are laid off, by introducing a UI system to Malaysia.

In each of two meetings held with the Tripartite Project Committee (TPC) during the field trip, Datuk K. Selvarajah, SOCSO CEO, made it clear that all stakeholder views must be considered and everyone must benefit from an UI system that is tailored to the needs of Malaysia. The first phase of the project is to gain an understanding of UI principles and to learn from the experiences of other countries with UI systems. The government emphatically supports an engagement and consensus building exercise extending to all stakeholders, in particular employers' and workers' groups. This was supported by the Minister of International Trade and Industry and the Minister of Human Resources. In a joint statement to the press, they stated: "no decision has been made either as to its [UI] structure, implementation or its funding structure. The government has no intention to introduce the [UI] scheme until all stakeholders are fully engaged and consulted prior to finalizing the study".²⁹

MoHR officials have indicated the government's interest in exploring the adaptation of the Chilean model (Individual Saving Accounts supplemented by a component of social insurance) to Malaysia.

During the field trip, the study team met a number of ministries and departments. Discussions focused on each department's mandate and on statistical data required by the international and national consultants. During these meetings an overview was provided of the principles of UI and the design of UI parameters, along with references to other countries with UI systems.

²⁹ The Star Online dated Tuesday, June 12, 2012:

<http://biz.thestar.com.my/news/story.asp?file=/2012/6/12/business/20120612150135&sec=business>

The majority of ministries/departments support the principle of a UI system but are concerned about its management and costs. For example, the Ministry of Finance positively supports the UI concept but a good model is needed and they are concerned about the fiscal impact of a government contribution. They see the need for a cost/benefit analysis in relation to sustainability issues. However, they agree that a UI system would displace and thereby save some of the costs of other programs such as welfare. Overall, the following factors were indicated as some of those that are relevant to the UI discussion: Moral hazards, Tax Issues, Tax incentives/disincentives, Contributions/Benefits, Economic impacts and trends, Timing (introduction of minimum wage), Market based solution, Fiscal cost-benefit analysis.

Government Agencies

SOCSO, EPF and HRDF each collect contributions from employers and workers but on a different earnings base in each case, as prescribed by their respective Acts. Details are in Appendix 3. With the possible addition of UI contributions, many persons see the desirability of integrating all of the collection processes. Ideally, the creation of a single collection unit or agency would streamline those procedures, a concept that has been under review for some time by both PEMANDU (which is charged with overseeing the implementation and progress of government and economic transformation programmes) and PEMUDAH (the taskforce charged with addressing bureaucracy issues in business-government dealings).

The Ministry of Women, Disabilities, Social Assistance and Welfare manages programs that focus on gender equality, family and community development, and assistance to the disabled and needy. Programs for the poor target the most needy individuals or households.³⁰ For example, the 1Azam Programme is designed to provide the extreme poor and poor with job opportunities through initiatives such as job placements, training, entrepreneurship, services and agricultural activities.

The Ministry coordinates its work with SOCSO's return to work unit (RTW unit) to assist the disabled and a return to permanent work. SOCSO's RTW unit provides assistance to those who are injured but still capable of working to assist them to return to work as quickly as possible. The work and goals of the RTW unit are in many respects similar to those that would be intended under an UI system, and RTW officials seemed ready to take up any additional challenge and opportunity that the adoption of UI could bring.

The eKasih program, or National Poverty Data Bank, was launched in June 2008 under the supervision of the Implementation Control Unit of the Prime Minister's Office, to identify the poor and improve the effectiveness of poverty eradication programmes in Malaysia. Those eligible to register are urban households earning less than RM1,500 per month and rural households earning less than RM1,000 per month. The main objective of eKasih is to avoid duplication of aids given to the poor by establishing a central data bank for the use of all federal and state agencies involved in poverty eradication.

EPF (Employees Provident Fund) officials presented the main characteristics of Malaysia's retirement savings scheme for private sector employees. EPF collects contributions from employers, processes applications for withdrawals and issues payment. Smart card technology allows EPF members to use automated kiosks to verify their up-to-date account information and print out their savings record.

³⁰ The mean poverty line per household for 2009, as calculated from the Household Income Survey, was RM763 per month (in Sabah: RM1,048 and in Sarawak: RM912). The poverty line was calculated based on the concept of absolute poverty, and is intended to be adjusted according to changes in the Consumer Price Index.

EPF officials did not feel it would be desirable to extend the withdrawal provisions allowed under their Act to the unemployment domain, in other words to allow EPF funds to be used as UI savings accounts. EPF savings are already under stress and inadequate for many of their contributors. The *de facto* retirement age is low in Malaysia (55 years) and life expectancy has been increasing (76.9 years for women and 72.5 years for men).³¹ Most workers withdraw their entire savings at age 55 and, as a result, 70% of members exhaust their EPF savings by age 65. In addition, 73% of those aged 54 years in 2010 had less than RM50,000 in their account.

Because of the emphasis given to retraining and upgrading the skills of the Malaysian workforce in order to achieve the status of developed country by 2020, the HRDF is expected to play a prominent role in achieving the government's goals.

The HRDF operates on a levy/grant system (see Appendix 1). A levy of 1% of monthly wages is applied to employers in the manufacturing sector that either employ (i) 50 or more Malaysian workers or (ii) 10 to 49 workers and have paid capital of RM2.5 million or more. It also applies (iii) to employers with 10 employees and above in twenty-one selected industries in the services sector; and (iv) to hypermarkets, supermarkets and departmental stores, if they have 50 employees and above. In addition, companies with less than 50 Malaysian workers to a minimum of 10 Malaysian workers with paid capital less than RM2.5 million can voluntarily elect to pay a levy of 0.5% of employee's monthly wages.

As of December 31, 2011, PSMB reported a total of 12,870 registered employers, comprising 6,683 (52%) employers from the manufacturing sector and 6,187 (48%) employers from the service sector. With annual levies of RM355 million, it can be estimated that these registered employers cover close to 35% of the private sector aggregate payroll (based on the 1% levy and assuming an aggregate private sector payroll of just over RM100 billion).

Employers who pay the levy can qualify for training grants from the fund to defray or subsidize training costs for their employees. The rate of financial assistance is 100% of the allowable costs incurred for training such as ISO related training and up to 50% for costs incurred overseas. The approved financial assistance was RM377 million in 2011, compared to levies of RM355 million.

The role of JobsMalaysia should be especially significant, as there would be a need for strong linkages with the UI program to promote employment opportunities to unemployed workers. In addition, depending on the best fit UI program scenario, there could also be a need for further job assistance such as mobility assistance and job search or resume writing. Since May 2002, Jobs Malaysia provides an Internet portal (originally called the Electronic Labour Exchange or ELX), where employers and job seekers can submit job vacancies and applications respectively.

³¹ A proposal for a minimum retirement age of 60 for the private sector was introduced In June 2012 in the Malaysian Parliament, to prohibit retirement before age 60 unless there is a written contract or agreement allowing otherwise.

Jobs Malaysia also conducts workshops to help job seekers search for jobs and prepare resumes. In addition, they will visit schools to promote Jobs Malaysia to students and encourage them to use the job portal. Visits are also made to encourage employers to post their vacancies on the job portal and job fairs or “carnivals” are held in collaboration with employers. Since 2005, it is compulsory for employers to report job vacancies to Jobs Malaysia before they can apply for foreign workers, so it is possible that a large share of reported job vacancies represents demand for (mostly unqualified) foreign workers.³² There may however be some issues with the count and listing of vacancies³³ and these would have to be investigated before linking the UI system with Jobs Malaysia for employment search.

The reported data also indicate a mismatch between the jobs offered and those being sought. Our analysis found that, averaged over three different dates, the number of active job vacancies was 203 thousand as compared to 361 thousand job seekers. More importantly, we found that there were 5 job seekers for every offered vacancy, if we excluded the elementary occupations for which there was high employer demand (65% of vacancies) but low supply of workers (only 2% of job seekers). Appendix 10 provides the data collected from the JobsMalaysia website as averaged at those three recent dates.

Results of Regional and National Tripartite Workshops

Two Regional Tripartite Workshops were held in Kota Kinabalu, Sabah and Kuching, Sarawak on May 21 and 22 respectively. The purposes of the regional workshops were:

- i) To build capacity of the stakeholders on unemployment insurance through the presentation of international experiences with UI and
- ii) To capture regional issues, feedback, and alternatives from the stakeholders on the various tentative scenarios for a UI system in Malaysia.

The workshops emphasized the objectives of unemployment benefits: (i) to provide temporary partial income replacement to workers who lose their employment involuntarily; (ii) and to help unemployed workers return to suitable employment. The presentation also recalled the main definitions and guidelines included under the ILO Convention No. 102 and No. 168 related to unemployment benefits. An unemployed is a person not working, able to work and looking for a job. Unemployment benefits are organized on the basis of social insurance which allows for pooling of risks and financial resources on an equitable basis. Unemployment benefits was also presented as a mechanism which allows for protection of workers even when an employer becomes insolvent or individual savings mechanisms fail (as in recent economic crisis).

Concrete examples taken from six countries, namely Canada, Chile, Germany, Japan and Republic of Korea, illustrated the unemployment insurance concept and compared the approach in terms of retrenchment benefits among these six countries. Examples of active labour market policies such as work-sharing programmes were also explained to participants.

³² As suggested by Bank Negara in its 2005 Annual Report, when job vacancies surged from 49,975 in 2004 to 304,500 in 2005.

³³ The publicly reported number of job vacancies would, by 2011, have reached no less than 2.3 million, a figure which appears so large that it ought to be reviewed to determine its proper meaning.

A key element of the regional workshops was the group discussions and presentations on scenarios that illustrated different possibilities for the design of a Malaysian UI system. Active and lively discussions produced a number of interesting opinions and a sharing of ideas concerning the parameters of UI:

- Much discussion on what is meant by salary in various groups; is it salary and fixed allowances, should overtime and bonuses be included in the definition of salary for contribution purposes?
- Many groups felt that self-employed persons should not be covered under the UI fund but some suggested they could be covered voluntarily, now or later;
- Most agreed that all salaried workers should be covered but no consensus on whether public servants should be covered under the UI act; many felt that domestic workers should not be covered while the coverage of foreign workers triggered mixed reactions;
- Most participants felt the contributions should be paid tripartite or bipartite with premiums between 0.5% to 2% depending on the results of an actuarial study;
- Qualifying conditions should be set between 3 to 12 months of insurable employment;
- All agreed that an unemployed worker needs minimum amount of employment worked prior to filing for benefits and must be actively looking for work and be available and capable of working;
- Benefits should be paid to those who involuntarily lose their job due to lay off, plant closure etc.; no consensus on those who leave voluntarily – some felt they should be entitled to UI benefits irrespective of the reason for separation while others felt that those who quit their work without just cause should be denied benefits or benefits should be reduced in these instances; others felt that those who quit their work but have genuine reasons (just cause – was justified in leaving the employment immediately) should be allowed to receive UI in full (in cases of dangerous working conditions, employer not paying worker, sexual harassment and other justified reasons).
- Many participants liked the idea of paying more benefits to older workers or providing additional benefits to young workers who are having problems finding work;
- In terms of administration and governance, many participants felt a new department would be considered wasteful given SOCSO already administers employment injury and the Employee Provident Fund covers private sector pensions;
- A pure unemployment savings system (without any insurance component) was proposed to stakeholders at the two Regional Tripartite Workshops in Sabah and Sarawak as one of the scenario to be debated during the group exercise. The overall view of stakeholders was that such an approach would offer little protection to those most at risk of becoming unemployed. It was also perceived to be costly and a duplication of the EPF system.

The National Tripartite Workshop was held on May 24 in Kuala Lumpur. As mentioned, the results of the regional workshops were then summarized, noting for example the improved understanding of UI that it had given participants. This understanding helped stakeholders to participate in the design of a possible UI system. Finally, both MEF and MTUC had recognized the need to be flexible and to keep an open mind.

Many of the views expressed at the national workshop mirrored the discussions at the regional workshops, while introducing new ideas and confirming certain positions, notably of workers wanting to keep their acquired rights to retrenchment benefits. A proposal was put forward to preserve entitlement for past years of service prior to the introduction of UI. Workers would then be covered by UI from the effective date of the implementation of a UI system. Some participants agreed with this concept and viewed it as a medium compromise. Others objected that it would transfer employer responsibility to the UI fund.

In some group discussions, the view was held that the main problem is the negligence of some employers in not paying retrenchment benefits and many held that a system is needed to guarantee or enforce the payment of retrenchment benefits; comments were made that retrenchment benefits should be maintained with or without a UI system.

At various times, the international consultants were asked about the benefits paid under the Canadian EI system. When it was mentioned that maternity benefits were included along with sickness benefits, interest was expressed in similarly including maternity benefits in a Malaysian UI system at some point. Currently, employers are responsible to pay maternity benefits for a period of 60 days.³⁴

In closing remarks at the national workshop, TPC representatives voiced their appreciation for the consensus building exercise through which participants engaged in group discussions about various parameters of a UI system. Mr. Michael Chiam Tow Hui, MEF vice-president, was impressed by the restitution of the group exercise and felt that the quality of views was good. He also felt that some of the stakeholders had taken a very responsible point of view and expressed the hope that the discussions will continue. Mr. Khalid Atan, MTUC president, expressed his satisfaction for the better understanding of UI concepts as a form of social protection for Malaysian workers. He also felt the discussions were very fruitful.

Results of the survey of the participants to the National Tripartite Workshop

SOCSCO also conducted a survey to collect the views of participants to the National Tripartite Workshop (visitors to the SOCSCO website could also complete the survey, for a time). The survey was an added opportunity to consult representatives of government, workers, employers, civil society and academia.

193 survey responses were received in total from participants at the national workshop, as follows:

Completion of Survey by Respondents		
Respondents	Number	Percentage
Government	31	16.1%
Statutory Body	38	19.7%
Employer	36	18.7%
Employee	45	23.2%
Academician	10	5.2%
NGO	9	4.7%
General Public*	24	12.4%
TOTAL	193	100%

*24 surveys were received via SOCSCO's website.

On the question of whether or not it is necessary to set up UI in Malaysia, the following was reported:

	Government	Employer	Employee	Other	TOTAL
Yes	31	16	43	76	166
No	0	20	2	5	27
TOTAL	31	36	45	81	193

³⁴ An ILO recommendation was made in 2005 to include maternity benefits within SOCSCO, as "a cost-effective method of extending duration of leave in the interests of the health of mother and child, to counter discrimination against employment of females due to direct liability of employers for maternity pay, to facilitate increased female labour force participation", http://www.undp.org.my/uploads/Ken_MB3_Revised.ppt.

The majority of participants at the workshop felt there was a need for UI but many participants who answered “no” provided arguments such as increased costs on employers and a reduction of competition. Some participants commented on the need for alternatives or other necessary changes such as amendments to the Employment Act and initiating active labour market policies. Others suggested that more work and discussion was required on the parameters and design of a Malaysian UI system.

On the question of who would contribute to the UI fund (tripartite means government, employers and workers, and bipartite means employers and workers):

Contributions	Government	Employer	Employee	Others	TOTAL
Tripartite	16	18	32	60	126
Bipartite	16	9	10	25	60
Other	1	3	3	3	10
TOTAL	31	36	45	80	193

Another question dealt with the type of unemployment protection. A comparative analysis was discussed with participants during the presentation on “UI in Other Countries” on various systems throughout the world. The question was then posed to workshop participants on what type of plan they would favour (participants could choose more than one option):

Types of Protection Plans Favoured by Workshop Participants					
	Govern't	Employer	Employee	Others	TOTAL
Income Replacement linked to previous earnings	12	16	16	47	91 (47.2%)
Measures supporting return to work – vocational training etc	13	12	17	37	79 (40.9%)
Flat Rate Income Replacement	4	7	12	31	54 (28.0%)
Measure supporting creation of business	7	5	9	20	41 (21.1%)
Preventive Measures – to maintain empl. in enterprises	6	3	9	18	36 (18.7%)
Replace severance pay with unemployment insurance	10	6	8	9	33 (17.1%)
Lump Sum under individual savings accounts	4	7	2	17	30 (15.5%)
Maintain severance pay (and add UI) at present level	7	3	7	4	21 (10.9%)
Maintain severance pay (and add UI) at lower level	1	2	5	7	15 (7.8%)

Overall, 91 participants endorsed a protection plan where benefits are linked to previous earnings and 79 participants also included support measures to assist unemployed workers to return to work as quickly as possible (total of 170 participants). This reflects the current situation of most countries throughout the world introducing mandatory insurance systems linked to previous earnings with many opting for an active labour market component to assist the unemployed. There will need to be a discussion on the most appropriate means for funding active measures.

The survey summary report included a category of “others” which refers to statutory bodies, academics, NGOs and the general public. Relating to the question of how serious were unemployment and retrenchment issues in Malaysia, 33% of “others” felt they were serious/very serious, 41% were neutral and 26% didn’t consider it serious/very serious. However, 94% felt UI was necessary for Malaysia. The other 6% gave the following comments:

- “We just (need) to improve the existing safety net, through SOCSO;
- Assist the unemployed;
- The public will prefer to be unemployed so that they can receive unemployment benefits;
- It’s necessary but other things should be amended first such as old age scheme;
- It will lead to low productivity amongst employees while errant employers escape their responsibility of termination benefit.”

The “others” category also offered these opinions for alternatives to UI:

- “Amend Employment Act 55 and IR Act 1967;
- Provide training for skilled and unskilled;
- Family assistance;
- Funded through annual budget by the MoF & administered throughout the nation by government;
- Gov’t to provide for retrenched workers at company closure due to business or economic downturn;
- No alternative as we need to go for it;
- Not long term at the most 6-12 months;
- Only retrenched or laid off employees;
- Other than labour laws, need union to protect workers’ rights;
- Compensation from employer;
- Provide jobs for graduates and employ them in home town so that transportation not a problem;
- Restructure/reorganize the existing social safety net;
- Retrenchment fund;
- Skill training;
- Social security benefit;
- Stop cronyism and bureaucracy;
- Many are qualified and skilful; therefore, those should not be a problem for job matching.”

Relating to the issue of contributions, “other” participants voted for a tripartite arrangement (74%) while 31% were in favour of a bipartite arrangement and 5% had additional options such as:

- Goods and Services tax;
- Government and employee;
- Insurance for retrenched workers.

F) RETRENCHMENT BENEFITS IN PRACTICE

A Preliminary Review of Compliance with Retrenchment Benefits

Form PK1 reports indistinctly on 3 types of retrenchment benefits. First, minimum retrenchment benefits, namely those effected within the strict requirements of the *Employment Act* and which do not exceed the parameters contained in Table 1. Second, for employees covered by the *Employment Act*, arrangements that are more generous than the statutory minimum, whether negotiated or granted voluntarily. Third, for employees not covered by the *Employment Act* (50% of private sector workers, up to April 1, 2012, and 30% since then), retrenchment benefits on a voluntary, negotiated or other basis.

In addition, Form PK1 reports on the application of the voluntary separation schemes (VSS), temporary layoffs and salary cuts, each of which relate to workforce adjustment processes undertaken by employers, which can in some respects be similar to retrenchment action, most notably under VSS. Temporary layoffs are layoffs which last 12 days or less within 4 consecutive weeks, while (based on information sent to us) salary cuts refer to wage reductions of up to 15%.

Employer compliance with the retrenchment rules specified in the *Employment Act 1955* as well as with the *Employment (Termination and Lay-Off Benefits) Regulations 1980* should be measured in principle on the basis of the minimum conditions specified therein. Any additional benefits paid pursuant to negotiated or voluntary arrangements would for that purpose have to be parsed out of the equation. Indeed, the level of conformance with such arrangements should be quite high, having been mutually or voluntarily agreed to and thus presumably within each firm's capacity and willingness to pay. This might not be entirely so for collective agreements, but the low level of unionisation within the Malaysian private sector should make such situations relatively infrequent.

It is not possible, however, to make those distinctions, given the limitations of Form PK1. It would seem that the only approach that would allow verification of employer compliance with the statutory retrenchment rules would be to consider each PK1 Form on its own and determine for each the exact *minimum* amounts due and that were ultimately paid. This could be a time consuming task and is not recommended at this time, especially in light of the data issues which are described in the following section.

Data Issues

There are strong indications that the data collected through Form PK1 is not reliable. Given the complexity and length of the form, some employers may either not complete it correctly or may not provide all of the detailed information that is required. Other employers may neglect to send in the form. This could be the case, for example, for employers who terminate their operations without warning or disappear from public view. The monitoring and processing of the PK1 Forms within the Departments of Labour (of Peninsular Malaysia, Sabah and Sarawak) may also be in question, as it was not possible to obtain any verification or feedback for a number of entries which appeared to be in error.

It further appeared that there were few if any computer edits on the data provided by employers, and that monitoring efforts were not systematic and could depend mainly on local or individual initiatives, when prompted by worker complaints of non-payment. As it seemed, there would be no call backs to employers if there were no worker complaints. Enforcement action seemed to be lacking and we were not advised, for example, of any employers being fined or otherwise penalised for not submitting Form PK1 or for submitting incomplete or incorrect information.

One illustration of data problems is the observation that, in 2010, the figures reported to the ILO team showed that the amount due as retrenchment benefits was RM264.4 million in the “financial activities and insurance/takaful” sector but that only 0.1% of that amount had been paid out, or RM394 thousand. This posting concerned 320 individuals, which would imply average retrenchment benefits for each of them of RM827,000. Efforts at investigating this and other doubtful data have been unsuccessful.

As a result and based on our examination of existing data, some of it published and some of it unpublished, we are not able to report, at least at this time, on the number of retrenchments made over recent years. Nor could we report on the amounts of retrenchment benefits due and paid or that have remained unpaid. The following paragraphs provide further explanation.

We considered as a possible source of retrenchment data the information cited in the 2010 report for a proposed Relief Fund, which formed the basis of an official submission to the Government of Malaysia. This information is reproduced below (Table 3).

**Table 3: Retrenchment Benefits, Amounts and Workers
(including both compulsory and voluntary retrenchments)**

Year	Amount (RM)			Number of retrenched workers			Average amount (RM)			Unpaid proportion	
	Payable	Paid	Unpaid	Payable	Paid	Unpaid	Payable	Paid	Unpaid	Amounts	Workers
2004	255,706,872	195,437,439	60,269,433	38,258	28,787	9,471	6,684	6,789	6,364	24%	25%
2005	420,214,219	330,066,744	90,147,475	30,046	25,471	4,575	13,986	12,959	19,704	21%	15%
2006	330,835,507	215,045,616	115,789,891	37,862	34,012	3,850	8,738	6,323	30,075	35%	10%
2007	472,951,272	415,403,463	57,547,809	134,846	127,221	7,625	3,507	3,265	7,547	12%	6%
2008	459,313,710	284,601,153	174,712,557	62,608	42,385	20,223	7,336	6,715	8,639	38%	32%
Average	387,804,316	288,110,883	99,693,433	60,724	51,575	9,149	6,386	5,586	10,897	26%	15%
5 year total	1,939,021,580	1,440,554,415	498,467,165	303,620	257,876	45,744				26%	15%

Source: ILO 2010 Report, attributed to MoHR.

Last two columns are own calculations.

Based on MoHR data, this table indicated an annual average of 61,000 retrenchments from 2004 to 2008, costing an average of RM388 million annually. The unpaid share of those benefits was reported to amount to an annual average of RM100 million or 26% of the total amounts due. The retrenchment benefits due for 2007 and 2008 respectively amounted to RM473 million and RM459 million.

Table 4 next summarizes some of the data that we were provided with for the years 2007 to 2011. Two of these years (2007 and 2008) overlap with the previous data but show much lower total retrenchment benefits due, namely RM174 million and RM141 million respectively. These amounts are only 37% and 30% of the amounts indicated above for the same years. Those differences are unexplained, even if the earlier data compilation had considered both compulsory and voluntary retrenchments while the more recent data only concerns the data reported for retrenchments on Form PK1, excluding VSS. There are additional indications of divergent data coming from different sources or quoted at different times, for example (on the last row of Table 4) the data recently presented by MoHR at the regional and national tripartite workshops.

Table 4: Retrenchment benefits due, paid and unpaid, 2007 to 2011 (RM)

	2007	2008	2009	2010	2011	Total, 2007-2011
Amounts due	173,944,707	140,581,822	185,760,702	354,773,187	209,192,808	1,064,253,226
Amounts paid	150,204,268	127,761,545	170,181,363	75,401,968	114,998,010	638,547,154
Unpaid amounts	23,740,439	12,820,276	15,579,339	279,371,220	94,194,798	425,706,072
% unpaid	14%	9%	8%	79%	45%	40%
MoHR data ¹	8,330,796	216,552,364	379,406,714	393,174,027	294,001,617	1,291,465,518

¹ Presented at regional and national tripartite workshops in May 2012.

In our opinion, there could be two courses of action to deal with the above discrepancies. The first course of action could be to initiate an official and comprehensive review of Form PK1, its objectives and contents, employer difficulties and willingness to comply with the form and with all of its requirements, the manner in which the form is handled by staff of the Labour Department, edited, processed, monitored for integrity and completeness, including follow ups and investigations in cases of non-reporting. This review should also cover how the form is tabulated and reported upon, whether for internal government purposes or for public dissemination.

The second and complementary course of action could be to focus on the objectives and purposes of Form PK1 itself, with a view to simplifying it as much as possible. Is all of the requested information important or at least useful? Why is this information being collected, who does it serve and what purposes? Are all of the required data and information elements likely to be answered correctly and completely? If not, what should be changed? This review could also be useful for the development of procedures and tools of the future UI scheme.

In either case, the review could be conducted by a 3 member working group composed of one employer, one worker and one government representative, reporting to a higher level steering committee, perhaps similar in structure to the Tripartite Project Committee (TPC) that is guiding the UI project.

International Comparison of Retrenchment Legislation

Retrenchment in Malaysia is a fairly complex and expensive proposition. It is worth comparing some of the rules for Malaysia with those of other ASEAN countries. The required notice period in Malaysia is the second longest of the 9 countries for which information is available (information is not available for Myanmar), with all ASEAN countries except Cambodia requiring shorter notice periods.

Table 5: Legally mandated notice period for redundancy dismissal

	After 9 months of continuous employment	After 1 year of continuous employment	After 5 years of continuous employment	After 10 years of continuous employment	After 20 years of continuous employment
	<i>(weeks of advance notice)</i>				
1. Cambodia	2.1	2.1	8.7	13.0	13.0
2. Malaysia	4.0	4.0	8.0	8.0	8.0
3. Lao PDR	6.4	6.4	6.4	6.4	6.4
4. Thailand	4.3	4.3	4.3	4.3	4.3
5. Philippines	4.3	4.3	4.3	4.3	4.3
6. Singapore	1.0	1.0	4.0	4.0	4.0
7. Brunei Darussalam	1.0	1.0	4.0	4.0	4.0
8. Vietnam	0.0	0.0	0.0	0.0	0.0
9. Indonesia	0.0	0.0	0.0	0.0	0.0

Source: Cost of Doing Business dataset for 2012, World Bank,

<http://www.doingbusiness.org/data/exploretopics/employing-workers>.

As regards the amounts to be paid on retrenchment, Malaysia ranks as the sixth most expensive country amongst the ASEAN group. As seen in the table below, only Cambodia, Singapore and Brunei require lower retrenchment benefits (none at all in the last two instances).

Table 6: Minimum severance pay to be paid for redundancy dismissal

	After 9 months of continuous employment	After 1 year of continuous employment	After 5 years of continuous employment	After 10 years of continuous employment	After 20 years of continuous employment
	<i>(weeks of salary)</i>				
1. Indonesia	8.7	17.3	60.7	95.3	108.3
2. Lao PDR	3.9	5.2	39.0	78.0	156.0
3. Philippines	4.3	4.3	21.7	43.3	86.7
4. Thailand	5.0	15.0	30.0	50.0	50.0
5. Vietnam	0.0	4.3	21.7	43.3	86.7
6. Malaysia	0.0	1.7	16.7	33.3	66.7
7. Cambodia	1.0	2.1	10.7	21.4	26.0
8. Singapore	0.0	0.0	0.0	0.0	0.0
9. Brunei Darussalam	0.0	0.0	0.0	0.0	0.0

Source: Cost of Doing Business dataset for 2012, World Bank,

<http://www.doingbusiness.org/data/exploretopics/employing-workers>.

On a worldwide basis, Malaysia ranks 57th out of 181 countries on the average length of the notice period that must be given to retrenched workers, and 48th on the average amount of the retrenchment benefits to be paid. The averages used in these calculations were based on the durations shown in the previous two tables, namely durations of 9 months, 1 year, 5, 10 and 20 years.³⁵

³⁵ Own calculations based on the Cost of Doing Business dataset for 2012, World Bank, <http://www.doingbusiness.org/data/exploretopics/employing-workers>.

The preceding discussion relates to mandated provisions for retrenchment, namely those that are stipulated in national laws. It has to be kept in mind that, in many if not most countries, the retrenchment packages that are provided to workers often go beyond the legally required minimums, either due to company practices, negotiated agreements or legal precedents. A global survey of severance practices was conducted in 2009 by Right Management, a Fortune 500 company operating in over 80 countries. It showed that in most countries (62%) severance and termination policies were primarily governed by a combination of company policy and local/national law.³⁶ Even in the United States, where there is no legally required minimum, it was estimated in 2005 that about one quarter of workers were covered by a severance pay plan.³⁷

This is also the case in Malaysia, where the workers who are entitled to retrenchment benefits under the *Employment (Termination And Lay-Off Benefits) Regulations 1980* are only those who are covered by the *Employment Act 1955*. Up until April 1, 2012, this included about 50% of private sector employees, and about 70% since then. There is unfortunately no information available in Malaysia about whether the retrenchment benefits reported and paid came under the legally required minimum, or were instead provided through company practices or negotiated agreements. Since the 30% of private sector employees that are excluded from the *Employment Act 1955* in fact account for about 70% of the total wages paid in the private sector, one would expect that a major share, possibly the dominant share, of the retrenchment benefits paid in Malaysia come under voluntary or negotiated arrangements rather than under statutory minimum requirements.

This observation is important in that, as previously mentioned, the comparative assessment of the impact and costs of UI vs. retrenchment benefits would have to take into account that portion of the retrenchment benefits that are paid outside of the legislated minimum.

Conceptual View of UI and Retrenchment Benefits

The conceptual difference between UI and retrenchment benefits was described in the 1969 case of *Lloyd v Brassey* which, though it was decided in an English court, is cited as a precedent setting case in a number of jurisdictions, including in Malaysia: "... a worker of long standing is now recognised as having an accrued right in his job; and his right gains in value with the years. So much so that, if the job is shut down, he is entitled to compensation for loss of the job - just as a director gets compensation for loss of office. The director gets a golden handshake. The worker gets a redundancy payment. It is not unemployment pay [added underline]. I repeat 'not'. Even if he gets another job straightaway, he nevertheless is entitled to full redundancy payment. It is, in a real sense, compensation for long service."

An alternate view is that, since loss of job is the usual trigger for the payment of retrenchment benefits, there is a rationale for coordinating the payment of UI benefits with retrenchment benefits. In many countries, this is done by deferring the start of UI benefits according to the period intended to be covered by retrenchment benefits. Nevertheless, some countries have implicitly agreed with the rationale expressed in the preceding paragraph and will allow for UI benefits to be paid in full at the same time as retrenchment benefits. More detail on the practices of a number of countries is given in Appendix 7.

³⁶ "Severance Practices Around the World", Right Management Group, 2009, <http://www.right.com/thought-leadership/research/severance-practices-around-the-world.pdf>.

³⁷ "Benefit Generosity In Voluntary Severance Plans: The U.S. Experience", Donald O. Parsons, Department of Economics, George Washington University, <http://ssrn.com/abstract=877903>.

According to the TPC members, both of those views may be combined by considering that, in practice, the payment of retrenchment benefits has two objectives: (1) compensation for loss of income (which can be replaced by UI), (2) acknowledgement for years of services (which cannot be replaced by a “classical” UI scheme).

Considerations Related to Retrenchment and UI Costing

To complete the above discussion, a sharp distinction must be drawn between the number of retrenched workers and the number of unemployed to whom an UI system could apply.

First, the number of retrenched workers has been variously reported in the different sources that we have considered, as previously seen in Table 3 and as seen in Table 7 that follows: an annual average of either 60,000 or of 19,000. Such a wide range makes it impossible to establish any estimates with confidence, except to provide high and low values.

Second, the table that follows suggests that there may be little direct correlation between the unemployment rate and the reported numbers of retrenchment cases. This might be explained, for example, by prevailing economic conditions outside Malaysia, which might have a large impact on retrenchment decisions, in particular for multi-national corporations or for export-dependent firms.

Table 7: Number of retrenchments from 2007 to 2011, by source, and annual unemployment rate

	Year					5-Year Average
	2007	2008	2009	2010	2011	
Unemployment rate	3.2%	3.3%	3.7%	3.4%	3.1%	3.3%
Source of report on retrenchments						
By MoHR to ILO experts ¹	21,753	21,910	18,351	7,254	8,385	15,531
By MoHR during workshops ²	25,865	35,013	36,243	12,112	13,844	24,615
By MoHR web site ³	14,035	24,059	25,064	7,085	9,452	15,939
Average	20,551	26,994	26,553	8,817	10,560	18,695

¹ Special tabulations.

² During regional and national tripartite workshops of May 2012.

³ Obtained from monthly reports on MoHR web site.

We might nevertheless want to estimate what the available numbers could represent in terms of annual retrenchment costs. Assuming, to simplify matters, 19,000 or 60,000 retrenchment cases annually, and that each retrenchment case had average earnings of RM1600 per month and average retrenchment entitlement of about 4 months, then the average annual cost for retrenchments (for the reported cases) might range from a low of about RM122 million to a high of RM384 million. We are not able to confirm the reasonableness of either of those estimates.

Whatever the situation, we still have to question the applicability of this finding to an UI system. Table 8 below shows the number of unemployed workers in 2010 and 2011, according to whether they ever worked before, as well as their distribution by time unemployed and sex.

There were on average about 270 thousand unemployed workers during 2010 and 2011 reporting previous work. While we don't know how long they worked in the past, whether their previous employment could have been UI-insurable nor the cause of their job termination (voluntary vs. involuntary), the discrepancy between 19 thousand potential retrenchments and 270 thousand potentially qualified UI beneficiaries is too large to ignore.

Table 8: Numbers of unemployed persons by work experience, duration of unemployment and sex, Malaysia, 2010-2011 (numbers in thousands, and see notes at bottom of table)

Sex/duration of unemployment	2010			2011		
	Total	Used to work	Never worked before	Total	Used to work	Never worked before
Total number of unemployed	395.8	269.3	126.5	382.9	272.0	110.9
Active	222.4	160.6	61.9	222.6	165.8	56.8
Inactive	173.4	108.7	64.7	160.3	106.3	54.0
Active unemployed						
Total	222.4	160.6	61.9	222.6	165.8	56.8
less than 3 months	105.7	82.1	23.7	110.9	85.7	25.2
3 months - less than 6 months	65.2	45.3	19.9	64.4	46.6	17.8
6 months - less than 1 year	28.8	18.6	10.2	26.8	19.4	7.4
1 - 3 years	19.3	12.3	7.0	17.2	12.0	5.2
more than 3 years	3.4	2.3	1.1	3.3	2.0	1.3
Male	139.8	109.8	30.1	136.5	110.0	26.5
less than 3 months	68.6	56.3	12.3	71.6	58.4	13.2
3 months - less than 6 months	41.2	31.7	9.5	37.2	29.6	7.6
6 months - less than 1 year	16.0	11.9	4.1	15.4	12.3	3.1
1 - 3 years	11.9	8.2	3.7	9.7	7.9	1.9
more than 3 years	2.1	1.7	0.5	2.6	1.8	0.8
Female	82.6	50.8	31.8	86.1	55.8	30.3
less than 3 months	37.1	25.8	11.4	39.3	27.3	12.0
3 months - less than 6 months	24.0	13.6	10.4	27.2	17.0	10.2
6 months - less than 1 year	12.8	6.8	6.1	11.4	7.1	4.3
1 - 3 years	7.4	4.1	3.3	7.5	4.1	3.3
more than 3 years	1.3	0.6	0.7	0.7	0.2	0.5

Source: Labor Force Survey, Department of Statistics Malaysia (unpublished data).

Duration of unemployed statistic is based on active unemployed only. Active unemployed refers to those who did not work during the survey week but were actively looking for work during the week.

Inactive unemployed:

- a) those who did not look for work because they believed no work is available or not qualified;*
- b) those who might otherwise seek employment due to illness or bad weather*
- c) waiting for job applications result; and*
- d) those who had looked for work before the reference week*

Assuming an average duration of unemployment of 4 months would imply that employment terminations could range around 810 thousand annually, or around 540 thousand with an average duration of 6 months.³⁸ Even if only one-third of those unemployed workers were to eventually qualify for UI, there could be 180 to 270 thousand potential UI beneficiaries annually.

This order of magnitude for potential UI claims in a year (180 to 270 thousand) is so different from the number of retrenchments being reported that we doubt that any assessment based directly or mainly on the number of retrenchments could provide an adequate measure to estimate the costs of an UI system.

To illustrate the potential UI costs from this number of claims, we might assume average earnings of RM2500 for insured job losers, an average benefit of RM1250 and an average claim duration of about 3 months, before the average UI claimant returned to gainful employment. The combination of those factors with the above claims volume could lead to annual UI program costs ranging from RM675 million to RM1.0 billion. A precise cost estimate would depend on the specific design of the UI system, and could be higher or lower depending on the parameters chosen, notably the work requirement needed to qualify, the benefit rate, the duration of benefits and the conditions for payment of benefit (reason for job loss as well as the strictness of job search criteria and monitoring).

In conclusion, our cost and operational estimates in a subsequent phase of this project would of necessity rely primarily on other data, including that obtained from the Department of Statistics of Malaysia from the monthly Labour Force Survey (LFS). We have examined the LFS questionnaire, procedures and definitions and met with responsible officials and have every reason to believe that this data is credible and reliable, and is collected in accordance with sound international practices and principles. In addition, the usage of such data for actuarial and operational assessments is standard practice.

Further calculations can be carried out in order to evaluate the impact on workers and employers from adopting an UI system.

First, we can evaluate whether individual workers would, if they lost their employment, be better off under UI or with the existing system of retrenchment benefits (RB). We are concerned here only with the minimum retrenchment benefits stipulated by law. Workers covered by more generous retrenchment schemes pursuant to collective or individually negotiated agreements should not be impacted, and such agreements would remain valid. The following simulation thus concerns only those who are entitled to the minimums specified under the *Employment Act 1955* (for each year of service, 10 days of RB after 1 year, 15 days of RB from 2 to 5 years and 20 days of RB after 5 years).

Table 9 shows that, assuming a 50% UI benefit rate and 6 months of benefits, workers would be better protected by an UI system up to their 4th year of service, but that after 5 years they would be entitled to lower amounts of UI benefits than are now provided by retrenchment benefits. This could suggest a grandfather provision for current workers, so that they not lose any acquired rights. That provision could provide for no further accumulation of RB from the date that the UI system came into force, and that they would receive the higher of UI or RB upon retrenchment.

³⁸ Calculations are as follows : 270 thousand times 12 yields 3.24 million unemployment months annually, the number of terminations (or entries into unemployment) being derived by dividing that total by an assumed average duration of either 4 or 6 months.

Table 9: Simulation of UI Benefits vs. Retrenchment Benefits (RB) for Individual Workers

Monthly Wages	After 1 year		After 2 years		After 4 years		After 5 years		After 10 years		After 20 years	
	RB ^{*1}	UI ^{*2}	RB ^{*1}	UI ^{*2}	RB ^{*1}	UI ^{*2}	RB ^{*1}	UI ^{*2}	RB ^{*1}	UI ^{*2}	RB ^{*1}	UI ^{*2}
800	263	2,400	789	2,400	1,578	2,400	2,630	2,400	5,260	2,400	10,521	2,400
1,500	493	4,500	1,479	4,500	2,959	4,500	4,932	4,500	9,863	4,500	19,726	4,500
2,000	658	6,000	1,973	6,000	3,945	6,000	6,575	6,000	13,151	6,000	26,301	6,000
3,000	986	9,000	2,959	9,000	5,918	9,000	9,863	9,000	19,726	9,000	39,452	9,000
5,000	1,644	15,000	4,932	15,000	9,863	15,000	16,438	15,000	32,877	15,000	65,753	15,000
10,000	3,288	30,000	9,863	30,000	19,726	30,000	32,877	30,000	65,753	30,000	131,507	30,000
20,000	6,575	60,000	19,726	60,000	39,452	60,000	65,753	60,000	131,507	60,000	263,014	60,000

^{*1} Months counted at 30.417 days (365 divided by 12).

^{*2} Assume 50% UI benefit rate for 6 months.

For employers, the impact of moving from a retrenchment system to an UI system will depend on how many workers they might retrench and on the RB entitlement of those retrenched workers. Table 10 and Table 11 follow and show the possible gains for employers of adopting an UI system.

Table 10: Advantage of UI for Employers: 10% retrenchment rate every 5 or 10 years

Monthly Wages	Employee distribution	After 5 years			After 10 years		
		Number retrenched ^{*1}	Retrenchment costs	Employer's accumulated UI costs ^{*2}	Number retrenched ^{*1}	Retrenchment costs	Employer's accumulated UI costs ^{*2}
800	25	4	10,521	3,000	4	21,041	6,000
1,500	12	3	14,795	2,700	3	29,589	5,400
2,000	15	2	13,151	4,500	2	26,301	9,000
3,000	25	1	9,863	11,250	1	19,726	22,500
5,000	20			15,000		0	30,000
10,000	2			3,000		0	6,000
20,000	1			3,000		0	6,000
Total	100	10	48,329	42,450	10	96,658	84,900

^{*1} Assume 10% of employees retrenched, each with 5 or 10 years of service.

^{*2} Assume 0.25% contribution rate for employers during 5 or 10 years.

As shown in Table 10, if approximately 10% of workers were retrenched by an hypothetical employer every 5 or 10 years, the costs of retrenchment benefits would be 14% higher than the costs of the UI contributions paid by the same employer over those 5 or 10 years (taken to be 0.25% of total wages).

The net gain to employers would be greater if the number of retrenchments was higher. Table 11 presents results if it was instead assumed that 20% of workers might be retrenched over a 5 or 10 year period. This would leave employers in a much more favourable position under an UI system than if they had to pay for retrenchment benefits. One might envisage such a result or even higher retrenchment levels if unemployment rates, for example, would move up to the levels seen in the mid-1980s, at around 7% of the labour force.

Table 11: Advantage of UI for Employers: 20% retrenchment rate every 5 or 10 years

Monthly Wages	Employee distribution	After 5 years			After 10 years		
		Number retrenched ^{*1}	Retrenchment costs	Employer's accumulated UI costs ^{*2}	Number retrenched ^{*1}	Retrenchment costs	Employer's accumulated UI costs ^{*2}
800	25	8	21,041	3,000	8	42,082	6,000
1,500	12	4	19,726	2,700	4	39,452	5,400
2,000	15	4	26,301	4,500	4	52,603	9,000
3,000	25	4	39,452	11,250	4	78,904	22,500
5,000	20			15,000			30,000
10,000	2			3,000			6,000
20,000	1			3,000			6,000
Total	100	20	106,521	42,450	20	213,041	84,900

^{*1} Assume 5 employees retrenched, each with 5 or 10 years of service.

^{*2} Assume 0.25% contribution rate for employers during 5 or 10 years.

Final observations on this subject are that retrenchment costs are borne by employers at the time they occur – which is likely to be when a firm's revenues are depressed. From a business perspective, this is the worst possible result. From an economic perspective, this financial burden is likely to have a destabilizing impact, if any of the affected firms are thereby pushed into debt or even into bankruptcy.

UI contributions, on the other hand, are spread in a much more stable and predictable way across time and across the entire group of contributors, whether workers, employers, or both.

G) IMPACT OF UI PAYROLL TAXES

Based on general reasoning about the wage setting process as well as on economic theory, much of the cost to enterprises of payroll taxes, whether imposed to fund social security or public schemes or even to raise general government revenues, is likely to be passed on to workers. This is because firms determine their wage levels by considering the total payroll costs which they can afford to pay, and they will ultimately set lower wages if they are required to pay social security contributions or any other payroll taxes.

Firms may differ on the extent and speed at which they would be able to pass on the costs of new or increased payroll taxes to their workers. This will generally depend on their relative bargaining position vis-à-vis the workers they employ, on the labour market within which they operate as well as on their overall competitive situation. In addition, enterprises who employ workers whose earnings are set under minimum wage laws may not be able to completely adjust their workers' wages on account of new or increased payroll taxes, although they may still do so in part by reducing some of the fringe benefits or other costs that relate to the employment of those workers.

The cost to firms of doing business may thus increase if a UI system is introduced but the relevant question is by how much? In broad terms, it is unlikely that any required UI contributions charged to Malaysian employers would have more than a minor impact. This conclusion flows from the fact that an UI system for Malaysia is bound to be a low-cost undertaking, given the country's low and stable unemployment rate, averaging 3.3% over the last 20 years.

The ILO's 2010 report to the Government of Malaysia proposed, for example, employer and worker contribution rates of only 0.1% of earnings each for a flat rate UI system. The PEMANDU report on UI, on the other hand, suggested tentative contribution rates of 0.5% of earnings for each of employers and workers, for a system adopting a 50% benefit rate, while indicating that such contribution rates would be more than sufficient to cover the costs of a UI system for Malaysia even under high unemployment scenarios.

Though we have not yet performed detailed analysis and assessment of potential UI costs, preliminary analysis indicates that under present conditions they should be close to the mid-point of those two previous assessments. This would in fact be consistent with PEMANDU's views that the combined contribution rate of 1.0% of wages would most likely have to be reduced after a few years.

Nevertheless, when an UI system is newly introduced, a case may be made for special transition measures to help some firms in paying their UI contributions – notably SMEs and firms whose relative market position is weak and who might be negatively affected by additional costs. The extent of any necessary assistance would depend on the importance of the newly required UI contributions. No assistance at all would be required if, for example as in Denmark, it was decided that the entire costs of the UI system should fall to workers and government.

It also matters when such payroll taxes are abruptly and unexpectedly increased, both for employers and workers. Under UI, such increases can be avoided by setting contribution rates at a level that can be maintained both when unemployment rates rise and when they fall. This implies setting aside what might be called rainy day reserves, in order to draw upon those funds to cover the extra claim costs which may occur during an economic downturn. The amount of such reserves should however be strictly supervised and controlled, and should ideally be placed in an independent arm's length fund that can only be accessed when needed to pay for UI benefits. Those reserve funds should not be used to finance any other schemes or programs, however desirable and valuable they might be: to do so would not only put UI long-term sustainability at risk but would break the implicit contract with UI contributors, that their funds will be used for a specific purpose and only for that purpose.

Employers' representatives in Malaysia have argued that any UI contributions for them, however small, would represent an additional cost for all of the so-called "good employers", namely for those who have never made any retrenchments. Setting aside the fact that the future might not be favourable to all employers, this argument should be weighed against the fact that, in the absence of an UI system, Malaysian firms and citizens nevertheless pay hidden costs, either through specific levies or out of general taxes.

We could count among those hidden costs a share of the general welfare costs for destitute families, a share of the stimulus spending by government during economic downturns such as in 1998 or 2009, possible extra costs incurred by SOCSO or EPF during recessions, additional medical costs caused by stress and health problems, or societal costs due to family conflicts or social unrest. Other possible costs include those which might occur if any financially strapped unemployed workers resort to crime or delinquency. Thus, even "good employers" as well as workers who are in stable employment are presently paying for those hidden costs through their general taxes.

H) ADVANTAGES OF UI SYSTEMS: WHO GAINS?

An outline of the main benefits offered by an UI system is offered below, with ensuing comments.

Table 12: Main benefits offered by an UI system

Category	Benefits gained
Unemployed Persons & Families	<ul style="list-style-type: none"> • Reduced hardship and poverty • Better chance of finding suitable job • Reduced stress and health problems • Avoiding financial difficulties that can lead to family conflicts • Increased employability through training and retraining
Firms	<ul style="list-style-type: none"> • Productivity gains • Flexibility to adjust to technological or structural changes • Terminations easier to accept by employers and workers • “Sheltered” workforce during temporary layoffs • More stable economic and business environment • Potential for better matching of vocational training with the needs of enterprises • Less pressure in case of cutbacks or bankruptcy
Workers	<ul style="list-style-type: none"> • Security and reassurance • Reduced need for savings
Governments	<ul style="list-style-type: none"> • Economic stabilization during recessions • Higher tax revenues • Reduced costs of public assistance schemes • Reduced need for special government interventions
Society	<ul style="list-style-type: none"> • Social stability: reduced unrest, delinquency and crime

Unemployed persons and their families gain from the adoption of an UI system because it will allow many of them to avoid falling into poverty. The resulting maintenance of human dignity and self-esteem can have an immeasurable impact on reducing stress and health problems as well as eventual family conflicts. The impact on health was evidenced in a recent study published in the American Journal of Public Health, its lead researcher stating: “Employment insurance makes a difference to the health of the most vulnerable populations, low-wage and poorly educated workers.” The press release announcing the study’s conclusions added that: “The study found that 75 per cent of unemployed German workers received unemployment compensation compared to only 19 per cent of U.S. workers.”³⁹

The temporary income cushion afforded by UI, along with the provision of re-employment assistance and skills training when necessary, would also give job seekers a better opportunity of finding employment that is suited to their experience, education and aspirations. Retrenchment benefits, when paid in a timely manner, might achieve some of the same objectives but, as discussed elsewhere in this paper, in a less effective and targeted manner. The lump sum feature of retrenchment benefits may in fact sometimes lead to imprudent financial decisions, causing unemployed workers to be prematurely without financial resources.⁴⁰

³⁹ “Unemployed Americans face greater risk of mortality: UBC study”, June 28, 2012, <http://www.publicaffairs.ubc.ca/2012/06/28/unemployed-americans-face-greater-risk-of-mortality-ubc-study>.

⁴⁰ As pointed out by EPF officials, a similar issue arises with the lump sum withdrawals that are the norm under the public pensions scheme, which in many instances leaves recipients destitute within a few years of retirement.

Certain low-income workers may also currently not be covered by the *Employment Act*, most particularly those in precarious or unstable employment. Currently, unless they obtain at least 12 months of continuous employment with the same employer, those workers can never be covered for retrenchment benefits, even if, over time, they might have gained a substantial employment record with multiple employers and have thus become permanent participants in the labour force.

The situation of laid off employees who never received their retrenchment benefits or who only received them in part or after a long delay has been a longstanding source of insecurity for workers. Such uncertainty would be lifted with the adoption of UI. Employer organizations have proposed as an alternative to make retrenchment benefits a priority claim over secured debts (a proposal which should likely extend to unpaid wages and annual leave). This would only be fully effective if the assets of a bankrupt firm were sufficient to meet outstanding claims, barring which laid off employees would still have to settle for less than the full amounts due. In addition, that type of “super priority” could have an adverse effect on the ability of businesses, particularly labour-intensive industries, to obtain bank credit. Nevertheless, one study showed that 25 countries granted such a super-priority to wage and related claims over both secured and unsecured assets.⁴¹

Employers should also benefit from UI, by recruiting workers who are better suited to their needs. Those workers will be more productive and less prone to leave their employment soon afterwards, if their decision to join the firm was made without the pressure of having to urgently find any source of income for survival. The presence of an UI system can also give firms more flexibility in managing workforce reductions, they and their workers being able to count on a temporary financial backstop, fully guaranteed by the public authorities.

UI benefits could facilitate a firm’s recourse to temporary layoffs, it being more likely that its workers would still be available when normal business activity resumes, thus avoiding the need to hire and train new staff. Alternatively, employers could put their workforce on temporarily reduced hours and wages, with UI work-sharing benefits picking up part of their workers’ lost income. This would allow employers to maintain all of their staff on active payroll. The example of Germany is particularly revealing, as their job-sharing scheme was extended to 500,000 workers during the last economic recession and was estimated to have preserved 120,000 jobs.⁴² Work-sharing features are described in Appendix 6, and that type of program has been adopted in such diverse countries as France, Canada, Denmark and the United States.

On a macro-economic level, firms will also gain from the greater economic stability that UI will provide within their communities and within the country, which would help to stabilize business activity and revenues. Individual firms faced with large retrenchment bills would also gain by being able to substitute UI for at least some of those costs. This could allow a greater number of them to survive until conditions improve, rather than go deeper into debt or even into bankruptcy.

⁴¹ “Recognizing Workers’ Economic Contributions: The Treatment Of Employee And Pension Claims During Company Insolvency, A Comparative Study of 62 Jurisdictions”, May 21, 2008, by Dr. Janis Sarra, Faculty of Law, University of British Columbia, Vancouver, Canada (page 13).

⁴² “2010 Annual Report, Fifty-Ninth Annual Report of the Federal Employment Agency (Bundesagentur für Arbeit)”, Germany, 2011 (page 31).

Active workers will also gain from an UI system, by providing them with the assurance of some social protection should it be needed. As pointed out in a recent presentation⁴³, this will avoid the need for workers to maintain large liquidity reserves in low-yielding bank accounts, as a hedge against possible job losses: the “absence of unemployment benefits means much personal savings are very liquid (savings account in banks) consequently giving low returns.” Excessive liquidity reduces the capacity of individuals to undertake personal or family investments, including their capacity to improve their standard of living.

Government and society will gain from UI in a number of ways: economic stabilization during recessions, higher tax revenues, reduced costs of public assistance schemes, reduced need for special government interventions and improved social stability, the latter contributing to less unrest, delinquency and crime. Higher tax revenues would flow not only from sustained consumer spending during downturns or in temporarily depressed regions but also from the added economic activity generated by a reduction in the precautionary savings held by employed persons.

The contrary phenomenon (of excess savings) could contribute to a drop in economic activity. As postulated by Keynes, such excess savings can become especially harmful when interest rates have fallen to a low level:

There is the possibility, for the reasons discussed above, that, after the rate of interest has fallen to a certain level, liquidity-preference may become virtually absolute in the sense that almost everyone prefers cash to holding a debt which yields so low a rate of interest. In this event the monetary authority would have lost effective control over the rate of interest.⁴⁴

Some of the above themes are explored further in the following paragraphs.

Economic stability and predictability

UI systems spread their costs not only over the covered group but also over time. Consequently, the contributions to an UI system should remain relatively stable over a business cycle, for contributors as well as the economic system as a whole. In times of economic slowdown, UI benefits will act as an automatic stabilizer for the economy, by providing basic income to job losers and thus supporting consumer spending, which in turn helps to stabilize business and economic activity.⁴⁵

In principle, retrenchment benefits also act in a counter cyclical fashion, rising during bad economic times and slowing when the economy is in full swing. This impact should normally flow through to retrenched workers, by providing them with income when they lose their employment. But the resulting swings can be destabilizing for employers, since employers’ costs of paying retrenchment benefits rise at the precise times when their economic and financial capacity is at its lowest. This can have negative effects, first by pushing some of those employers deeper into financial difficulty if not even into bankruptcy and thereby worsening the economic downturn. Second, in those circumstances, the retrenched workers may not receive all of the money to which they were entitled, or may not receive it as promptly as they need it – so that the stabilization effect expected from retrenchment benefits may not be as effective as it should.

⁴³ “The Five Pillar System and its Refinement for Application in Malaysia – Affordability and Sustainability”, Zainal Abidin Mohd. Kassim, Senior Partner, Actuarial Partners Consulting Sdn. Bhd., Malaysia, April 3, 2012 (page 12).

⁴⁴ John Maynard Keynes, *The General Theory of Employment, Interest, and Money*, MacMillan & Co. Ltd. (1964), p. 207.

⁴⁵ In the US, for example, where UI benefits are relatively limited, it was estimated that spending on UI benefits during 2009 contributed to reducing the fall in GDP by 18.3%.

(<http://www.dol.gov/opa/media/press/eta/eta20101615fs.htm>)

This could in turn force government to intervene and adopt special measures to support workers and affected communities. The Malaysian government, for example, launched two Economic Stimulus Packages in 2008 and 2009, which included a total of RM365 million to assist retrenched and new workers.⁴⁶ It is likely that, with the presence of an UI system, some of this stimulus spending could have been reduced.

Thus, in terms of stability and predictability, the preponderance of evidence indicates that an UI system achieves better results than retrenchment benefits, for employers, workers and the overall economy.

Targeting features of UI vs. retrenchment benefits

Overall, UI benefits should achieve better targeting than retrenchment benefits. There are three aspects to consider here. First, UI systems will only provide benefits to persons who are still unemployed, as compared to retrenchment benefits which are paid to all retrenched workers, even those who immediately find new employment. Second, the amount of benefits that are provided under an UI system will be in proportion to the time spent looking for work, while retrenchment benefits are based on the length of past service, which is unrelated to the difficulty and time needed to find a new job. Third, layoffs are normally imposed first on employees with lower seniority, even in countries which do not adhere strictly to LIFO (last-in, first-out) principles. By definition, those employees will have the lowest entitlement to retrenchment benefits and will thus run the greater risk of having insufficient funds to avoid falling into poverty while they search for new employment.

Relative costs of UI vs. retrenchment benefits

As regards the relative costs of each system, it is not possible to conclude definitely in favour of either. An UI system would in principle be less costly on account of the fact that it only pays benefits to unemployed workers and provides them with only partial income replacement, as compared to universal payment of retrenchment benefits at full salary rates. On the other hand, UI benefits could be more costly to the extent that a proportion of unemployed workers, especially workers having worked for only 1 or 2 years, might receive them for a longer period than would otherwise be covered by retrenchment benefits. It is probably impossible to predict beforehand how these opposing factors will play out over time and over a business cycle, since economic conditions may vary widely and unpredictably.

⁴⁶ Information from the web site of the Department of Labour of Peninsular Malaysia, accessed June 19, 2012.

I) TRIPARTITE PROJECT COMMITTEE – MOVING TOWARDS A CONSENSUS

After the completion of the fact finding mission, an interim report was sent to the TPC, highlighting a number of options to consider in deciding whether or not to proceed to Phase II of the Project. On July 20, the TPC met with ILO representatives. An agreement emerged amongst TPC members on the main elements that could be adopted for a Malaysian UI system. While a significant amount of work is still required to see the project concluded successfully, there has been considerable progress to date, on elements such as phasing out retrenchment benefits while introducing UI benefits, coverage to include all private sector employees and apprentices with any type of contract, 3 to 6 months duration of benefits and partial benefits in work-sharing situations.

The following five points of principle were agreed upon by TPC members. The UI system should:

1. Provide adequate protection for those who lose their job and contribute to poverty eradication;
2. Give flexibility to enterprises in adjusting to economic changes and in reorganizing their business (e.g. in the case of the introduction of new technologies) - UI would therefore contribute to the protection of businesses and not only of employees;
3. Facilitate mobility of labour force through income security and re-employment measures;
4. Be associated with job retention measures;
5. Support job search and placement, training and retraining.

For retrenchment benefits, it was agreed that the introduction of unemployment insurance should not lead to a duplication of benefits but should ensure that the existing level of protection for those who lose their jobs is maintained. The parties saw retrenchment benefits as fulfilling two functions:

- (i) a safety net function that should in future be taken over by UI, and
- (ii) an acknowledgement of tenure (years of service) within the enterprise that should be also taken care of in the design.

The TPC also stressed that these two functions - the protection for the loss of income in case of loss of employment and the acknowledgement of tenure (years of service) – should be to the extent possible translated in the future design of the scheme.

The UI system should help to limit the number of retrenchment cases by providing support to enterprises to maintain their employees on a part time basis while promoting training to increase their employability. Within these objectives, it was decided that “employment insurance system” could be the appropriate terminology.

The following outline was agreed to for the main UI parameters:

A. Coverage:

- The EI system will include all private sector employees with a contract of service or apprenticeship, whatever the duration or type of contract.
- Public servants, foreign workers, domestic workers, new entrants and self-employed will not be included.

B. Qualifying conditions and reason for separation:

- The employee should contribute at least 12 months during the last 24 months.
- Claimants should register at the employment office and actively look for a job, to be monitored by regular visits to the employment office.
- Termination of employment should be involuntary.
- Consistent with the termination and lay-off rules, workers under short term contracts will not be entitled to unemployment benefits at the end of their fixed term contract but will qualify for benefits if fired before the agreed termination date (if they have contributed at least 12 months over the last 24 months).

C. Funding:

- Workers and employers both agree to contribute.
- Participation of the government can be envisaged for the reinforcement of active labour market policies (e.g. job placement, training, work-sharing programme/wage subsidies, support to part-time workers with wage complement).
- In addition the government should be the ultimate guarantor of the scheme.

D. Duration and level of benefits:

- All parties agree that the EI system should provide partial and limited income replacement: beneficiaries will be entitled to between 40 and 50% of previous salaries; entitlements should range from 3 to 6 months.
- The TPC rejected any provision aiming to increase the replacement rate or duration of benefits conditioned to age or dependents.

ILO and the international UI experts agreed to work within the above framework, subject to proposing minor adjustments where appropriate. Such adjustments would be suggested in particular for workers whose fixed term contract came to a normal end (international practice is to provide equal benefits to those workers if they are unemployed at the end of their contract) and in regards to the benefit rate (international practice is to provide a minimum benefit of 50% of previous earnings).

ILO and the international UI experts also agreed to evaluate the specific UI proposals for Malaysia on the basis of the international Conventions on unemployment protection as well as in accordance with the five points of principle that the TPC has endorsed, as noted previously.

J) POSSIBLE SCENARIOS FOR THE DESIGN OF A UI SYSTEM

Preliminary observations

Three basic scenarios for an UI system in Malaysia are summarized in Appendix 5. At the request of Malaysian authorities, a fourth scenario is developed in the next section, as an adaptation for Malaysia of the Chilean “savings plus insurance” model. The Chilean system must be understood as one that is unique and fairly complex; further information on that system is provided in the Supplemental Appendix attached to this report, as a 16 page case study.

All three of the scenarios that are outlined in Appendix 5 build on a traditional social insurance model which is by far the most common internationally, as it exists in 64 of the 78 countries that provide unemployment protection. These countries' unemployment benefits also embrace concepts included under the ILO Conventions No. 102 and No. 168 where unemployment benefits are recommended to be organized on the basis of social insurance which allows for pooling of risks and financial resources on an equitable basis. It is also the model which was continuously addressed, discussed and proposed during the fact finding mission and consensus building exercises, and around which there has developed a significant commonality of views. Although an unemployment savings model was discussed in the Sabah and Sarawak tripartite workshops, it was not felt by participants to be suitable for Malaysia (as previously addressed on page 23 of this report).

Three Basic UI Scenarios

The three scenarios that are presented at this point build on a common framework or pillar, namely on a basic social insurance system to which could be added, as a second scenario, a set of active labour market policies (Pillar 2), and, in a third version, a supplemental savings component (Pillar 3). Graphically, this can be presented in the following "staircase" representation for the development of progressively increased benefit packages, which is consistent with the principles stated by the TPC:

	Scenario 1	Scenario 2	Scenario 3
Pillar 1: Compensation for loss of income	Unemployment Insurance	Unemployment Insurance	Unemployment Insurance
Pillar 2: Employability & Business Protection		ALMPs	ALMPs
Pillar 3: Acknowledgment of tenure			Savings Accounts

Pillar 1: Mandatory UI

Pillar 1 addresses the income replacement function of the protection in case of loss of employment, and is thus the common denominator under each of the three basic UI scenarios. Under Pillar 1, UI benefits would serve as a replacement for the existing system of retrenchment benefits, at least insofar as the statutory aspects of that system are concerned. Under Pillar 1, the retrenchment benefits earned up to the starting date of UI system would be protected (under a grandfather clause) but would not accumulate further, once the new UI system is put in place. Existing private agreements to provide retrenchment benefits on an individual or collectively negotiated basis would not be affected. However, any retrenchment benefits paid in future to unemployed workers (whether the accrued portion before the introduction of the UI system or privately negotiated amounts) would delay the start of a UI claim, in accordance with the length of the period covered by the retrenchment payment.

Pillar 1 is highlighted in the graph below to emphasize its role in the overall unemployment protection scheme. The role of Pillars 2 and 3 will be discussed later on, as they would apply under Scenarios 2 and 3.

	Scenario 1	Scenario 2	Scenario 3
Pillar 1: Compensation for loss of income	Unemployment Insurance	Unemployment Insurance	Unemployment Insurance
Pillar 2: Employability & Business Protection		ALMPs	ALMPs
Pillar 3: Acknowledgment of tenure			Savings Accounts

The specific rules for the proposed UI pillar (Pillar 1) are described hereafter, reflecting the views of TPC members. Based on the views expressed during the fact finding mission, we consider that the proposed rules should be generally acceptable to the broader community of stakeholders. Conformance to ILO Conventions No. 102 and No. 168 and to international practice is mentioned as appropriate. Under Scenario 1, there would be a single pillar constituted by that Pillar 1.

- 1) Coverage: include all private sector employees who are employed for wages under a contract of service or as apprentices, whether the contract is express or implied, oral or in writing, either for a fixed term or indefinite period, on a daily, weekly, monthly or other basis including part-time, should be covered. Universal or quasi universal coverage of private sector employees is the rule in most countries, for example in Chile, Canada, Thailand, Japan, Republic of Korea, France or Germany.

The following would be excluded: public servants, foreign workers, domestic workers, new entrants and the self-employed. Canada includes public servants, France allows public institutions to opt in to its UI system, but most other countries exclude public servants.

ILO Convention No. 102 requires 50% coverage of all employees while Convention No. 168 raises the bar to 85%, while allowing that public employees whose employment is guaranteed by national laws may be excluded from protection.

Conventions No. 102 and No. 168 do affirm, however, the principle of equality of treatment between national and non-national workers. New entrants and self-employed are excluded under most UI systems, even if some countries (for example Republic of Korea and Austria) have started to extend coverage to some of them (Denmark has for a long time allowed voluntary participation of the self-employed).

Finally, domestic workers are covered under the UI plans of many countries, for example Canada, South Africa, the United States, Belgium or the United Kingdom – in most instances, if their earnings or hours are high enough. They could receive benefits, for example, in case their employer died or had to terminate their contracts prematurely.

- 2) Contributions: employers and workers would share equally in the costs of Pillar 1, for which their respective contributions are, for illustrative purposes and pending actuarial validation, currently assumed to be 0.25% of covered earnings. The earnings base used to determine and collect contributions should be the same as the one currently being used by the collecting agent.

Bipartite financing by employers and workers is common practice internationally. Examples are Japan, Republic of Korea, Canada, Chile (supplemented by a minor government subsidy), France, Germany and many others, although Chile, Canada and France charge higher contributions on employers than on workers. Thailand, Viet Nam, Denmark have included a financial participation from the government. It conveys the message that the scheme is a joint undertaking and reinforces the notion that each of the social partners has a legitimate voice in how the system is designed and operated. Most UI systems worldwide cost more than what is currently being envisaged for Malaysia, so that the proposed contributions should not affect the country's competitiveness.

ILO Convention No. 102 stipulates that there should be collective financing of UI and that insured workers should not pay for more than half of the costs of the system. Convention No. 168 is silent on financing, except to hold the State as the ultimate guarantor that benefits will be paid as promised, which is also a requirement under Convention No. 102.

- 3) Reasons for Separation: those who involuntarily lose their employment (due to shortage of work, plant closure, economic downturn, technological change and other similar causes) would be entitled to receive UI benefits. Voluntary leavers with just cause, being effectively forced to resign, would also qualify for benefits: "just cause" means there is a sense of urgency to quit, such as dangerous working conditions, unpaid wages or sexual harassment. The applicable conditions defining just cause would have to be clearly specified in legislation and, if proven, the worker would be entitled to UI benefit (see Appendix 8 for illustrative circumstances found under Canada's *EI Act*⁴⁷).

It is common international practice to pay UI benefits under the circumstances described above and this practice is in conformity with ILO Conventions No. 102 and No. 168. The imposition of a "just cause" rule for individuals forced to leave their employment is also recognized international practice, in recognition of the long delays, uncertainty and financial difficulties faced by workers who must resort to legal proceedings against their former employer. Chile is one of the few countries to deny UI benefits (under that country's solidarity component) in cases where just cause for leaving could be established, preferring to leave it to the judicial system to sort out any such disputes, since this also affects the payment of severance benefits. This has reputedly given rise to very poor compliance with that country's rules on severance payments.

TPC members have proposed that no UI benefits be paid to workers on fixed term contracts if their contract ends normally, on the date scheduled. Although this is current practice for retrenchment benefits (given the employer's liability), it would run counter to international practices in the UI context. It is instead recommended to pay UI benefits to "fixed-term" unemployed workers as for all others, namely if they are out of work, able and available to work and actively searching for employment. It would in practice be difficult to apply the rule proposed by the TPC, since employers would find it difficult to deny worker requests to be terminated a day or a week before the "normal" termination of their contract.

- 4) Qualifying Conditions: the minimum period of contributions required to qualify for UI benefits is proposed as at least 12 months of work during the last 24 calendar months. Bahrain, China, Denmark and Vietnam can be given as examples of countries where there is 12 month requirement to qualify for UI benefits. Any contribution months that occur before a UI claim is established cannot be reused later on, for a subsequent UI claim.

⁴⁷ Service Canada website: http://www.servicecanada.gc.ca/eng/ei/information/voluntarily_leaving.shtml and *Digest of Benefit Entitlement Principles*: http://www.servicecanada.gc.ca/eng/ei/digest/6_8_0.shtml

These rules will be sufficient to avoid excessive use of the UI system, on the observation that even shorter qualification periods are in place in many countries (for example in Canada, the US, Thailand and France). The 12 month requirement will prevent the establishment of repetitive seasonal claims, as could occur for example if the required qualification period was only 6 months.

ILO Conventions No. 102 and No. 168 both allow for prescribing a qualifying period that is sufficient to prevent abuse.

- 5) Benefit Rate: a basic monthly benefit of 50% of previous average earnings is proposed, with the maximum benefit set at 50% of the maximum earnings that have been subject to contributions. ILO Convention No. 102 prescribes a minimum benefit rate of 45% of previous earnings and Convention No. 168 raises that minimum to a rate of 50%.

The TPC has proposed an alternative rate of 40% of previous earnings. This would fall below international norms and could be seen as a poor trade-off for workers to replace the existing retrenchment benefits. Simulations presented earlier in this report showed that, even at the 50% rate, the unemployed workers receiving 6 months of UI benefits would be favoured by the existing retrenchment benefits, once they gain about 5 years of employment. Lowering the benefit rate to 40% would make the comparison even less favourable, and run against the previously expressed opinion by the TPC that the “existing level of protection for those who lose their jobs is maintained” (see page 52).

A benefit rate of 50% is seen in the US and in South Korea, though benefit rates generally exceed 50% in most other countries, for example 60% in Bahrain and Vietnam, 55% to 60% in Canada, up to 80% in Japan and up to 90% in Denmark.

Lower benefit amounts might not be seen as reasonable for most unemployed workers, nor would they be expected to contribute to any reduction in so-called “moral hazard”, the case for which is weak once the benefit rate is set at a basic rate of 50%. Many countries do pay higher rates but it is recommended that Malaysia not do so until sufficient experience has developed under its own system. Consideration could also be given at some point to slightly higher benefits for older workers or for those with dependents but this is not proposed for now.

- 6) Waiting period before benefits are paid: it is common practice to impose a short waiting period at the beginning of each UI claim, on the grounds that individuals should bear some part of the costs of the unemployment event. This waiting period is a period in respect of which no benefits are to be paid, and is not subject to being compensated retroactively. A 7 day waiting period has been proposed for Malaysia, which is in line with international practice and is the maximum allowed under ILO Conventions. South Korea, Thailand, Japan and France require one week waiting periods. Only Canada and Vietnam require a longer waiting period (two weeks), while Chile has no waiting period as is the case for Denmark (except for non-salaried workers and those who quit without any just cause, who must serve a longer waiting period).

Such a waiting period also gives the administrators of the UI system a bit of time to set up the claim, to collect all of the necessary information from the unemployed worker and the employer, as well as to initiate all of the necessary procedures. The waiting period will also avoid having to deal with claims that could be deemed as trivial, lasting only a week in total.

UI benefits will then be paid at the end of each subsequent month of unemployment (after verification that the unemployed person is still unemployed and was in fact unemployed during the entire month. If returning to work in the middle of a month he/she would be entitled to only a share of the benefits for the last month of unemployment.

- 7) Duration of benefits: as agreed by the TPC, benefits would be paid for a maximum of 3 to 6 months. It is proposed that the 3 month minimum be applicable for workers who have worked the required minimum of 12 months, and that each additional 4 months of work provide one additional month of benefits, to reach 6 months after 24 months of work. The resulting entitlement schedule would be as follows:

Months of contributions	Months of UI Benefit Entitlement
12	3
16	4
20	5
24	6

Benefits are usually paid for a minimum of 6 months in most countries, for example in Bahrain, Denmark (2 years), Germany (6 to 24 months), Thailand and the US, but Vietnam similarly limits its minimum duration to 3 months and only provides 6 months of benefits to persons having worked at least 3 years (the looseness of benefit rules in Vietnam must here be noted, however).

ILO Convention No. 102 prescribes a minimum average duration of 3 months when the UI system provides that duration shall vary with the length of the qualifying period, while Convention No. 168 prescribes an average duration of 6 months in such circumstances. International practice varies considerably on the duration of benefits, but usually ranges from 6 months to sometimes as high as two years. Consideration is often given to prolonged benefits for older workers or for workers affected by a severe national or regional crisis.

Some countries (for example, Chile, Canada and the US) have adopted automatic triggers to provide extended benefits when unemployment rates increase excessively, on a national or regional basis. Other countries (Thailand, Japan) adopt special ad hoc legislation in crisis situations, which may be less desirable and may cause delayed and uncertain implementation.

- 8) Ongoing Entitlement: an unemployed worker must initially and promptly register at the employment office, and report regularly to that office while in receipt of UI benefits. Unemployed workers will be allowed to refuse one suitable employment but a second refusal will disqualify them from benefits. Suitable employment will for these purposes have to be defined in a fair, reasonable and transparent manner. Examples of countries that similarly allow refusal of no more than one suitable employment offer are Bahrain and Mongolia. Most other countries require that any suitable job offer be accepted or benefits will be terminated, for example Canada, France and Germany. Chile, on the other hand, does not require job seekers to accept any particular job offer.

ILO Convention No. 168 states the following about suitable employment: "In assessing the suitability of employment, account shall be taken, in particular, under prescribed conditions and to an appropriate extent, of the age of unemployed persons, their length of service in their former occupation, their acquired experience, the length of their period of unemployment, the labour market situation, the impact of the employment in question on their personal and family situation and whether the employment is vacant as a direct result of a stoppage of work due to an on-going labour dispute."

The factors indicated by ILO Convention No. 168 are of general application amongst the countries with UI systems, though some apply them with more severity than others. In managing referrals to suitable employment, it is of course necessary that the administration of the UI system be linked effectively to the agencies, public or private, through which such jobs can be proposed to UI beneficiaries.

- 9) Active Labour Market Policies (ALMP): ALMPs are desirable in principle to support both workers and employers and are highly recommended in principle for Malaysia. The types and extent of such measures that should be adopted remain a subject of some debate at the international level. Under scenario 1, the extent of ALMPs would be limited to existing and fairly inexpensive measures such as job search assistance, resume writing assistance or preparation for interviews, which JobsMalaysia already provides to interested job seekers. Those measures would continue to be funded as they are now, through specific government funding and outside the UI system. More extensive ALMP measures will be addressed under Pillar 2.
- 10) Governance: it should go without saying that sound governance is essential to the success of an UI system, as for any public system designed to provide social protection. For Malaysia, this is an admitted objective and constraint but it is still too early to go into detail on such matters.

One of the important considerations in the adoption of an UI system is that it be readily manageable, so that the system would not impose undue burden on employers, on workers or on job seekers. Sound management will require the hiring and training of competent staff to handle all aspects of the system, from the collection of contributions through to the payment of monthly benefits. Systems will be needed for case management and day to day operations, linkages will need to be established for referrals to employment and training opportunities, monitoring and control systems will need to be developed to control against misuse, along with statistical systems and all of the other operational aspects that must be attended to. Malaysia has long experience in managing social insurance systems, notably for SOCSO and EPF, and would be able to build on that experience.

Pillar 2: ALMPs

Active Labour Market Policies (or programmes, ALMP) have provoked vigorous debate over the years. A number of evaluations have sought to determine the effectiveness of investments made in such programmes. Their results have often been mixed and uncertain, and suggest that countries should only entertain such measures in a cautious and measured approach. One meta-study reported on 199 program estimates drawn from 97 studies done between 1995 and 2007, indicating better long-term than short-term results⁴⁸. This suggests a definite role for ALMPs but that authorities should not expect quick and easy results. The types of measures that are applied also matter a great deal. The same study found, for example, “that subsidized public sector jobs programs and programs for youth are generally less successful than other types of ALMP’s.”

In May 2012, the World Bank published a review of the types of ALMP measures that are undertaken and found a great variety amongst countries.⁴⁹ One comment from that study may be quoted here: “Activation of jobseekers is a labor intensive activity. Moreover, activation policy interventions should be tailored to the needs of the labor market and jobseekers themselves.”

⁴⁸ “Active Labor Market Policy Evaluations: A Meta-Analysis” by David Card, Jochen Kluge, Andrea Weber (February 2009), IZA, Bonn, Germany.

⁴⁹ “Public Employment Services and Activation Policies”, by Arvo Kuddo, World bank, May 2012.

The OECD defines Active Labour Market Policies (or programmes, ALMP) as follows: “Active labour market programmes include all social expenditure (other than education) which is aimed at the improvement of the beneficiaries’ prospect of finding gainful employment or to otherwise increase their earnings capacity. This category includes spending on public employment services and administration, labour market training, special programmes for youth when in transition from school to work, labour market programmes to provide or promote employment for unemployed and other persons (excluding young and disabled persons) and special programmes for the disabled.”

There is thus a clear rationale for such policies, beyond the practical (if not political) reality that responsible governments must attend proactively to the needs of their citizens, employers and national workforce. But those measures can be costly, thus their scope and role must be defined by Malaysia for the Malaysian context, based on a national assessment of needs and financial capacity.

Some countries provide for an extensive (and sometimes expensive) network of ALMPs, notably Denmark, South Korea and Japan. Other countries provide for much lower investments in ALMPs, such as Canada and the US, relying instead on a relatively low benefit rate and on market incentives to prompt job seekers to find work. In those two countries at least, this approach has proven effective, since very few beneficiaries draw all of the UI benefits to which they could be entitled. Each country must find its own balance according to its particular circumstances, philosophy and needs.

One example of ALMPs that is common to France, Germany and Canada is the compensation by the UI system for loss of income to jobseekers who accept to return to work on a part-time basis, while continuing to search for full-time employment or enrolling in re-training programmes.

Work-sharing is another example, where employers who are facing a temporary business slowdown will be allowed to put their workforce on reduced work hours while the UI system compensates their workers through partial UI benefits. This allows employers to resume full operations as soon as their business picks up, without having to recruit and train new staff. Such arrangements usually require the concurrence of the workers and can only be implemented for limited durations. Examples of country with work- or job-sharing arrangements of this type include Denmark, Germany, France, Canada and about half of the US states.

In the present framework, the entire set of ALMP measures, as varied as they may be, is designated as Pillar 2, where they come in support of the income replacement function that is guaranteed under Pillar 1. Graphically, the Pillar 2 role for ALMPs is shown below as it would apply under UI Scenarios 2 and 3.

	Scenario 1	Scenario 2	Scenario 3
Pillar 1: Compensation for loss of income	Unemployment Insurance	Unemployment Insurance	Unemployment Insurance
Pillar 2: Employability & Business Protection		ALMPs	ALMPs
Pillar 3: Acknowledgment of tenure			Savings Accounts

Such ALMPs should in principle be of strong benefit to employers, by enlarging the pool of trained and productive personnel from which they can hire, by offering them assistance in the recruitment process, by providing subsidies towards the training of their existing personnel or of possible new recruits or towards the maintenance of certain classes of workers in employment.

In the context of an UI system, ALMPs have also often been associated with what has been called “activation” policies, which have taken on different forms in different countries, being often intended mainly to bring down the costs of the UI systems themselves. These policies have at times been deemed to include penalties imposed on UI beneficiaries to reinforce the intensity of their job search. This has been especially so for countries where benefit rates are relatively generous, for example in Denmark (where benefits can reach 90% of previous earnings and last for two years). There is less to gain, from a cost-benefit perspective, if the UI benefits paid are low in amount and duration.

But even in those situations, a case can be made on public policy grounds that the sound development of the labour force and of the economy requires a degree of public intervention to assist certain classes of unemployed individuals in developing their full potential and thus in fully contributing to the country’s economic growth.

Measures such as job search assistance, assistance for resume writing and for improvement of interview skills have generally been found to be the most cost effective, being inexpensive and yielding good results. Training and retraining programs, though highly touted, must be managed with careful regard to their costs, effectiveness and targeting, but should nevertheless be considered for implementation as long as the budgets for those measures are kept under tight control.

For all ALMP measures and especially for the costlier measures such as training, there should be built-in effectiveness and cost-benefit evaluations conducted according to established evaluation methodology. The evaluation plans themselves should be set at the same time as the measures are being planned for launch.

In the Malaysian case, it is assumed that Pillar 2 dealing with ALMPs will be granted a fixed annual budget, and we would recommend that such budgets start on a modest scale and only be ramped up gradually over time. In that context, it is not possible to determine at this time what should be the amounts to be invested in such measures, which would in turn determine the appropriate contribution rate. For now, we assume a combined contribution rate of 0.2% of covered earnings (equally shared between employers and government) , which could fund additional ALMP spending of about RM200million per year.

It is proposed that funding for ALMPs come from equal bipartite financing involving the government and employers. The employer share could be deducted from their HRDF contributions, at least for the 13,000 or so employers who do contribute to HRDF (and whose payroll we estimate to represent about 35% of the total private sector wages).

The following country examples can be given:

- in Canada, there are fixed annual budgets devoted to ALMPs, which over recent years have amounted to approximately 0.4% of aggregate insured earnings (funding for these amounts is included in overall EI costs, and thus shared between employers and workers);
- in Japan, the ‘Two Services’ component of EI is funded by employers only, at 0.35% of covered earnings, covering measures to ensure (i) Employment stability (to prevent unemployment and stabilize or increase employment) and (ii) Human resources development, or measures to develop human resources throughout working life, through vocational training and other means.
- In the Republic of Korea, the ALMP measures are included under 2 broad umbrellas, known as Vocational Competency Development plus the Employment Stabilization Program, for which funding is entirely charged to employers, from 0.25% of wages if they have less than 150 employees, to 0.65% if they employ more than 1,000 workers.

Pillar 3: Savings Accounts

The TPC saw retrenchment benefits as serving a dual purpose:

- (i) a safety net function that should in future be taken over by UI, and
- (ii) an acknowledgement of tenure (years of service) within the enterprise.

Acknowledgment of tenure would be recognized through the adoption of individual savings accounts, which in UI Scenario 3 would appear as Pillar 3, as represented below.

	Scenario 1	Scenario 2	Scenario 3
Pillar 1: Compensation for loss of income	Unemployment Insurance	Unemployment Insurance	Unemployment Insurance
Pillar 2: Employability & Business Protection		ALMPs	ALMPs
Pillar 3: Acknowledgment of tenure			Savings Accounts

It is proposed that these savings accounts not be taken into account when paying UI benefits, since they entirely concern past service and are akin to personal funds. This is consistent with the view espoused by the TPC. That favourable treatment is in fact given to retrenchment payments (known as severance in most countries) under the laws of a number of countries: in some US states, in France (though amounts exceeding the statutory minimum are taken into account), in Argentina, Chile and Thailand.

The funding for these individual savings accounts would come from employer and worker contributions, which for now are proposed to be 1% of covered earnings for each. The combined 2% contribution would build savings equivalent to about one quarter month of wages for each year of contributions, for example about 2 and half months after 10 years of service.

The accumulated employers' contributions in the saving accounts would be deducted from any retrenchment benefits accrued until the starting date of the UI system. At retrenchment, the workers can receive both the employers' and workers' cumulated savings as a lump sum. In case of voluntary departure (retirement, resignation or misconduct), workers will only be entitled to his/her portion of the savings, and the employers will be entitled to recover their own paid contributions.

Scenario 3 should not however be confused with has been referred to as the UISA model (Unemployment Insurance Savings Accounts). It provides a higher protection than the UISA model and would cost less, as explained below.

Scenario 4: Combined Savings Plus Insurance Model

Authorities have requested that an adaptation of the Chilean UISA model be considered as a possible solution for Malaysia. The TPC has not up to now reacted to such a proposal since it had not been brought up for consideration, after the participants of the two Tripartite Regional Workshops (in Sabah and Sarawak) found it costly and inadequate.

We refer the reader to the Supplemental Appendix to this document, which is a case study of the Chilean model adopted in 2002 and modified in 2009. The basic premise of the UISA model is that the first line of protection against loss of income is an individual savings account. It is presumed that individuals, by having to draw on their own savings, should be more strongly motivated to avoid unemployment or to quickly return to employment than they would under a traditional UI system.

This concept has two immediate consequences:

first, the savings or contribution rate for UISAs must be set at a sufficiently high level, in order to build enough savings to provide an effective incentive; and

second, additional protection will be needed to provide replacement income for unemployed workers whose work patterns prevent them from accumulating much if any savings.

The UISA approach, as proposed by Feldstein & Altman (F&A) in 1998 and simulated for the US case, assumed a 4% contribution rate.⁵⁰ Vodopivec in 2008 assumed a 3% contribution rate for simulations with Slovenian data.⁵¹ Vodopivec observed that replacing a UI system by UISA “reduces redistribution and thus hurts the poor”, and that countries would have to decide whether or not their concern about moral hazard was sufficient reason to justify that consequence. F&A as well as Vodopivec provided that the government would lend money to unemployed individuals if their savings were insufficient.

Chile has diverged from the above UISA model in two respects.

First, instead of having the government lend money to unemployed individuals, Chile introduced a solidarity or insurance component as the second pillar of its UISA. That solidarity component ensures that, if savings run out, the UI system will guarantee 5 months of benefits at decreasing benefit rates: for permanent workers, the monthly benefits are 50% of previous earnings in the first month, then 45%, 40%, 35% and 30% in subsequent months and, for temporary workers, benefit rates are 35% and 30% over two months.

Second, Chile has since 2002 allowed terminating employees to withdraw their savings even if they are not unemployed, if they quit voluntarily or are fired for misconduct. This has led to the excessive withdrawals that have previously been mentioned.

To correct some of the weaknesses of the Chilean model while keeping its fundamental characteristics, the proposed UISA model adapted to Malaysia is the following:

- A three pillar scheme built on a savings scheme (Pillar 1) , a supplementary UI system (Pillar 2) and reinforced ALMPs (Pillar 3);

⁵⁰ “Unemployment Insurance Savings Accounts”, by Martin Feldstein, Daniel Altman, NBER Working Paper No. 6860, Issued in December 1998 (<http://www.nber.org/papers/w6860>).

⁵¹ “How Viable Are Unemployment Insurance Savings Accounts: Simulation Results for Slovenia”, by Milan Vodopivec, April 2008, IZA; published in: Comparative Economic Studies, 2010 (http://www.iza.org/en/webcontent/publications/papers/viewAbstract?dp_id=3438).

Scenario 4

Pillar 1: Compensation for loss of income

Savings Accounts (SA)

When pillar 1 exhausted, backed up by:

Pillar 2: Compensation for loss of income

+ Unemployment Insurance (UI)

Pillar 3: Employability

+ ALMPs

- Funding for Pillar 1 (savings scheme): employer and worker contributions of 2% of wages for each (the employer share in this case being fully vested and non-refundable, as in Chile);
- Under Pillars 2 and 3, the supplemental UI system and ALMPs: if Pillar 1 savings run out, guaranteed minimum benefits will be paid equal to those available under UI Scenarios 1 to 3, namely at the same benefit rate (50%), qualifying condition (12 months of work in the last 24 months) and duration (3 to 6 months depending on time workers), and in addition the unemployed will have access to a range of ALMPs as defined under Pillar 2 of scenarios 1 to 3;
- Funding for Pillar 2 (UI): a contribution of approximately 0.3% of covered wages, which could either be supported by government or be shared between employers and workers;
- Funding for Pillar 3 (ALMPs): a combined contribution rate of 0.2% of covered earnings coming from equal bipartite financing involving the government and employers and integrated with HRDF ;
- Payments under both Pillars 1 and 2: only made on the usual conditions of unemployment, as under UI scenarios 1 to 3, namely for workers who lose their jobs involuntarily or are forced to quit with just cause, and who thereafter remain out of work, capable and available for work and actively searching for work, subject to regular reporting to the employment office and the obligation to accept suitable employment (with a single refusal allowed).

The proposed system should avoid the low benefit coverage observed in Chile as well as the excessive withdrawals noted by Chilean authorities. The conditions put on benefit receipt should also avoid turning the UI system into a passive payment system, while leaving room for the adoption of proactive ALMP measures, along the lines discussed earlier.

The combined contribution rate in Chile is 3% of covered wages to which the government adds a subsidy that is equivalent to about 6% of employer and employee contributions. Our proposal is for somewhat higher contributions given that the proposed UISA model for Malaysia would provide constant benefits of 50% of previous earnings for a maximum duration of 6 months instead of the lower benefits provided in Chile, especially in the case of fixed-term workers.

In order to be effective and congruent with ILO Conventions and Recommendations, the UISA model must, as presented above, retain its full pillar 2 guarantee as a fundamental characteristic. The adoption of the model as it has been applied in Chile would deviate from ILO standards and could not be supported by ILO. Apart from its high costs, it could represent, in our view, a risky attempt to apply a model that has to date been attempted in a single country, with little international support in terms of lessons learned and limited financial space for ALMP measures and for eventual benefit adjustments in crisis situations.

In addition, scenario 4 would primarily serve the second purpose of the retrenchment benefits (the safety net function) since the savings account would be first depleted before the unemployment benefits can be claimed. Therefore it is expected that this scenario 4 will not be in line with the expectations of the TPC, where the progressive shift from the existing Retrenchment Benefits model to the Employment Insurance model would be accompanied by the safeguarding of its two functions: (i) providing a compensation for the loss of income and (ii) providing an acknowledgment of tenure (years of services).

The ILO would therefore recommend assessing the feasibility and further exploring the design of scenario 3 which (i) takes into account all principles agreed upon by the TPC, (ii) safeguards the dual purpose of existing retrenchment benefits model at a lower cost, (iii) improves employability and supports business development, (iv) is in line with ILO Conventions and Recommendations, and (v) learns from good practices and lessons learned of international experience.

L) CONCLUSION AND NEXT STEPS

The possibility of implementing an unemployment insurance system has provoked considerable reaction and discussion in Malaysia, not only during the past few months but even over the years. A number of initiatives have been attempted during the past ten years to introduce a UI system or similar mechanism but none of them has met with success.

During the three week fact finding mission, there was a significant amount of feedback, both positive and negative, relating to UI principles in general and to a possible UI system for Malaysia in particular. The comments and concerns expressed by the stakeholders have been passionate and informative. A consensus may now be developing at least within the Tripartite Project Committee. There seems to be willingness from all parties to be flexible and work together for an efficient system to protect workers during periods of unemployment, especially during times of crisis, but this must be done in such a way as to maintain a productive and flexible business environment for employers, including for those who compete on the international scene. UI systems are becoming prevalent worldwide, having also been adopted in recent years by two ASEAN countries, Thailand and Viet Nam.

One of our previous observations may be worth repeating: though we have not yet performed detailed analysis and assessment of UI costs, because a number of data elements are either still missing or will require deeper study, preliminary analysis indicates that under present conditions the total cost of an UI system for Malaysia (pillar 1 under scenarios 1, 2, 3) could be in the range of 0.5% of covered earnings. This is in fact close to the mid-point of two previous assessments conducted separately in 2010 by PEMANDU and by a joint ILO-Korea team. The addition of ALMP measures and especially of individual savings account may bring total contributions to a higher level, as would especially be the case for a UISA model adapted from the Chilean experience.

The next steps will be crucial. The Tripartite Project Committee and Malaysian authorities will review this report and decide whether or not to continue with a second phase of this project – a deeper analysis of the possible design and costs of a UI system for Malaysia, along with continuing consultations and consensus building. It is our hope that this report will provide all of the necessary information to make an informed decision.

Given the focus placed on helping unemployed workers back to work and on supporting employers in their objectives of building a flexible and competitive workforce, the TPC has considered that the proposed UI system could advantageously be designated “Employment Insurance”. This suggestion could indeed be acted upon when drafting the enabling legislation.

APPENDICES

Appendix 1

ILO Consultations in Malaysia, May 2012

The field trip consisted of meetings with stakeholders in Kuala Lumpur, Sarawak and Sabah from May 5 to May 25 as follows (national consultants attended the meetings in Kuala Lumpur only).

Kuala Lumpur (May 5 to 15):

- Tripartite Project Committee;
- MoHR: SOCSO, SOCSO Return to Work Program, MoHR Steering Committee, Department of Labour (DoL), Department of Industrial Relations (DIR), Department of Skills Development (DSD), Human Resources Development Fund (HRDF), Foreign Worker Affairs and Jobs Malaysia;
- Other Government Departments: Economic Planning Unit (EPU), Ministry of Finance (MoF), Employees Provident Fund (EPF), Department of Statistics (DOS), Ministry of Women, Disabilities, Social Assistance and Welfare, Ministry of International Trade and Industry (MITI), Small and Medium Enterprise Corporation (SME Corp);
- Employers: MEF, Small Medium Industries Association (SMI Association), Green Wellness (M) Sdn Bhd and Goodlife (M) Sdn Bhd.;
- Workers: MTUC

Kuching, Sarawak (May 16-17-22):

- Government Departments: SOCSO, DoL, Jobs Malaysia;
- Employers: MEF meeting with group of employers, also individual meetings with Asia Aquaculture (M) Sdn Bhd and Harum Bidang Sdn Bhd;
- Workers: MTUC satellite meeting.

Kota Kinabalu, Sabah (May 18-21):

- Government Departments: Jobs Malaysia
- Employers: MEF meeting with group of employers, also individual meeting with Khong Guan Biscuit Factory (Borneo) Sdn Bhd;
- Workers: MTUC satellite meeting.

In the final week of the field trip, two regional tripartite workshops were conducted in Kota Kinabalu, Sabah (May 21) and Kuching, Sarawak (May 22). The workshops commenced with an introduction to the project by MoHR followed by position papers from MEF and MTUC. The international consultants provided a presentation entitled "UI in Other Countries" highlighting six countries of interest to Malaysia – Japan, South Korea, Thailand, Germany, Canada and Chile. A question and answer period followed the presentation to allow for further clarification of UI programs and parameters around the world.

In the afternoon sessions, the participants were divided into 4 groups for debate, brainstorming and capacity building exercises. Each group was assigned an illustrative scenario of the parameters of UI to assist in the development of a better understanding of UI/EI and to gather ideas and suggestions that could lead to suitable UI models and scenarios for Malaysia.

Illustrative Scenarios of UI Systems for Regional Workshops (Sabah and Sarawak – May 21/22)	
Scenario	Concept
#1: Unemployment Protection – Savings Accounts	<p>Compulsory savings, with funds set aside in individual accounts by workers and their employers, and unemployed persons can draw them out if they lose their jobs.</p> <p>Theoretical contributions of 2% of total wages from both employers and workers to a maximum of RM5,000 per month and hypothetical unemployment payments of 50% of previous earnings for 12 months or as long as the funds last.</p>
#2: Unemployment Insurance – High Protection	<p>(i) A compulsory insurance system with generous UI benefits, (ii) job seekers <u>must</u> genuinely look for work and follow directives, or lose benefits, and (iii) zero retrenchment benefits and employers can hire & fire at will.</p> <p>Theoretical contributions of 0.5% of total wages from employers and workers to a maximum of RM5,000 per month and hypothetical UI payments of 80% of previous earnings up to 24 months depending on months worked.</p>
#3: Unemployment Insurance – Medium Protection	<p>(i) A compulsory UI system with above average UI benefits, (ii) reason for termination of employment must be involuntary and (iii) worker must be actively looking for work and available and capable of work.</p> <p>Theoretical contributions of 1% of total wages from employers and workers to a maximum of RM5,000 per month and hypothetical UI payments of 60% of previous earnings from 6 to 24 months depending on months worked.</p>
#4: Unemployment Insurance – Low Protection	<p>(i) A compulsory UI system with low UI benefits, (ii) reason for termination of employment must be involuntary and (iii) worker must be actively looking for work and available and capable of work.</p> <p>Theoretical contributions of 0.5% of total wages from employers and workers and 0.25% from the government to a maximum of RM5,000 per month and hypothetical UI payments of a flat rate of RM500 per month to a maximum of 6 months depending on months worked.</p>

The groups presented their opinions and comments on the scenarios followed by a wrap up session and next steps. Participants were generally positive concerning the group discussions, seeing them as an effective way of developing a better understanding of the concepts and elements of unemployment insurance. It also provided the participants with a forum to consider various issues in an objective way and also to better understand the positions of their counterparts. For example, most participants rejected the concept of contributions by employers or workers only. Most participants expressed the opinion that there should be a tri-partite or bi-partite solution to the question of who should contribute to the proposed UI system. Participants were ambivalent on whether those who voluntarily quit without just cause should face a denial or reduction of benefits. Most participants also rejected the suggestion of a new entity to collect premiums and that the process of paying contributions by employers should be streamlined and standardized to better support employers.

For the ILO team, the group discussions provided an effective tool to learn about the views of all stakeholders. The participants generally were not in favour of overlapping benefits for retrenchment and UI but a compromise solution presented by one of the discussion groups offered the following:

“.....workers could keep their acquired rights to retrenchment benefits for the past years of service before the introduction of UI; they would in addition be covered by UI (after the introduction of UI)”.

On May 24, a National Tripartite Workshop was held at the World Trade Centre in Kuala Lumpur, attended by around 210 government officials, employers’ and workers’ representatives, academics and representatives of civil society. This workshop also commenced with an introduction to the project by MoHR followed by position papers from MEF and MTUC. The ILO regional representatives and international consultants presented the findings of the regional tripartite workshop and the numerous meetings held from May 5 to May 18. The international consultants also provided the presentation on “UI in Other Countries”. The workshop participants were divided into 6 groups to consider six illustrative UI models that could be of interest for Malaysia.

As with the regional workshops, the national workshop allowed more participation to discuss important concepts and elements in smaller groups. The groups investigated and discussed various parameters such as the type of system, coverage, contribution rates, qualifying conditions, benefit rates and duration, waiting period, continuing eligibility conditions, and payment of benefits. Participants recognized the need to provide partial temporary benefits to look for work but not so generous as to create a disincentive to look for work (moral hazard).

Participants recognized the importance of sustainability of the UI fund and the need for good governance in order for the UI system to be successful. The issue of voluntarily leaving without just cause was discussed at length. The consensus was that those who voluntarily quit on their own without any good reason should not receive full UI benefits. A great deal of discussion also took place on the issue of “just cause” and its definition. A number of scenarios were presented and debated on whether they fell under the definition of “just cause”.

Finally, a compelling statement made by a participant in one of the group discussions demonstrated the effectiveness of group discussions and spelled out the vision of the continuing consensus building exercises beginning with these workshops:

“A journey of a thousand miles begins with one step”.

Illustrative Scenarios of UI Systems for National Workshop (Kuala Lumpur – May 24)	
Scenario	Concept
#1: Unemployment Protection – Workers Pay All	(i) Only workers contribute; (ii) no change to the existing rules on retrenchment benefits; (iii) a 60% normal benefit rate, 67% for persons with dependents; (iv) job seekers must genuinely look for work or lose benefits Theoretical contributions of 0.75% of total wages from workers only to a maximum of RM3,000 per month and hypothetical unemployment payments of 60% (67% if worker has dependents) of previous earnings for up to 18 months depending on months worked.
#2: Unemployment Insurance – High Protection	Same as scenario at regional workshops.
#3: Unemployment Insurance – Medium Protection	Same as scenario at regional workshops.
#4: Unemployment Insurance – Low Protection	Same as scenario at regional workshops.
#5: Unemployment Insurance – Experience Rated and Employer Pay Only	(i) A compulsory UI system with basic UI benefits, (ii) reason for termination of employment is economic or business grounds and worker must be actively looking for work and available and capable of work, and (iii) only employers contribute, low-layoff employers paying less than high-layoff according to ratio of their past UI claims to their active workforce. Theoretical contribution of 0.75% on previous earnings for employers only up to maximum of RM3,000 per month and hypothetical UI payments of 45% of previous earnings for a maximum of 4 months.
#6: Unemployment Insurance – With Transition Period	(i) A compulsory insurance system is established on 1 st January 2014; (ii) those workers employed before 1 st January 2013 are entitled to retrenchment benefits accumulated between the starting date of their contract and 31 st December 2013; (iii) all workers who have at least worked for 6 months in the company are entitled to UI benefits; (iv) job seekers <u>must</u> genuinely look for work. Theoretical contributions of 0.5% from employers and workers and 0.25% from government and hypothetical UI payments of 75% of previous earnings for 3 to 12 months depending on months worked.

Spokespersons from each group presented the findings of the participants after the group discussions.

Appendix 2

Economy

Historical Developments

Located in South East Asia, bordered by Thailand in the north and Singapore and Indonesia in the south, Malaysia belongs to a group of successful developing countries. It has a land mass of approximately 330,803 square kilometres. As a developing country, it aims to achieve the status of a developed nation by 2020. To encourage the development of its economy, Malaysia has since 1965 mapped out a series of medium to long-term plans. The Malaysian economy has now been in a transitional stage for more than 20 years in an effort to industrialize; outward-oriented industrialization approaches has been a major thrust. In relation to trade, Malaysia has implemented two major policies: export-oriented and import substitution strategies.

The overall picture of the Malaysian economy since 1985 years is presented in Table 13. It shows that during the period 1985-2011 the population increased 81 percent from 15.8 million to 28.6 million. In 1985, economic growth retreated by 1.1 percent due. Economic recession took its toll, with heavy industry performing particularly badly during the 1985-1987 recession period. All of Malaysia's heavy industries faced massive losses, including for example Perwaja Steel. But five years after the economic recession, the economy was growing at rates averaging over 9 percent, with growth peaking at 10.0 percent in 1996 and per capita income growth of 7.51 percent. However, during the Asian financial crisis of 1997, GDP growth fell to 4.62 and then went into sharp decline falling by 9.7 percent in 1998. During this period, most of the major companies that the government had privatized and reserved for *Bumiputra*⁵² leadership, including Proton (the national car company), Malaysian Airlines (the national airline company), Renong (an engineering group) and the Malaysian Resources media group had to be renationalized to prevent their collapse.

A vigorous recovery programme mounted by the government showed positive results during the second quarter of 1999, and the Malaysian economy began to recover. For the full year, GDP and per capita income growth rates were 6.1 percent and 3.47 percent respectively. Even stronger results were posted in 2000, GDP growing by 8.9 percent and per capita income by 6.15 percent, followed by more modest but steady growth rates thereafter. All of this came to a halt in 2009, as the global economic meltdown caused negative GDP growth of 1.5 percent, but the Malaysian quickly shook off those difficulties and resumed its growth in 2010 and 2011.

Table 14 will provide more detail on labour force and unemployment trends, where it will be seen that the mid-1980s proved to be much more difficult times for Malaysian workers than either the 1997 or 2009 economic slowdowns.

⁵² Bumiputra (or Bumiputera): from Sanskrit "sons of the land", refers to Malaysians of Malay or indigenous origin, for which affirmative action programs were created in the 1970s. According to the 2010 Census, the Bumiputra comprise 67.4% of Malaysian citizens, the remainder being of Chinese (24.6%), Indian (7.3%) or other origin (0.7%).

Table 13: Basic Economic Indicators for Malaysia, 1985 to 2011

Item	1985	1990	1995	1996	1997	1998	1999	2000	2003	2005	2008	2009	2010	2011
Population, millions	15.88	18.1	20.69	21.17	21.67	22.18	22.71	23.49	25.04	26.04	27.57	27.9	28.3	28.6
Real GDP growth rate, %	-1.1	9.0	9.8	10.0	7.3	-7.4	6.1	8.9	5.8	5.3	4.8	-1.5	7.2	5.1
Per capita GDP, growth rate, %	-3.78	5.87	6.75	7.51	4.62	-9.69	3.47	6.15	3.01	3.06	3.46	-3%	6%	n.a.
Labour force, millions	6.22	7.00	7.89	8.62	8.74	8.88	9.15	9.56	10.24	10.41	11.01	12.1	12.17	12.51
Employment, millions	5.65	6.69	7.65	8.4	8.57	8.6	8.84	9.36	9.87	10.01	10.66	11.6	11.78	12.1
Unemployment rate, %	5.62	4.5	3.14	2.52	2.4	3.2	3.43	3.1	3.6	3.5	3.3	3.7	3.3	3.1
Labour force participation rate, %	65.7	66.5	64.7	66.3	65.6	64.3	64.2	65.4	65.2	63.3	62.7	62.9	63.4	64.1
Exports on GDP, %	55.83	72.43	97.14	96.45	78.39	101.17	106.91	95.48	100.38	123.37	117.84	107.19	109.91	106.97
Imports on GDP, %	55.66	71.28	107.95	102.93	78.40	80.54	82.62	87.39	79.25	105.92	104.91	93.62	100.51	99.53

Source: Department of Statistics, Malaysia and Bank Negara

Trends in the Labour Force

Table 14 shows the main labour force components since 1982. While the unemployment rate had climbed to 5 percent in 1985 and exceeded 7 percent during the three ensuing years, from 1986 to 1988, the situation started improving in 1989 and by 1995 that rate had finally dropped below 4 percent, where it has remained ever since.

Table 14: Labour Force Trends in Malaysia from 1982 to 2010

Year	Number ('000)				%	
	Labour force	Employed	Unemployed	Outside labour force	Labour force participation rate	Unemployment rate
1982	5,431.4	5,249.0	182.4	2,944.6	64.8	3.4
1983	5,671.8	5,457.0	214.9	2,969.4	65.6	3.8
1984	5,862.5	5,566.7	295.8	3,119.6	65.3	5.0
1985	5,990.1	5,653.4	336.8	3,124.9	65.7	5.6
1986	6,222.1	5,760.1	461.9	3,188.3	66.1	7.4
1987	6,456.8	5,983.9	472.9	3,246.1	66.5	7.3
1988	6,637.0	6,157.2	479.8	3,301.5	66.8	7.2
1989	6,779.4	6,390.9	388.5	3,463.5	66.2	5.7
1990	7,000.2	6,685.0	315.2	3,519.7	66.5	4.5
1992	7,319.0	7,047.8	271.2	3,783.6	65.9	3.7
1993	7,700.1	7,383.4	316.8	3,874.9	66.5	4.1
1995	7,893.1	7,645.0	248.1	4,297.7	64.7	3.1
1996	8,616.0	8,399.3	216.8	4,379.0	66.3	2.5
1997	8,784.0	8,569.2	214.9	4,605.1	65.6	2.4
1998	8,883.6	8,599.6	284.0	4,934.0	64.3	3.2
1999	9,151.5	8,837.8	313.7	5,098.4	64.2	3.4
2000	9,556.1	9,269.2	286.9	5,065.1	65.4	3.0
2001	9,699.4	9,357.0	342.4	5,239.9	64.9	3.5
2002	9,886.2	9,542.6	343.5	5,473.8	64.4	3.5
2003	10,239.6	9,869.7	369.8	5,458.6	65.2	3.6
2004	10,346.2	9,979.5	366.6	5,730.5	64.4	3.5
2005	10,413.4	10,045.4	368.1	6,048.2	63.3	3.5
2006	10,628.9	10,275.4	353.6	6,205.1	63.1	3.3
2007	10,889.5	10,538.1	351.4	6,330.1	63.2	3.2
2008	11,028.1	10,659.6	368.5	6,575.7	62.6	3.3
2009	11,315.3	10,897.3	418.0	6,665.7	62.9	3.7
2010	11,517.2	11,129.4	387.9	6,855.9	62.7	3.4

Source: Department of Statistics, Malaysia (data not yet revised to account for Census 2010 results).

The apparent capacity of the Malaysian labour market to more or less shrug off the 1997 and 2009 economic slowdowns – with only a small impact on the unemployment rate – hides a crucial fact, namely that this was achieved in large part by sending thousands of foreign workers back home. Many of those workers did not appear in official statistics, or could no longer be counted once they had left the country, so that the exact number of affected persons is difficult to establish. It has been estimated by some to exceed a hundred thousand.

The scope of foreign worker employment in Malaysia can be noted in the following reference: “... on 13 July 2011 the Government launched the 6P initiative to register and monitor legal and illegal foreign workers in the country. The 6P is a programme to register, legalise, provide amnesty, supervise, enforce and deport illegal foreign workers. A total of 1,016,908 legal and 1,269,369 illegal foreign workers were registered under this programme.”⁵³

The overall labour force participation rate, for its part, generally ranged around 65 percent until 2003, but started to reduce thereafter, reaching a recent low of 62.7 percent in 2010. It is observed in Table 16 that this was due to the reduction in labour force participation rates for men, from about 85 percent in the 1980s to 78.7 percent by 2010. The rate for women stayed relatively stable at around 46 percent. On ILO standardized definitions, women’s participation rate for Malaysia was low, ranking 144th out of 189 countries,⁵⁴ approximately 10 points below the median for all countries. Table 15 shows that, amongst ASEAN countries, Malaysia had the lowest female participation rate. The country’s tight labour market should represent an opportunity for women to improve their level of activity and economic standing, and thus contribute more strongly to Malaysia’s vision of becoming a high-income country.

Table 15: Labour Force Participation Rate of Women, ASEAN, 2010

Country	Labour force participation rate (%)	Type of statistic
Cambodia	79.3	ILO estimates
Laos	76.6	ILO estimates
Myanmar	75.0	ILO estimates
Viet Nam	73.1	ILO estimates
Thailand	63.8	As reported
Singapore	56.7	As reported
Brunei Darussalam	55.7	ILO estimates
Indonesia	51.0	ILO estimates
Philippines	49.5	ILO estimates
Korea, Republic of	49.2	As reported
Malaysia	43.7	ILO estimates

Note: ILO standardized estimates allow valid country comparisons.

⁵³ “Economic Report 2011/2012”, Ministry of Finance, Malaysia (chapter 1, page 14).

⁵⁴ According to the ILO KILM database, available on the ILO web site, <http://kilm.ilo.org/kilmnet/>.

Table 16: Labour Force Trends by Sex, 1982 to 2010

Year	Number ('000)								Percent			
	Labour force		Employed		Unemployed		Outside Labour Force		Labour Force Participation Rate		Unemployment rate	
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
1982	3,562.3	1,869.1	3,465.3	1,783.7	97.0	85.4	611.5	2,333.1	85.3	44.5	2.7	4.6
1983	3,693.1	1,978.8	3,570.4	1,886.5	122.6	92.2	620.8	2,348.6	85.6	45.7	3.3	4.7
1984	3,832.2	2,030.3	3,662.6	1,904.1	169.6	126.2	654.9	2,464.7	85.4	45.2	4.4	6.2
1985	3,896.7	2,093.5	3,700.5	1,952.8	196.1	140.6	657.7	2,467.3	85.6	45.9	5.0	6.7
1986	4,037.7	2,184.3	3,753.5	2,006.6	284.2	177.7	666.0	2,522.3	85.8	46.4	7.0	8.1
1987	4,151.3	2,305.5	3,868.0	2,115.9	283.3	189.6	697.3	2,548.9	85.6	47.5	6.8	8.2
1988	4,268.7	2,368.4	3,984.0	2,173.2	284.7	195.1	700.6	2,600.9	85.9	47.7	6.7	8.2
1989	4,389.1	2,390.3	4,155.3	2,235.5	233.7	154.8	737.5	2,726.0	85.6	46.7	5.3	6.5
1990	4,489.8	2,510.3	4,310.7	2,374.3	179.1	136.1	775.1	2,744.6	85.3	47.8	4.0	5.4
1992	4,716.5	2,602.5	4,554.2	2,493.6	162.3	108.9	841.4	2,942.2	84.9	46.9	3.4	4.2
1993	5,043.3	2,656.9	4,853.8	2,529.6	189.5	127.3	820.6	3,054.4	86.0	46.5	3.8	4.8
1995	5,203.1	2,690.0	5,056.6	2,588.4	146.5	101.6	967.0	3,330.7	84.3	44.7	2.8	3.8
1996	5,653.9	2,962.1	5,514.2	2,885.0	139.6	77.1	1,006.1	3,372.9	84.9	46.8	2.5	2.6
1997	5,787.3	2,996.7	5,657.7	2,911.5	129.6	85.3	1,080.8	3,524.3	84.3	46.0	2.2	2.8
1998	5,904.2	2,979.4	5,718.9	2,880.7	185.3	98.7	1,196.8	3,737.2	83.1	44.4	3.1	3.3
1999	6,063.5	3,088.0	5,851.2	2,986.5	212.3	101.4	1,261.1	3,837.4	82.8	44.6	3.5	3.3
2000	6,156.2	3,399.9	5,973.5	3,295.7	182.7	104.2	1,257.1	3,807.9	83.0	47.2	3.0	3.1
2001	6,268.3	3,431.1	6,055.9	3,301.1	212.3	130.1	1,344.0	3,895.9	82.3	46.8	3.4	3.8
2002	6,352.3	3,533.9	6,141.8	3,400.8	210.5	133.1	1,438.4	4,035.4	81.5	46.7	3.3	3.8
2003	6,559.4	3,680.1	6,323.6	3,546.1	235.8	134.0	1,428.4	4,030.1	82.1	47.7	3.6	3.6
2004	6,615.1	3,731.1	6,390.4	3,589.1	224.7	142.0	1,563.7	4,166.9	80.9	47.2	3.4	3.8
2005	6,700.9	3,712.5	6,470.5	3,574.8	230.4	137.7	1,677.1	4,371.1	80.0	45.9	3.4	3.7
2006	6,843.5	3,785.4	6,618.6	3,656.8	224.9	128.7	1,719.6	4,485.5	79.9	45.8	3.3	3.4
2007	6,963.5	3,926.0	6,747.1	3,791.0	216.4	135.0	1,794.4	4,535.7	79.5	46.4	3.1	3.4
2008	7,074.6	3,953.5	6,851.1	3,808.5	223.5	145.0	1,881.1	4,694.6	79.0	45.7	3.2	3.7
2009	7,218.1	4,097.2	6,955.7	3,941.6	262.4	155.6	1,926.9	4,738.8	78.9	46.4	3.6	3.8
2010	7,351.8	4,165.4	7,112.1	4,017.3	239.7	148.1	1,989.7	4,866.3	78.7	46.1	3.3	3.6

Source: Department of Statistics, Malaysia (data not yet revised to account for Census 2010 results).

Table 17 shows the labour force participation rates by sex and educational attainment, where it is seen that women with lower education levels have especially low participation rates. It is expected that this gender gap will gradually be reduced, since the ratio of women to men graduates is reportedly at 60:40.

Table 17: Labour Force Participation Rate by Sex and Educational Attainment, Malaysia, 2006–2010

Sex	Total	No formal Education	Primary	Secondary	Tertiary
	(Percent)				
Total					
2006	63.1	51.3	64.9	63.0	64.7
2007	63.2	52.3	65.0	62.9	65.3
2008	62.6	53.5	63.4	62.0	66.1
2009	62.9	51.7	63.7	62.5	65.7
2010	62.7	51.8	62.3	62.6	65.1
Male					
2006	79.9	78.8	89.3	79.4	71.7
2007	79.5	79.6	88.9	79.0	71.9
2008	79.0	80.7	88.3	78.1	72.8
2009	78.9	79.0	88.0	79.1	71.5
2010	78.7	79.2	86.9	79.4	70.8
Female					
2006	45.8	37.6	40.8	44.2	58.0
2007	46.4	38.4	41.4	44.4	58.9
2008	45.7	37.8	38.5	43.8	59.6
2009	46.4	36.3	39.7	43.9	60.0
2010	46.1	35.6	37.9	43.7	59.6

Source: Department of Statistics, Malaysia (data not yet revised to account for Census 2010 results).

Table 18 shows the percentage distribution of labour force by sex and ethnic group for the years 2006 to 2010. Overall, almost 90 percent of the labour force in Malaysia has Malaysian citizenship while about 10 percent are non-citizens and these percentages have remained fairly stable over recent years. Amongst Malaysian citizens, Malays rank first in number, representing about 47% of the labour force, persons of Chinese origin represent about 25% and Indians are 7%.

Table 18: Percentage Distribution of Labour Force by Sex and Ethnic Group, Malaysia, 2006-2010

Sex		Malaysian Citizens							Non Malaysian Citizens
		Total	Bumiputera			Chinese	Indian	Others	
			Total	Malay	Other				
Total									
2006	100.0	90.3	56.9	46.3	10.7	25.0	7.4	0.9	9.7
2007	100.0	90.3	57.3	46.5	10.8	24.8	7.2	1.0	9.7
2008	100.0	90.4	57.5	46.8	10.8	24.7	7.2	0.9	9.6
2009	100.0	90.4	57.9	47.0	10.8	24.5	7.2	0.9	9.6
2010	100.0	90.4	58.5	47.6	10.9	23.9	6.9	1.1	9.6
Male									
2006	100.0	89.8	56.7	45.7	11.0	25.0	7.3	0.9	10.2
2007	100.0	89.8	56.9	45.9	11.0	24.7	7.3	0.9	10.2
2008	100.0	89.8	57.2	46.1	11.0	24.5	7.2	0.9	10.2
2009	100.0	89.8	57.4	46.3	11.1	24.3	7.3	0.8	10.2
2010	100.0	89.8	58.0	46.8	11.2	23.8	7.0	1.1	10.2
Female									
2006	100.0	91.0	57.4	47.2	10.1	25.0	7.7	1.0	9.0
2007	100.0	91.1	58.0	47.5	10.4	25.1	6.9	1.2	8.9
2008	100.0	91.4	58.2	47.9	10.3	25.0	7.3	1.0	8.6
2009	100.0	91.5	58.6	48.2	10.4	25.0	6.9	1.0	8.5
2010	100.0	91.6	59.5	49.1	10.4	24.3	6.8	1.1	8.4

Source: Department of Statistics, Malaysia (data not yet revised to account for Census 2010 results).

As seen in Table 19, the majority of employed persons are employees, 74%, and that percentage is higher for women (78%) than for men (72%). Employers (defined as persons who operate a business, a plantation or other trade and employ one or more workers) count for just below 4% of employed persons, own account workers (persons who operate their own farm, business or trade without employing any paid workers in the conduct of their occupation) count for 17% of employed persons. The number of unpaid family workers has been falling slowly, the entire reduction being due to women. On the other hand, the proportion of female employer and own account workers rose slightly between 2006 and 2010, a result which was consistent with Government policy to encourage the participation of women in businesses.

Table 19: Percentage Distribution of Employed persons by Status of Employment, Malaysia, 2006-2010

Sex			Total	Employer	Employee	Own Account Worker	Unpaid Family Worker
Total	2006	('000)	10,275	397	7,633	1,733	512
		(%)	100.0	3.9	74.3	16.9	5.0
	2007	('000)	10,538	363	7,824	1,832	520
		(%)	100.0	3.4	74.2	17.4	4.9
	2008	('000)	10,660	371	7,951	1,851	486
		(%)	100.0	3.5	74.6	17.4	4.6
	2009	('000)	10,897	399	8,154	1,863	482
		(%)	100.0	3.7	74.8	17.1	4.4
	2010	('000)	11,129	438	8,274	1,917	500
		(%)	100.0	3.9	74.4	17.2	4.5
Male	2006	('000)	6,619	341	4,776	1,319	182
		(%)	100.0	5.2	72.2	19.9	2.8
	2007	('000)	6,747	312	4,893	1,357	185
		(%)	100.0	4.6	72.5	20.1	2.7
	2008	('000)	6,851	319	4,947	1,407	179
		(%)	100.0	4.7	72.2	20.5	2.6
	2009	('000)	6,956	339	5,067	1,380	170
		(%)	100.0	4.9	72.9	19.8	2.4
	2010	('000)	7,112	371	5,124	1,432	185
		(%)	100.0	5.2	72.0	20.1	2.6
Female	2006	('000)	3,657	56	2,857	414	330
		(%)	100.0	1.5	78.1	11.3	9.0
	2007	('000)	3,791	51	2,931	475	335
		(%)	100.0	1.3	77.3	12.5	8.8
	2008	('000)	3,809	53	3,004	444	308
		(%)	100.0	1.4	78.9	11.7	8.1
	2009	('000)	3,942	61	3,086	483	312
		(%)	100.0	1.5	78.3	12.2	7.9
	2010	('000)	4,017	67	3,150	485	315
		(%)	100.0	1.7	78.4	12.1	7.8

Source: Department of Statistics, Malaysia (data not yet revised to account for Census 2010 results).

A detailed breakdown of employment by industry is provided in Table 20 for the year 2010. This table has been ranked by descending share of employment, showing at a glance that manufacturing employment ranks just before wholesale and retail trade, with close to one sixth of employed persons (and little difference between men and women). Agriculture still occupies a large share of workers, 13% in total and 16% amongst men – which is nearly twice the proportion observed for women. Construction follows at 9%, with only a small percentage of women being active in that group. The accommodation industry attracts a somewhat lower share of men than women, but this is especially observable in the education sector, a phenomenon which is common in most countries.

Table 20: Percentage distribution of employed persons by industry and sex, 2010

	Total	Male	Female
Manufacturing	16.9	16.3	17.9
Wholesale and retail trade; repair of motor vehicles and motorcycles	16.2	16.2	16.2
Agriculture, forestry and fishing	13.3	16.0	8.5
Construction	9.1	13.0	2.3
Accommodation and food service activities	7.3	6.0	9.5
Public administration and defence; compulsory social security	6.9	7.6	5.8
Education	6.9	3.7	12.7
Transportation and storage	4.8	6.4	1.9
Administrative and support service activities	3.0	3.1	2.7
Financial and insurance/ takaful activities	2.7	2.0	4.0
Human health and social work activities	2.5	1.2	4.7
Professional, scientific and technical activities	2.4	2.2	2.7
Activities of households as employers	2.1	0.3	5.4
Other service activities	1.6	1.2	2.3
Information and communication	1.4	1.6	1.3
Arts, entertainment and recreation	0.8	0.8	0.8
Water supply; sewerage, waste management and remediation activities	0.6	0.7	0.3
Mining and quarrying	0.5	0.6	0.2
Electricity, gas, steam and air conditioning supply	0.5	0.6	0.3
Real estate activities	0.5	0.5	0.6
Activities of extraterritorial organisations and bodies	0.0	0.0	0.0
Total	100.0	100.0	100.0

Source: Department of Statistics, Malaysia.

Per capita GDP by State and Territory

Table 21 provides per capita GDP for each of the thirteen states of Malaysia as well as the two federal territories of Kuala Lumpur and Labuan, revealing the large income disparities that remain within the country. Per capita income in the federal territory of Kuala Lumpur is almost 7 times that in Kelantan. From 2005 to 2010, the growth in per capita income has been significant in all states, Sabah showing the highest growth followed by Kelantan, while the territory of Labuan put in the lowest growth though only marginally lower than the state of Perlis. The data are ranked according to the 2005 to 2010 growth rate, which shows that 8 of the jurisdictions exceeded the national growth rate of 37% and the other 7 had lower than average growth.

Table 21: GDP Per Capita by State for 2005 and 2010, at Current Prices (RM)

	2005	2010 ^P	Growth from 2005 to 2010
<i>State</i>			
Sabah	10,187	17,242	69%
WP Kuala Lumpur	37,476	55,951	49%
Kelantan	5,549	8,273	49%
Pahang	15,934	22,743	43%
Selangor	22,182	31,363	41%
Perak	11,630	16,088	38%
Sarawak	24,080	33,307	38%
Kedah	9,629	13,294	38%
Johor	15,440	20,911	35%
Terengganu	14,215	19,225	35%
Negeri Sembilan	20,607	27,485	33%
Melaka	18,843	24,697	31%
Pulau Pinang	25,884	33,456	29%
Perlis	12,218	15,296	25%
WP Labuan	23,598	29,116	23%
Malaysia	19,732	27,113	37%

Source: Bank Negara (2010 preliminary).

SOCSO, EPF and Government Workers

The 3 following tables present data on SOCSO and EPF populations as well as the number of government employees. There are a number of reasons why the count of employees and of their earnings is somewhat different for SOCSO and EPF. Coverage, contribution rules, earnings definitions and the time at which the data were reported are the main reasons, the full details of which can be addressed at a later stage. In spite of this, it is seen that under either scheme, the covered population is just below 6 million, with SOCSO coverage about 130,000 less than EPF coverage. The annualized earnings base in both cases exceeds RM100 billion, and is higher for SOCSO than EPF due to the broader earnings definition that applies under SOCSO.

Table 22: SOCSO Contributors and Annualized Earnings, 2011

Monthly earnings	Contributors				Annualized earnings	
	Male	Female	Total	Cumulative distribution	Value (millions RM)	Cumulative distribution
Below RM1000	1,047,025	907,264	1,954,289	34%	14,816	13%
RM1000 to RM2000	1,073,699	759,549	1,833,248	66%	32,130	42%
RM2000 to RM2900	576,770	350,417	927,187	82%	27,096	66%
RM2900 and over	672,840	374,062	1,046,902	100%	37,437	100%
Total	3,370,334	2,391,292	5,761,626		111,480	

Source: SOCSO, special tabulation, own calculations.

Table 23: EPF Contributors and Annualized Earnings, as of August 2010

	Contributors		Annualized earnings	
	Number	Cumulative distribution	Value (millions RM)	Cumulative distribution
Up to RM1000	2,519,312	43%	15,983	16%
RM1001 to RM2000	1,677,821	71%	30,201	45%
RM2001 to RM3000	773,605	84%	23,208	68%
RM3001 to RM5000	528,206	93%	19,015	86%
RM5001 and over	392,732	100%	14,138	100%
Total	5,891,676		102,545	

Source: EPF, special tabulation, own calculations.

The number of government employees stood at 1.46 million at the latest count, in 2011. Though it is not expected that they would be covered under an eventual UI system, that possibility should not be discarded before all of its implications are reviewed.

Table 24: Number of government employees, 2006 to 2011

Item / Year	2006	2007	2008	2009	2010	2011
Federal Public Service	907,417	974,957	994,713	1,114,180	1,149,250	1,170,665
State Public Service	84,580	88,892	88,072	81,903	83,166	94,146
Federal Statutory Bodies	94,623	104,104	105,407	111,704	119,452	126,497
State Statutory Bodies	14,195	14,478	12,868	13,022	16,805	16,043
Local Authorities	41,968	43,155	43,305	44,175	51,714	52,517
Total Public Servant	1,142,783	1,225,586	1,244,365	1,364,984	1,420,387	1,459,868

Source : Public Service Department of Malaysia (unpublished data).

Unemployment Situation

Table 25 provides, for 2010 and 2011, the distribution of unemployed persons according to whether they ever worked before becoming unemployed, as well as the length of time for which they have been searching for work. Close to 70% or about 270,000 unemployed persons had previous work experience, and few of the unemployed encountered long term idleness. Both of these findings are important and paint an encouraging picture of their labour market situation – suggesting a positive outlook for their reintegration into the active workforce, as well as the perspective that an UI system could be of applicability in those circumstances.

Table 25: Numbers of unemployed persons by work experience, duration of unemployment and sex, Malaysia, 2010-2011

Sex/duration of unemployment	Number ('000)					
	2010			2011		
	Total	Worked before	Never worked	Total	Worked before	Never worked
Total number of unemployed	395.8	269.3	126.5	382.9	272.0	110.9
Active (see notes below)	222.4	160.6	61.9	222.6	165.8	56.8
Non-active (see notes below)	173.4	108.7	64.7	160.3	106.3	54.0
Active unemployed						
Total	222.4	160.6	61.9	222.6	165.8	56.8
less than 3 months	105.7	82.1	23.7	110.9	85.7	25.2
3 months - less than 6 months	65.2	45.3	19.9	64.4	46.6	17.8
6 months - less than 1 year	28.8	18.6	10.2	26.8	19.4	7.4
1 - 3 years	19.3	12.3	7.0	17.2	12.0	5.2
more than 3 years	3.4	2.3	1.1	3.3	2.0	1.3
Male	139.8	109.8	30.1	136.5	110.0	26.5
less than 3 months	68.6	56.3	12.3	71.6	58.4	13.2
3 months - less than 6 months	41.2	31.7	9.5	37.2	29.6	7.6
6 months - less than 1 year	16.0	11.9	4.1	15.4	12.3	3.1
1 - 3 years	11.9	8.2	3.7	9.7	7.9	1.9
more than 3 years	2.1	1.7	0.5	2.6	1.8	0.8
Female	82.6	50.8	31.8	86.1	55.8	30.3
less than 3 months	37.1	25.8	11.4	39.3	27.3	12.0
3 months - less than 6 months	24.0	13.6	10.4	27.2	17.0	10.2
6 months - less than 1 year	12.8	6.8	6.1	11.4	7.1	4.3
1 - 3 years	7.4	4.1	3.3	7.5	4.1	3.3
more than 3 years	1.3	0.6	0.7	0.7	0.2	0.5

“The unemployed are classified into two, that is the actively unemployed and inactively unemployed. The actively unemployed include all persons who did not work during the reference week but were available for work and actively looking for work during the reference week. Inactively unemployed persons include the following categories:

- (a) persons who did not look for work because they believed no work was available or that they were not qualified;
- (b) persons who would have looked for work if they had not been temporarily ill or had it not been for bad weather;
- (c) persons who were waiting for result of job applications; and
- (d) persons who had looked for work prior to the reference week.”

Source: Labour Force Survey, Department of Statistics Malaysia (special tabulation)

Additional data indicates that the unemployment rate is not highly differentiated by sex, even if it has remained about 10% higher for women as compared to men (Table 26). This should however be viewed in light of the fact that women have a much lower labour force participation rate, suggesting a significant degree of underemployment for them.

Table 26: Unemployment rate by sex (percent)

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Total	3.5	3.5	3.6	3.5	3.5	3.3	3.2	3.3	3.7	3.4
Male	3.4	3.3	3.6	3.4	3.4	3.3	3.1	3.2	3.6	3.3
Female	3.8	3.8	3.6	3.8	3.7	3.4	3.4	3.7	3.8	3.6

Source: Labour Force Survey, Department of Statistics Malaysia.

A group of prime concern are youth aged 15 to 24, since young adults struggles at finding and keeping employment can mark them for their entire career and maybe even prevent some of them from becoming fully productive and fulfilled members of society and of their communities. Since at least 2001, the unemployment rate amongst the youths of Malaysia has remained stubbornly high, at over 10% for both young men and young women (Table 27). Similarly, youth unemployment constituted in 2010 no less than 60% of total unemployment, 57% for young men and 65% for young women (Table 28).

These percentages have been gradually decreasing over time but remain quite worrisome. However, more encouraging is the fact that in 2010 only 4.5% of the total youth population were unemployed, counting both the participant and non-participant population (Table 29). This time, however, the proportion is higher for young men than for young women (3.8%). But for both men and women this rate has decreased since 2001.

Table 27: Youth Unemployment Rate by Sex (percent)

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Total	10.5	10.7	10.9	11.7	11.7	10.9	10.9	10.9	11.9	11.3
Male	10.3	10.3	11.0	11.2	11.5	10.8	10.5	10.3	11.5	10.9
Female	10.7	11.4	10.7	12.4	12.0	11.0	11.5	11.8	12.5	12.0

Source: Labour Force Survey, Department of Statistics Malaysia.

Table 28: Youth unemployment as a proportion of total unemployment by sex (percent)

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Total	66.1	66.4	65.0	68.0	66.7	64.6	64.9	62.2	58.8	59.7
Male	61.8	60.8	60.4	63.3	62.1	60.0	60.7	58.2	54.5	56.5
Female	73.0	75.2	73.1	75.5	74.3	72.5	71.5	68.3	66.1	64.8

Source: Labour Force Survey, Department of Statistics Malaysia.

Table 29: Youth unemployment as a proportion of the youth population by sex (percent)

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Total	5.0	4.9	5.1	5.2	5.0	4.6	4.5	4.5	4.8	4.5
Male	5.7	5.5	5.9	5.8	5.8	5.3	5.1	5.0	5.4	5.1
Female	4.3	4.4	4.2	4.5	4.3	3.8	3.9	4.0	4.1	3.8

Source: Labour Force Survey, Department of Statistics Malaysia.

A last perspective on unemployment is gained by looking at the percentage distribution of unemployment persons according to their level of education (Table 30). This shows that close to three quarters of job seekers have only primary or secondary education, but that for out-of-work women an increasing proportion have tertiary education, reaching 35% in 2010. Further study would be needed to determine the reasons for this trend, which could relate for example to curricula, quality of education or societal factors.

Table 30: Percentage distribution of unemployed persons by educational attainment and sex

Sex		2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Total	Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
	None	2.8	4.0	3.6	3.0	2.6	3.0	2.2	3.9	3.1	3.8
	Primary	13.4	13.5	12.4	13.3	11.5	11.6	11.1	10.4	11.6	10.0
	Secondary	68.9	64.2	65.1	62.8	62.4	60.8	61.6	60.9	60.7	60.1
	Tertiary	14.8	18.3	18.9	20.9	23.6	24.5	25.1	24.9	24.7	26.1
Male	Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
	None	2.6	3.3	3.9	3.1	2.4	2.9	2.4	3.7	3.0	3.3
	Primary	15.8	16.1	14.3	15.9	13.4	13.5	12.3	11.6	13.7	12.0
	Secondary	70.7	66.3	66.7	65.4	66.3	65.3	66.3	64.7	63.9	64.3
	Tertiary	10.9	14.3	15.1	15.6	17.9	18.3	19.0	20.1	19.4	20.3
Female	Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
	None	3.2	4.9	3.1	3.0	3.0	3.2	2.0	4.2	3.3	4.4
	Primary	9.6	9.4	8.9	9.1	8.1	8.3	9.2	8.5	8.0	6.8
	Secondary	66.0	60.9	62.3	58.6	55.9	53.1	54.0	55.0	55.2	53.4
	Tertiary	21.1	24.8	25.6	29.3	33.1	35.4	34.8	32.3	33.5	35.4
Source: Labour Force Survey, Department of Statistics Malaysia.											

Appendix 3

EPF, SOCSO and HRDF Contributions and Earnings

1. SOCSO (Employment Injury Insurance and Invalidity Pension)

Conditions		Contribution Rate	
		Employer	Worker
1 st covered salary < RM3000: mandatory, once-in always-in	Age < 50 when first insured ¹	1.75%	0.5%
	Age > 50 when first insured ²	1.25%	n.a.
1 st covered salary > RM3000: voluntary, if both employer and worker agree	Age < 50 when first insured ¹	1.75%	0.5%
	Age > 50 when first insured ²	1.25%	n.a.
Included: private sector employees Excluded: government employees, foreign workers, domestic servants, self-employed, business owners and their spouses			
Contributory wages: all wages up to RM3000 per month, including overtime pay, commission, leave, allowances (incentive, good behaviour, cost of living), service charges; excluding bonus and retrenchment benefits			

¹ Covered for employment injury and invalidity; at age 55 or if certified invalid, the second line applies.

² Covered for employment injury only.

2. EPF (Employees Provident Fund)

Conditions	Contribution Rate	
	Employer	Worker
Age under 55, Salary < RM5,000	13.0%	11.0%
Age under 55, Salary > RM5,000	12.0%	11.0%
Age 55 to 75, Salary < RM5,000	6.5%	5.5%
Age 55 to 75, Salary > RM5,000	6.0%	5.5%
Foreign Workers (voluntary)	RM5/month	11%
Included: private sector employees & non-pensionable govt employees; voluntary for pensionable govt employees, self-employed, domestic maids and foreign workers Excluded: temporary foreign workers earning less than RM2500, pensioners		
Contributory wages: all wages (without limit) including bonus, commission, allowances (incentive, good behaviour, cost of living); excluding overtime pay, service charges, retrenchment benefits		

3. HRDF (Human Resources Development Fund)

Conditions	Contribution Rate	
	Employer	Worker
Mandatory coverage (specific industries in manufacturing and service sector, based on minimum size)	1%	n.a.
Voluntary coverage (firms excluded due to their size below minimum)	0.5%	n.a.
Contributory wages: all wages (without limits)		

Appendix 4

Code of Conduct for Industrial Harmony, 1975: Redundancy and Retrenchment

20. In circumstances where redundancy is likely an employer should, in consultation with his employees' representatives or their trade union, as appropriate, and in consultation with the Ministry of Labour and Manpower, take positive steps to avert minimise reductions of workforce by the adoption of appropriate measures such as:

- i) limitation on recruitment;
- ii) restriction of overtime work;
- iii) restriction of work on weekly day of rest;
- iv) reduction in number of shifts or days worked a week;
- v) reduction in the number of hours of work; and
- vi) re-training and/ or transfer to other department/work.

21. The ultimate responsibility for deciding on the size of the workforce must rest with the employer, but, before any decision on reduction is taken there should be consultation with the workers or their trade union representatives on the reduction.

22. a) If retrenchment becomes necessary, despite having taken appropriate measures, the employer should take the following measures:

- i) giving as early a warning, as practicable, to the workers concerned;
- ii) introducing schemes for voluntary retrenchment and retirement and for payment of redundancy and retirement benefits;
- iii) retiring workers who are beyond their normal retiring age;
- iv) assisting in co-operation with the Ministry of Labour and Manpower, the workers to find work outside the undertaking;
- v) spreading termination of employment over a longer period;
- vi) ensuring that no such announcement is made before the workers and their representatives or trade union have been informed.

b) The employer should select employees to be retrenched in accordance with an objective criteria. Such criteria, which should have been worked out in advance with the employees' representatives or trade union, as appropriate, may include:

- i) need for the efficient operation of the establishment or undertaking;
- ii) ability, experience, skill and occupational qualifications of individual workers required by the establishment or undertaking under (i);
- iii) consideration for length of service and status (non-citizens, casual, temporary, permanent);
- iv) age;
- v) family situation; and
- vi) such other criteria as may be formulated in the context of national policies.

23. Employees who are retrenched should be given priority of engagement/re-engagement, as far as is possible, by the employer when he engages workers.

24. The appropriate measures and objective criteria should comprise part of the establishments or undertaking's employment policy.

Appendix 5

Scenarios for Consideration of a Possible Design of Malaysian UI/EI System

<u>Scenario #1</u>	<u>Scenario #2</u>	<u>Scenario #3</u>
Pillar 1: Mandatory UI System	Pillar 1: Mandatory UI System Pillar 2: Active Labour Market Policies	Pillar 1: Mandatory UI System Pillar 2: Active Labour Market Policies Pillar 3: Supplementary Individual Savings Accounts
Retrenchment: Phasing out retrenchment benefits while introducing unemployment benefits: workers receive accrued retrenchment benefits up to the effective date of implementation of UI system. No retrenchment benefits are paid for work commencing after effective date of UI system.	Retrenchment: Same as Scenario #1.	Retrenchment: Same as Scenario #1. The accumulated value of employers' contributions in the saving accounts are deducted from any retrenchment benefits otherwise due at termination of contract.
Coverage: All private sector salaried employees and apprentices under a contract of service of any type or duration, excluding foreign workers and domestic servants.	Coverage: Same as Scenario #1.	Coverage: Same as Scenario #1.
Illustrative Contributions: 0.25% of covered wages for employers and 0.25% of covered wages for workers.	Illustrative Contributions: UI financing: Same as Scenario #1 Plus ALMP financing: 0.2% of covered wages (equally shared between employers and the government, integrated with HRDF).	Illustrative Contributions: UI financing: Same as Scenario #1 Plus ALMP financing: 0.2% of covered wages (equally shared between employers and the government,, integrated with HRDF). Plus Savings Accounts: 1% of covered wages for employers and 1% for workers

<u>Scenario #1</u>	<u>Scenario #2</u>	<u>Scenario #3</u>
Pillar 1: Mandatory UI System	Pillar 1: Mandatory UI System Pillar 2: Active Labour Market Policies	Pillar 1: Mandatory UI System Pillar 2: Active Labour Market Policies Pillar 3: Supplementary Individual Savings Accounts
<p>Benefit Rate and Duration: UI system to pay partial and limited income replacement benefits with a monthly benefit rate of 50% of previous earnings, and duration of benefits from 3 to 6 months depending on previous contributions.</p>	<p>Benefit Rate and Duration: Same as Scenario #1.</p>	<p>Benefit Rate and Duration: Same as Scenario #1.</p> <p>For the Supplementary Individual Savings Account, a lump sum payment will be made after termination of employment irrespective of the reasons for termination, in recognition of past service, and will not affect UI benefits.</p>
<p>Reason for Separation: Workers who voluntarily quit their positions without just cause will have their benefits denied. Those who voluntarily quit with just cause will be entitled to receive UI benefits.</p>	<p>Reason for Separation: Same as Scenario #1.</p>	<p>Reason for Separation: Same as Scenario #1.</p> <p>For savings accounts, the retrenched workers can receive both the employers' and workers' cumulated savings as a lump sum in case of involuntary termination of the contract. In case of voluntary departure (retirement, resignation or misconduct), workers will only be entitled to their own portion of the savings, and employers will be entitled to recover their own share.</p>

<u>Scenario #1</u>	<u>Scenario #2</u>	<u>Scenario #3</u>
Pillar 1: Mandatory UI System	Pillar 1: Mandatory UI System Pillar 2: Active Labour Market Policies	Pillar 1: Mandatory UI System Pillar 2: Active Labour Market Policies Pillar 3: Supplementary Individual Savings Accounts
<p>Qualifying Conditions: Workers would require 12 months of contributions in the last 24 months to qualify.</p> <p>Workers must register promptly after the termination of employment to the employment office to prove that they are available and capable of work and are actively looking for work.</p>	<p>Qualifying Conditions: Same as Scenario #1.</p>	<p>Qualifying Conditions: Same as Scenario #1.</p> <p>For savings account, no qualifying conditions imposed.</p>
<p>Waiting Period: Benefits not payable for the first 7 days of unemployment.</p>	<p>Waiting Period: Same as Scenario #1.</p>	<p>Waiting Period: Same as Scenario #1.</p> <p>Not applicable to savings accounts.</p>
<p>Ongoing Entitlement: Unemployed workers must report to the employment office on a monthly basis to continue receiving benefits.</p> <p>The second refusal of a suitable employment will result in a suspension of benefits.</p>	<p>Ongoing Entitlement: Same as Scenario #1.</p>	<p>Ongoing Entitlement: Same as Scenario #1.</p> <p>Not applicable to savings accounts.</p>

<u>Scenario #1</u>	<u>Scenario #2</u>	<u>Scenario #3</u>
Pillar 1: Mandatory UI System	Pillar 1: Mandatory UI System Pillar 2: Active Labour Market Policies	Pillar 1: Mandatory UI System Pillar 2: Active Labour Market Policies Pillar 3: Supplementary Individual Savings Accounts
Active Labour Market Policies: Unemployed workers are entitled to free job placement and counselling activities (job search workshops).	Active Labour Market Policies: Includes job placement and counselling activities; in addition, measures to assist unemployed workers find work as quickly as possible, such as mobility assistance, vocational training and retraining.	Active Labour Market Policies: Same as Scenario #2.
Governance: To be determined at a later stage. However, recommended: - MoHR to develop legal framework; - SOCSO to collect contributions, administer UI claims, pay benefits and manage UI Fund; - Jobs Malaysia to assume responsibilities for registration of job seekers and ongoing monthly reporting; - Vocational training agencies to be involved in selection of candidates from unemployed workers who wish to attend training courses.	Governance: Same as Scenario #1.	Governance: Same as Scenario #1. For the individual savings account, the Employee Provident Fund could possibly assume responsibilities for administration.

<u>Scenario #1</u>	<u>Scenario #2</u>	<u>Scenario #3</u>
Pillar 1: Mandatory UI System	Pillar 1: Mandatory UI System Pillar 2: Active Labour Market Policies	Pillar 1: Mandatory UI System Pillar 2: Active Labour Market Policies Pillar 3: Supplementary Individual Savings Accounts
<p>International References: Out of 78 countries offering unemployment protection, 64 have contributory UI systems. (World Social Security Report, ILO, 2010/11, page 59)</p>	<p>International References: Combining an ALMP pillar with the UI pillar has become the norm amongst countries, for example throughout Europe, in Japan and South Korea as well as in Canada. The scope of ALMP measures varies greatly from country to country.</p>	<p>International References: “External funding through individual accounts or centralized funds is limited to a small but growing number of middle- to high-income countries, with individual accounts concentrated in upper-middle-income and a few high-income countries.” (Reforming Severance Pay - An International Perspective, World Bank, 2012, page 36)</p>

Appendix 6

Work Sharing Program

The presentation on “UI in Other Countries” at the regional and national tripartite workshops referred to a special feature that has seen growing use within a number of UI systems, notably in Germany, France, Denmark and Canada.

The Canadian Work Sharing Program is especially popular with employers in times of crisis. Service Canada describes it as follows: “Work sharing is an adjustment program designed to help employers and employees avoid temporary layoffs when there is a reduction in the normal level of business activity that is beyond the control of the employer. The provisions provide income support to employees eligible for Employment Insurance benefits who work a temporarily reduced work week while their employer recovers”.⁵⁵

In 2008, a record number of work sharing agreements were signed between employers and employees due to the global financial crisis. The program benefits employers as they are able to retain their workforce and avoid the costly process of hiring and training new employees when business returns to normal levels. It benefits workers who are not laid off as a result of a shortage of work retaining their skills and their wages are supplemented by Employment Insurance (EI) benefits for the hours they are not working.

To be eligible, employers must have been in business for at least two years and have suffered a recent decrease in business (approximately 10%). The expected work shortage should be short and temporary and beyond the control of the employer. Eligible employees must be part of “core staff”, eligible to receive EI and agree to a reduction of their normal hours in order to share the available work.

In Germany, the program is called “Short-Time Allowance” (STA). STA is available when economic or unavoidable circumstances (such as a meaningful reduction in business activity) force companies to cut work hours and put part of the staff on temporary short-time. The allowance amounts to 60% of employees’ foregone net wages. If the worker’s household includes a child, 67% is paid. Employers calculate STA and pay it to the employees. The employers are then reimbursed by the respective local employment agency. The following requirements are needed for STA approval:

- Unavoidable or temporary reduction in normal working hours affecting at least 1/3 of staff and resulting in a loss of income from work of more than 10% of monthly gross earnings;
- Company and individual requirements have been met and
- The employer notified the cut in hours to the local employment agency.

It’s been estimated that 500,000 workers benefited from STA during the 2008 global financial crisis, avoiding 120,000 layoffs.

The United States is now also promoting short-time compensation under UI as a result of the *Middle Class Tax Relief and Job Creation Act of 2012*. “Work sharing is a win-win for workers and employers”, said a federal government spokesperson. “This program will provide more flexibility to workers and employers so they may more efficiently and effectively weather the ups and downs of the economy”⁵⁶. The US Labor Department recently issued guidance to state UI agencies on implementing short-time compensation of work sharing.

⁵⁵ Service Canada website: http://www.servicecanada.gc.ca/eng/work_sharing/index.shtml

⁵⁶ “Market Watch – The Wall Street Journal: <http://www.marketwatch.com/story/us-labor-department-announces-guidance-to-state-unemployment-insurance-agencies-on-implementing-short-time-compensation-or-work-sharing-2012-06-18>.”

Appendix 7

Treatment of Retrenchment (Severance) Payments under UI/EI Systems	
Country	Treatment under UI/EI Systems
Argentina	Severance payments amount to one-half month of wages per year of service; they are ignored for UI purposes and, therefore, UI benefits are paid in full irrespective of any payments.
Bahrain	There are no statutory severance payments and no impact on UI benefits.
Canada	As a provincial responsibility, severance payments are covered by various Labour Codes. Severance payments are allocated to post-employment weeks based on the normal rate of pay, thus delaying the start of UI benefits.
Chile	UI system does not take severance payments into account, so that UI benefits are paid in full even in the presence of legally mandated payments to terminated workers. Employers' accumulated contributions to an individual's UI savings account are, since the start of the UI system in 2002, deducted from future severance payments, which indirectly serves to partially prefund those payments (as it turns out, employers thus prefund about 20% of their severance obligation). In this way, UI benefits are not reduced, instead it is the severance payments that are reduced.
France	The start of UI benefits is deferred when the amount paid as severance pay exceeds the legally required payments.
Thailand	The UI system do not take severance payments into account, so that UI benefits are paid in full even in the presence of legally mandated payments to terminated workers.
United States	Some States consider dismissal or severance payments to be deductible income for benefit purposes. Alternatively, they might consider them as wages for contribution purposes, so that workers receiving such payments would not be considered as unemployed. - The opposite may also occur: under some rulings, workers receiving dismissal payments were held to be unemployed because the payments were considered to be for their prior service, not for the period following their separation from work.
Viet Nam	Since 2009, the time during which UI contributions are paid for an employee is not counted for the purposes of severance pay. For service before 2009 or uninsured employment since 2009, there are three circumstances under which severance pay is due: 1) where an employee or an employer terminates a labour contract with an employee who has worked for more than 12 months; 2) where an employer illegally terminates a labour contract with an employee and as a result, is forced to take him back but he/she refuses to return to work and 3) in the case of redundancy due to changes of the business structure or technology. There are no provisions in the UI Act concerning severance payments and therefore the unemployed workers can receive full UI benefits.

Appendix 8

Just Cause for Quitting (Canada)

Under the *EI Act* in Canada, those who voluntarily leave their employment without just cause are denied EI benefits. But in some cases an employee who quits may prove “just cause” and be able to receive unreduced EI benefits. “Just cause” exists where, having regard to all the circumstances, the unemployed worker had, as specified in the Canadian *EI Act*, “no reasonable alternative” but to leave their employment, a situation that has to be proven on the balance of facts. In some cases, alternatives did exist but didn’t resolve the situation or all attempts were exhausted without success. There are some 40 circumstances where “just cause” might be proven in Canada, most of them listed below. More information is on Service Canada’s website⁵⁷.

1. Armed Forces–Failure to Re-enlist for a Further Term	20. Disciplinary Action–Penalty Clearly Disproportionate
2. Discrimination on a Prohibited Ground	21. Duties–Intolerable Situation
3. Health Adversely Affected by Work or Working Environment	22. Health Adversely Affected–On Credible and Convincing Explanations from the Claimant
4. Health Adversely Affected–On Doctor's Advice	23. Illness in Immediate Family–Presence Required
5. Intolerable Situations–Living Accommodations, Food, Facilities, Employment Amenities	24. Moral Objections Based on Religious Beliefs
6. Moral Objections: Employer's Practices Contrary to Professional Ethics, Law	25. Moral Objections: Illegal Activities or Contrary to Fundamental Ethical Values
7. Moving Because of an Anticipated Marriage	26. Moving with Parents in the Case of a Minor
8. Obligation to Accompany a Spouse, Common-law Partner or Dependent Child to Another Residence	27. Obligation to Care for a Child or a Member of the Immediate Family
9. Overtime–Excessive Hours	28. Overtime–Failure to Pay
10. Pregnancy–Incapacity to Work and Leave Not Granted	29. Assurance of Another Employment in the Immediate Future
11. Relation with Authority–Hostile Atmosphere Created by Superiors	30. Relation with Co-workers–Abusive Treatment
12. Retirement–Undue Pressures from Employer	31. Sexual or Other Harassment
13. Transportation problems–serious, even insolvable	32. Union Relations–Employer's Abusive Treatment
14. Union Relations–No Longer Acting as Strike-breaker	33. Wages–Formal Promise of Increase Not Fulfilled
15. Wages–Hiring Conditions Not Honoured	34. Wages–Loss Due to Employer's Financial Difficulties
16. Wages–Unjustified Reduction	35. Wages or Salary Less than Provided by Legislation
17. Work Away from Family–Serious Illness in the Family	36. Work Away from Family–After a Reasonable Period of Absence
18. Working Conditions–Significant Unilateral Changes	37. Working Conditions–Unreasonable, Restrictive
19. Working Conditions that Constitute a Danger to Health or Safety	

⁵⁷ Service Canada website: http://www.servicecanada.gc.ca/eng/ei/information/voluntarily_leaving.shtml and *Digest of Benefit Entitlement Principles*: http://www.servicecanada.gc.ca/eng/ei/digest/6_8_0.shtml.

Appendix 9

Unemployment Protection – Savings Accounts

(as discussed in Sabah and Sarawak on May 21 and May 22)

Concept: compulsory savings, with funds set aside by workers and their employers, and unemployed persons can draw them out if they lose their jobs

Coverage: all salaried private sector employees, including foreign workers (legally employed) and domestic workers

Contributions: the employer and worker each contribute 2% of total wages (including overtime, allowances, bonuses, etc.) up to a limit of RM5000 per month (maximum contributions of RM100 each per month); these funds (plus interest) are deposited in an individual account for the exclusive benefit of each worker

Eligibility conditions: any covered worker who contributes for at least 12 months and loses his or her job through no fault of their own can withdraw funds, each month, at the rate of 50% of their previous average wages, for (i) as long as the funds last; provided (ii) a person is unemployed, and (iii) actively looking for work

Waiting period: no benefits are paid for the first 7 days of unemployment

Payment: benefits are paid at the end of each month until funds are exhausted

Unemployment condition: unemployed workers must report by the end of each month at the public employment office, and certify that they did not earn any money during the month and were continuously and actively looking for work

Lump sum payment: at retirement, death, disability, leaving country

Illustration: worker earning RM1000 per month, benefit = RM500 per month:

Worker works		Accumulates (plus interest)	If unemployed, receives
12 months	1 year	RM480	0.96 month
24 months	2 years	RM960	1.92 months
36 months	3 years	RM1,440	2.88 months
48 months	4 years	RM1,920	3.84 months
60 months	5 years	RM2,400	4.80 months
72 months	6 years	RM2,880	5.76 months
84 months	7 years	RM3,360	6.72 months
etc.			

=> Worker receives about 1 month of benefits per year of service (assuming: 50% benefit rate & 4% total contribution)

Appendix 10

JobsMalaysia Data

The averaged data shown below was retrieved from the JobsMalaysia website at the end of the day on three recent dates, namely on June 27, July 10 and July 24, 2012. Totals and distributions did not vary significantly from one date to another which is why we are only showing the average for the three dates.

Statistics of active jobseekers by job type			Active or 'Open' vacancies by available job type			Number of job seekers per 100 vacancies
Sector	Number	%	Sector	Number	%	
(1) Senior Officials and Managers	25,794	7.2%	(1) Managers	1,029	0.5%	2,507
(2) Professionals	105,711	29.3%	(2) Professionals	4,107	2.0%	2,574
(3) Technicians and Associate Professionals	63,194	17.5%	(3) Technicians And Associate Professionals	4,117	2.0%	1,535
(4) Clerical Workers	90,558	25.1%	(4) Clerical Support Workers	3,770	1.9%	2,402
<i>Sub-total (1) to (4):</i>	<i>285,257</i>	<i>79.1%</i>	<i>Sub-total (1) to (4):</i>	<i>13,023</i>	<i>6.4%</i>	<i>2,190</i>
(5) Service Workers and Shop and Market Sales Workers	16,097	4.5%	(5) Service And Sales Workers	16,297	8.0%	99
(6) Skilled Agricultural and Fishery Workers	2,608	0.7%	(6) Skilled Agricultural, Forestry, Livestock And Fishery Workers	13,207	6.5%	20
(7) Craft and Related Trades Workers	8,829	2.4%	(7) Craft And Related Trades Workers	8,577	4.2%	103
(8) Plant & Machine-Operators and Assemblers	10,262	2.8%	(8) Plant And Machine Operators And Assemblers	19,666	9.7%	52
<i>Sub-total (5) to (8):</i>	<i>37,797</i>	<i>10.5%</i>	<i>Sub-total (5) to (8):</i>	<i>57,747</i>	<i>28.5%</i>	<i>65</i>
(9) Elementary Occupations	7,149	2.0%	(9) Elementary Occupations	131,847	65.1%	5
(10) Others	30,390	8.4%	(10) Armed Forces Occupations	0	0.0%	
Grand Total	360,593	100.0%	Grand Total	202,617	100.0%	178
Grand Total less Elementary Occupations	353,444		Grand Total less Elementary Occupations	70,770		499

Appendix 11

Definitions

Unemployment Insurance (UI)	An insurance system, usually mandatory, based on employer, employee and government contributions or any combination thereof, under which temporary partial income replacement benefits are paid to unemployed workers who are involuntarily unemployed and are available, capable and actively looking for work.
Employment Insurance (EI)	As UI, but EI may place more emphasis on so-called active labour market policies (ALMPs) to assist unemployed workers and complement the UI benefits paid to unemployed workers to look for work. These ALMPs provide assistance to unemployed workers to find work quickly such as mobility assistance or purchasing tools as well as enhancing or upgrading skills development through vocational training or retraining.
Unemployment Insurance Savings Account (UISAs)	A mandatory system based on contributions from workers and employers and paid into an individual savings account, complemented by an insurance component of the form offered by UI/EI system.
Active Labour market Policies (ALMP)	Measures to assist unemployed workers return to work, for example by offering them job search assistance, interview skills, resume writing sessions, individual re-employment plans, training or retraining assistance or wage and employment subsidies.
Termination of Employment	Occurs when the employment of an employee terminates, whether for involuntary or voluntary reasons. The reason for separation could be involuntary such as in the case of lack of work, completed contract, seasonal work, business closure or moved to another locality. The employer could also dismiss the employee for misconduct or the employee could voluntarily quit his/her position.
Redundancy Dismissal	Redundancy relates to the situation where an employer considers that there is excess staff working for his enterprise. Regulations made in 1980 require the payment of retrenchment benefits in cases of redundancy or due to the take-over or cessation of a business, for employees who are covered by the Employment Act.
Retrenchment	Strictly speaking, retrenchment is the act of reducing expenditure in order to improve financial stability. Many enterprises who are having difficulty meeting their financial obligations during periods of financial crisis will consider downsizing or curtailing business activities or decide to close or move their business.
Retrenchment benefits	Retrenchment benefits are payments made by employers or out of a fund to compensate employees for loss of employment in a redundancy situation due to downsizing, technological changes, business closure, restructuring, reduction in production, mergers, take over, economic downturn or other similar circumstances. Retrenchment benefits can be paid as a result of statutory obligations such as, in Malaysia, the <i>Employment (Termination and Lay-off Benefits) Regulations</i> of 1980. Employers can also provide similar or better benefits pursuant to individual or collective agreements.
Lay Off Benefits	“Layoffs”, as defined in the <i>Employment (Termination and Lay-Off Benefits) Regulations 1980</i> , refer to situations where the employer does not provide work and the employee is not remunerated for at least twelve normal working days within any period of four consecutive weeks. Employees who meet the definition of “layoffs” are entitled to retrenchment benefits.

Salary Pay Cuts	Periods of non-work, reduced work or regular work when employees agree to receive lower wages in exchange for not being terminated. Retrenchment benefits are not applicable in this case.
Severance Pay	An allowance usually based on length of employment and on previous salary to which an employee is eligible upon termination of employment. It is a sum of money apart from wages or back pay, paid to an employee in recognition of long service and who is terminated because of lack of work. Severance pay might also be paid to employees who cease employment for other reasons, such as normal retirement.
Voluntary Separation Schemes (VSS) – sometimes called Mutual Separation Schemes (MSS)	VSS arrangements may be offered to groups of employees instead of retrenchment, lay-offs or salary cuts. Usually many more employees than actually need to be terminated are offered VSS leaving it to individuals within that group to decide if they wish to accept the offer. The employer can then choose which and how many of the consenting employees are actually given the VSS package. This process can be an effective way for employers and employees to negotiate acceptable terms in redundancy situations, allowing unemployed workers to receive better packages on separation.
Relief Fund	During 2009, the ILO, at the request of SOCSO Malaysia and in collaboration with the Korea Labor Institute, conducted a national tripartite seminar that led to proposing two approaches for income protection to retrenched workers: a retrenchment benefit guarantee fund (RBGF) of the type that MTUC had put forward in 1998, and an unemployment insurance system. It was estimated that the proposed UI system, described therein as a “Relief Fund” providing a flat benefit for 6 months, should cost about 0.2% of covered earnings. Under the Tenth Malaysia Plan, the Government thereafter allocated RM80 million for this Relief Fund, over the 2010 to 2012 period. The Cabinet decided that this fund would be put on hold until a comprehensive and permanent UI system had been decided upon, “as an exit strategy to replace the Relief Fund”.

SUPPLEMENTAL APPENDIX

Case Study : Chile – Unemployment Benefits

Chile Country Data

Area	756,096.3 km ² (compared to 329,847 km ² for Malaysia)
Population (est. June 30, 2012)	17,402,630
Urban share of population	87.0%
<u>Age structure</u>	
• 0-14 years	21.8%
• 15-64 years	68.7%
• 65 years and over	9.5%
Adult literacy rate (aged 15 and above)	98.6%
Life expectancy at birth (years)	79.1
<u>GDP per capita (2010)</u>	
• US\$	11,929
• PPP (US\$, IMF)	15,002
Labour force (2011)	8.0 million
<u>Labour Force Participation Rates (2011)</u>	
• Total	59.7%
• Men	72.7%
• Women	47.3%
Unemployment rate (2011)	7.1%
Human Development Index (HDI) Rank (2011)	44
HDI Gender Inequality Index / Rank (2011)	0.374 / 68



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Summary of the UI Scheme in Chile

Start date	October 2, 2002
Type of Scheme	Individual Savings Accounts supplemented by Solidarity Benefits
Target group	Private sector workers subject to the Labour Code, with voluntary coverage of those employed before Oct. 2, 2002.
Target population	Insured: 3.9 million employees (73% of all salaried employees in Chile)
Benefits	<ul style="list-style-type: none"> - Monthly payments for any cause from Individual Savings Accounts - Solidarity Benefits if qualified and laid-off for business reasons
Qualifying Conditions	<ul style="list-style-type: none"> - Individual Savings Accounts: 6 or 12 months of insured employment, depending on whether permanent or temporary employee - Solidarity Benefits: 12 months of insured employment in last 24 months, the last 3 being continuous and with the same employer
Benefit amounts and duration	<p>Decreasing monthly benefits based on previous average earnings:</p> <ul style="list-style-type: none"> - for permanent workers, lasting up to 5 months starting at 50% and reducing by 5 percentage points each month; - for temporary workers, lasting 2 months at 35% and 30% respectively.
Source of funding	<ul style="list-style-type: none"> - Combined employer and worker contributions totalling 3% of insured wages, subject to a maximum that is adjusted each year. - Indexed government contribution equal to about 6% of employer-employee contributions.
Impact	<ul style="list-style-type: none"> - Less than 20% of all unemployed workers receive benefits from the scheme, about 90% of which comes from Individual Savings Accounts. - Take-up rate is 35% overall, only 13% for Solidarity Benefits. - Very low benefits.
Sustainability	<ul style="list-style-type: none"> - Growing annual surpluses - OECD recommends improving benefits
Administration	<ul style="list-style-type: none"> - Private manager collects contributions, receives and decides applications, pays benefits, manages investments - Various government agencies exercise supervision and report to the private manager on jobseekers' compliance with return to work requirements
Summary assessment	<ul style="list-style-type: none"> - A high cost scheme providing low protection. - Exemplary transparency and accountability arrangements.

History and Background

Easy to recognize on a map, Chile is a long, narrow country, wedged in between the Andes Mountains to the East and the Pacific Ocean to the West, laid out as a ribbon almost 4,700 kilometres long and averaging about 175 kilometres wide. As a result of its relative isolation on the South American continent, Chile has sometimes been compared to an island, but it shares many links with the rest of the continent, both cultural and economic. Chile has only three neighbours: Argentina over about 3,900 kilometres of its eastern border, Bolivia over a 700 kilometre stretch of the northeast, and Peru over a short stretch, about 150 kilometres long, of the northern border.

Chile's north to south layout brings with it a variety of climates: from arid deserts in the north to dry temperate conditions in the center (around the capital city of Santiago), temperate then sub polar rainforests in the mid southern area, rounded out by alpine and tundra conditions going further south as far as the southern tip of the continent.

Before Spanish explorers arrived around the mid-1500s, Chile had been inhabited mainly by the indigenous Mapuche as well as, in the North, by the Incas. Over the next 300 years, the Spanish gradually occupied the northern part of the country. Cut off to the north by desert, to the south by the Mapuche, to the east by the Andes Mountains, and to the west by the ocean, Chile became one of the most centralized, homogeneous colonies in Spanish America, a situation which forged the country's identity and institutions.

After an 8-year war of liberation, the country declared itself independent from Spain in 1818. Chilean politics during the 19th century were described as retaining a "stratified colonial social structure, which was greatly influenced by family politics and the Roman Catholic Church." The 20th century saw Chile being usually ruled by an oligarchy that was established both in politics and in business.

A socialist government was elected in 1970 but was overthrown by a military coup in 1973, leading to 17 years of military rule, during which the country adopted neoliberal economic, social and institutional policies that have lasted to this day. With the return of democracy in 1990, the country has become one of South America's most developed and stable countries. Nevertheless, Chile stands out within the OECD as suffering from high income inequality and poverty, even if it has done better than most other countries in Latin America. Chile's current population exceeds 17 million, about 40% of whom live in the Santiago area.

Economy

Chile has been a member of the WTO (World Trade Organization) since 1995 and in 2010 became the first South American country to join the OECD. Its per capita GDP stood at 15,000 US\$ in 2010 (on the basis of purchasing-power parity, under IMF estimates), second only to Argentina on the continent. That figure has grown by an average of 6.4% from 1990 to 2008, dropping by 2.0% during the 2009 recession before recovering to traditional growth rates in 2010 and 2011.

Chile is one of the most stable and prosperous developing nations and consistently ranks high on international indices relating to economic freedom, transparency, and competitiveness. Since 1990, it has pursued market-oriented strategies, expanding global commercial ties, and actively participating in international matters and hemispheric free trade.

The mining sector, largely due to copper extraction, represents one of Chile’s most important engines of economic growth and revenue. It contributes approximately 15% of GDP, 50% of exports and 30% of government revenues. The government obtains a large part of those revenues from its ownership of Chile’s largest company, Codelco, which is the largest producer of copper in the world. Business services (13% of GDP), manufacturing (11%) and personal services (11%) come after mining in terms of their contribution to GDP, followed by the retail sector (8%) and construction (7%). Chile is known for its wines and is the world’s second largest producer of salmon (after Norway), though its agriculture and forestry sectors contributed less than 3% of GDP in 2011.

From a low of just over 6.0% in mid-2007, the national unemployment rate rose to a high point of 10.1% in August 2009 (on a seasonally-adjusted basis), before falling back to 8.1% in 2010 and to 7.1% in 2011. The Chilean labour force is marked by the low participation rate of women (48% compared to 73% for men, in December 2011), and their high unemployment rate (8.0% compared to 5.7% for men). Chilean women in fact have the lowest participation rate of women in Latin America. A further notable fact about the Chilean labour force is the large proportion of persons engaged in self-employment, no less than 23% in December 2011 as seen in the table below.

Table 31: Employed labour force in Chile, December 2011*

<i>Type of worker</i>	<i>Number</i>	<i>Distribution</i>
Salaried workers	5,348,160	70.5%
Self-employed (incl. business owners)	1,763,770	23.2%
Others	477,480	6.3%
Total	7,589,410	100.0%

* As published for the 3 months centered on December 2011.

Source: National Institute of Statistics (INE), Chile.

Chile is generally viewed as pursuing sound macro-economic policies. The Economist Intelligence Unit’s latest long-term outlook stated: “There is broad consensus on maintaining a free-market economy and pursuing prudent monetary and fiscal policies. This will provide a basis for continued steady long-term economic growth. A wide network of bilateral FTAs has further helped Chile to attract investment, diversify its economy and offset the small size of its own market.”

Other significant facts about Chile

The following additional information is mostly taken from the Economist Intelligence Unit’s 66 page review of Chile and its economy, published in January 2012.

- In July 2011, the minimum monthly wage for workers aged 18 to 65 was increased by 5.8% from 172,000 Chilean pesos (US\$ 356/month) to 182,000 pesos (US\$ 377/month). The minimum wage is normally adjusted annually to keep pace with changes in prices and general wage levels.

- Companies must provide profit-sharing for each worker. Terms may be provided in the employment contract; otherwise, companies must distribute 30% of profits, or 25% of yearly income.

- After one year of employment, an employee receives 15 paid days (three calendar weeks) of annual leave. After ten years, this increases by one extra day of annual leave, plus one for every three additional years worked, up to 35 days.
- Workers are allowed up to three days of paid sick leave without a doctor's note.
- Law 20.238, signed in 2009, requires equal pay for equal work, regardless of gender.
- Companies with more than 20 female employees must either establish free day-care centres for the children of their female employees or pay directly for such services.
- The retirement age is 65 years for men and 60 for women. Workers must cover the full cost of their social-security benefits (pension, disability and health insurance) through direct deductions that account for about 20% of salary. This includes nearly 13% for pension and life insurance, which goes into individual pension accounts with the privately managed pension fund of each worker's choice. The remaining 7% is for health insurance.
- The country introduced a mandatory unemployment savings scheme in 2002, complemented by a basic unemployment insurance scheme. That scheme, as amended in 2009, will be described in more detail in the following sections.

Protection against loss of employment

Employment protection legislation in Chile dates back to 1924, when employers were first required to give advance notice of layoffs, namely a six day notice for blue-collar workers and one month for salaried workers. In addition, severance payments of one month per year of service were provided at termination to salaried workers (but not to blue-collar workers).

The system went through many changes over the years. Severance must now be paid to all workers laid off for an acceptable business reason, at the rate of one month per year of service, subject to a maximum of 11 months. In addition, workers must be given a 30-day advance notice before they are laid off. The indemnity may be increased through collective bargaining. Neither severance payments nor advance notice are required when termination is due to the worker's own decision (e.g. retirement or voluntary resignation) or fault (misconduct).

It appears however that many workers do not get the legally required severance payments, as many employers are able to negotiate lower settlements with laid-off workers, given the desire of those unemployed persons to avoid court procedures. A 2009 OECD report echoed this situation in the following terms: "... there is evidence suggesting that in Chile employers often avoid paying the full amount of severance payments by reaching an agreement with workers, or simply by refusing to pay. Non-compliance also creates a burden on labour courts and government budgets."⁵⁸

⁵⁸ *OECD Reviews of Labour Market and Social Policies: Chile*, published 2009, OECD (page 20).

Unemployment Benefits in Chile

History

There had been a limited UI scheme in Chile before 2001, under a system initiated in 1937 and modified a number of times. This program still applies to individuals who have not yet come under the new UI program, along with public employees. Known as *subsídio de cesantía* or unemployment subsidy, the scheme has had low coverage and benefits throughout most of its history.

The adoption of a comprehensive UI program had been under consideration for about a decade when it was passed by the Chilean National Congress in April 2001. Various proposals had been proposed or debated before then but stiff opposition prevented any of them from being adopted. Following the election of a social democrat president in 2000 and on the heels of an economic crisis in 1999, new UI legislation was adopted in April 2001, under the designation of *seguro de cesantía* (unemployment insurance).

Coverage

The UI scheme in Chile covers all salaried employees in the private sector, or more precisely all employees covered by the Labour Code. There are four main exceptions (in addition to public employees and the armed forces): domestic workers, apprentices, youth aged below 18, and retired persons. There is an additional exemption, namely that coverage is optional for all employees working on the date when the scheme was launched, October 1, 2002, and mandatory only for contracts starting after that date. Nationals and foreign workers are on an equal footing.

In December 2011, 3.9 million workers contributed to the UI scheme, representing 73% of the 5.3 million salaried workers then reported in the national labour force survey. The remainder were accounted for by the previously mentioned exclusions (estimated at about 600,000 individuals), by non-covered individuals having held employment since before the UI scheme started to operate on October 2, 2002⁵⁹ and by possible non-compliance of some employers.

Contributions

The scheme provides for combined employer-employee contributions at the rate of 3% of insured wages for all covered workers, plus an indexed government subsidy, but the manner in which contributions are allocated depends on whether a worker is considered to be permanent or temporary.

For employees with an indefinite or permanent contract, employers pay 2.4% of insured wages, two-thirds of which (1.6%) goes into the employee's individual savings account (ISA). The remainder of the employer contribution (0.8%) is paid into the solidarity fund, which is the true insurance component of the scheme. Permanent workers for their part contribute 0.6% of their insured wages, all of which goes to their ISA.

For temporary workers, namely workers engaged under contracts that do not exceed one year (which, incidentally, are not eligible for severance payments), employers pay the entire 3.0% contribution, most of which (2.8%) goes into the ISA and only 0.2% is turned over to the insurance fund.

⁵⁹ Voluntary enrolment amongst pre-2002 workers has been modest, currently reaching 160,000 workers of an estimated 600,000 to 800,000 such employees. Current new voluntary enrolments average 750 individuals each month.

Table 32: Contributions under the Chilean UI Scheme
(based on insured wages)

	<i>Destination of contributions</i>					
	Indefinite employees			Temporary workers		
<i>Source of contributions</i>	Total	Individual Savings Account	Insurance Fund	Total	Individual Savings Account	Insurance Fund
Employer	2.4%	1.6%	0.8%	3.0%	2.8%	0.2%
Worker	0.6%	0.6%	n.a.	n.a.	n.a.	n.a.
Total	3.0%	2.2%	0.8%	3.0%	2.8%	0.2%

Insured wages are the total wages paid to covered workers up to a monthly maximum, which is indexed throughout the year in accordance with the inflation rate and each year to keep pace with changes in average earnings. The current maximum insured earnings are 2.3 million Chilean pesos per month, or about US\$4,700.

Two additional rules must be mentioned: first, employer and worker contributions to ISAs end after 11 years of employment with the same employer, but the employer's contribution to the insurance fund must continue; and second, employers can subtract the value of the contributions they make to their employees ISAs (plus interest earned) from the eventual severance payments they would have to pay⁶⁰.

Benefits

Benefits under the Chilean scheme are linked to coverage and contributions.

- To access their ISAs, workers need 6 or 12 monthly contributions, depending on whether they were temporary or indefinite employees. These ISA benefits are paid for any job termination, including voluntary quitting and cases of misconduct.
- Withdrawals from ISAs are paid at decreasing monthly rates until the account is empty (at rates of 50%, 45%, 40%, 35%, 30%, 25% and 20%, applied to the last 6 or 12 months average insured earnings).
- Requirements for insurance benefits are as follows: (i) 12 contributions within the last 24 months, the last 3 being continuous and with the same employer; (ii) job loss must be involuntary; (iii) the individual account must be exhausted; and (iv) claims cannot be made more than twice in 5 years.
- Insurance benefits for indefinite workers are made so that, in combination with ISA benefits, there are 5 monthly payments at the rates shown above. For temporary workers, payments are made to produce 2 monthly payments at rates of 35% and 30%, including payments from ISAs.
- "High unemployment" benefits consist of 2 extra months of insurance benefits at a monthly rate of 25% each, if the current unemployment rate is 1 point higher than the 4-year average rate.
- Health insurance is kept in force while receiving monthly benefits.
- Family allowances for low-income families continue for persons entitled to insurance benefits.
- There is no waiting period.
- Payments from ISAs continue for the duration of unemployment, without any job search obligation. Claimants can choose to receive a payment for the month during which they become re-employed.

⁶⁰ Which effectively gives them a 19.2% discount of their future obligation for severance payments.

- Insurance benefits for the unemployed require active job search and monthly reporting to the municipal employment office (OMIL). Claimants must join the National Job Bank, attend scheduled interviews and accept suitable employment or training referrals.
- Benefits cannot be paid while receiving a retirement or disability pension.

Administration

Chile has a history of managing its social security schemes through non governmental concerns, such as mutualistic, non-profit or private for-profit organizations. Government agencies then assume a monitoring and coordination function, and may be called upon to fill the gaps left by those other bodies. The pension system, for example, as established in 1981, is administered for profit by a number of private companies, the six AFPs. Similarly, management of the UI scheme was devolved in 2002 to a non governmental administrator, which came to be AFC, a private firm formed by the consortium of the 6 AFPs.

AFC was selected on the basis of a competitive bidding process, under a 10 year contract running until 2012, for the sole purpose of managing the UI scheme. It is responsible for collecting UI contributions, paying benefits and investing funds, and all related functions. Its remuneration comes from the commissions based on its investment results, but is notably unrelated to claim workload or duration. AFC is however subject to performance measures concerning how it handles all of its functions and to penalties if those measures are not met. This control is exercised by SP (*Superintendencia de Pensiones*, the Pension Superintendence), the government agency that performs a similar monitoring role for the private pension fund administrators.

Thus, AFC's primary mission is to invest and safeguard the funds it collects on behalf of workers, the task of helping unemployed workers find suitable jobs being left to other institutions, mainly through links to the municipal employment offices (known as *OMIL*). The OMILs are supported by a job bank established in 2011, the management of which has also been adjudicated under private contract.

The private administrator, AFC Chile, has approximately 100 employees of its own. It has subcontracted with the AFPs for the collection of contributions and for the receipt of benefit claims. There is no benefit control function of significant scope, other than internal computer matches against contributor records and reports made by OMILs, as to whether individuals show up each month for their scheduled appointment.

The AFPs operate 190 local offices which can be accessed by UI claimants, while AFC operates 18 of its own offices plus 2 mobile units. Claims for benefits must be made in person but it is possible for individuals to request affiliation, whether mandatory or voluntary, over the Internet. Employers may also use the Internet to advise AFC of job terminations or new hires. Benefit payments go directly to claimants, either in cash at certain financial outlets, by cheques mailed to recipients or by direct deposits in individual bank accounts.

AFC's thus subcontracts for most of the services it needs to operate. In addition to the above, the actuarial reports of 2003, 2005 and 2008 were done by consultants, an earlier version of the national job bank was developed by an external firm (in consultation with government agencies), AFC's informatics systems were developed and are maintained under a contract with one of the shareholders of AFC, the call centre is operated by an external firm.

In its supervisory role, SP has issued a number of detailed directives to AFC concerning the administration of ISAs and of the solidarity fund, accounting, financial and statistical requirements, actuarial reports, calculation of investment yields, procedures and standards to be followed in the collection of contributions and payment of benefits, etc. SP also monitors constantly how AFC performs in respect to all of these requirements, and has on occasion imposed financial penalties when problems arose.

Filing a Claim for Benefits

To receive benefits, unemployed workers must present a claim at an AFC or at an AFP office. They must then provide a completed and certified *finiquito* (a certified document delivered by the employer at termination of employment, certifying that all outstanding obligations of the employer-employee relationship have been settled) along with their personal identification card. Alternative proof of contract termination is possible if the unemployed worker cannot produce a *finiquito*.

The attending agent will then enter all of the information provided by the worker into the computer system and print out the one-page completed claim form, for the signature of the claimant (a sample form is provided in Appendix 1, in Spanish). The form will also contain the claimant's option concerning solidarity benefits, if applicable. The claimant must decide immediately whether or not to elect benefits under the insurance component, and that choice will apply for the duration of the claim.

The claim processing function is streamlined, based on adjudication processes that rely entirely on the *finiquito* for the reason of separation and on an automated system for the number of contribution months. In addition, no details are asked at this point about work history, qualifications, potential training or other similar issues since this is the responsibility of the local OMIL and not of AFC.

If a claimant does indeed qualify for and elect insurance benefits, they will have to register at an OMIL as a jobseeker, complete the requisite interview and form, and then report each month to that office at the dates specified by AFC, to prove their continuing entitlement. The OMIL will advise AFC whether jobseekers comply with the monthly reporting requirement. The monthly unemployment benefits to qualified jobseekers will be paid by direct bank deposit, cash or cheque.

While the OMILs should in principle be on the front line of helping unemployed workers find new jobs, through job search assistance or training referrals, many of them lack the financial and human resources they would require to fulfill that mission efficiently. Equally important, the OMILs may in practice have insufficient incentives to lead them in the desired direction.

Jobseekers must also enter their information into the National Job Bank (*Bolsa Nacional de Empleo*, or BNE). The BNE is an integrated database system, used by unemployed workers looking for employment and by employers to post their job vacancies. The current version of the BNE was developed in 2010 and 2011, replacing the previous system that had been operated by AFC since 2002. The operation of the new BNE has been adjudicated to a private firm under a three-year contract.

Accountability and transparency features

The Chilean UI scheme is notable for the strength of its transparency and accountability features.

All of the funds are held on behalf of contributors in trust, at arm's length from government, and are managed without government intervention or influence on particular investments. The government's involvement is limited to setting the rules and standards which the fund managers must follow, including performance measures in regards to investment results.

Comprehensive statistics on contributions and contributors, on benefit payments and on the growth of the Individual Savings Accounts as well as of the Solidarity Fund are published regularly and promptly, most of them on a monthly basis. All of the relevant data on operations, including quarterly and annual financial reports, are made available publicly through the Internet.

The legislation governing the UI scheme provides that external analysts are entitled to obtain access on demand to a sample database of contributors and claimants and relevant operations affecting them, for the purpose of conducting any academic studies they deem appropriate.

The legislation has created an independent Committee of Users, composed of three representatives of employees plus three representatives of employers, under the chairmanship of a university academic nominated by the government. This committee has full access to financial and operational data of the UI scheme and must report annually on the scheme's functioning, its challenges and any proposed changes to the legislation or to any administrative aspects. That report must be made public through the Internet.

An actuarial report on the projected financial state of the UI scheme over future years must be conducted jointly every three years (required every two years before 2009) by the Pension Superintendence and the Ministry of Finance's Budget Office. That report must be made public. Similar reports must be made every time changes are proposed to the legislation.

Bidding for the management of the UI scheme must be conducted in an open manner, all of the details being made publicly available. The contract cannot be attributed to any firm that has been condemned over the last 2 years for anti-union practices or for practices contrary to workers' fundamental rights.

Financial Experience

The following tables show the main categories of revenues and spending from 2002 to 2011. Contributions have exceeded benefit payments every year for both the ISAs and the Solidarity Fund. Furthermore, in the case of the Solidarity Fund, the returns on investments have even exceeded the payments made to beneficiaries. For both the ISAs and the Solidarity Fund, the growth in annual surpluses has even accelerated over the years, leading to growing fund balances. This trend continued even during the 2008-2009 economic downturn, in spite of modest benefit improvements made in 2009 and 2010.

Table 33: Financial Experience for Individual Savings Accounts

	Contributions	Benefit Payments	Investment returns	Commissions	Annual Surplus	Year-end balance
	---- (in millions of Chilean pesos) ----					
2002	207	0	1	0	208	208
2003	65,415	5,451	210	109	60,065	60,273
2004	115,622	31,044	5,089	407	89,260	149,533
2005	165,498	55,300	7,065	783	116,480	266,013
2006	214,612	85,776	30,338	1,298	157,876	423,889
2007	272,500	107,875	44,388	2,344	206,670	630,559
2008	345,366	142,894	46,369	3,827	245,014	875,573
2009	376,203	196,712	63,987	4,883	238,594	1,114,167
2010	439,172	195,167	69,908	6,922	306,991	1,421,158
2011	518,388	235,957	126,348	8,591	400,189	1,821,347

Table 34: Financial Experience for the Solidarity Fund

	Contributions	Benefit Payments	Investment returns	Commissions	Annual Surplus	Year-end balance
	---- (in millions of Chilean pesos) ----					
2002	252	0	0	0	252	252
2003	7,400	2	24	19	7,403	7,655
2004	22,765	1,364	859	-05	22,154	29,809
2005	35,722	3,733	1,459	261	33,188	62,997
2006	50,118	5,464	7,756	462	51,948	114,945
2007	66,981	6,012	12,772	794	72,947	187,892
2008	87,697	7,403	14,134	1,339	93,087	280,979
2009	107,579	19,501	21,938	1,919	108,096	389,075
2010	130,462	26,055	37,922	2,828	139,502	528,577
2011	154,460	21,188	39,770	3,766	169,276	697,853

Table 35: Financial Experience for Both Funds Combined

	Contributions	Benefit Payments	Investment returns	Commissions	Annual Surplus	Year-end balance
	---- (in millions of Chilean pesos) ----					
2002	459	0	1	0	460	460
2003	72,815	5,453	234	128	67,468	67,928
2004	138,387	32,408	5,948	512	111,414	179,342
2005	201,220	59,033	8,524	1,044	149,668	329,010
2006	264,730	91,240	38,094	1,760	209,824	538,834
2007	339,481	113,887	57,160	3,138	279,617	818,451
2008	433,063	150,297	60,503	5,166	338,101	1,156,552
2009	483,782	216,213	85,925	6,802	346,690	1,503,242
2010	569,634	221,222	107,830	9,750	446,493	1,949,735
2011	672,848	257,145	166,118	12,357	569,465	2,519,200

Source: data from SP website (<http://www.safp.cl/safpstats/stats/>).

The ISA surpluses at the end of 2011 thus represented 1.5% of the 2011 GDP of Chile⁶¹ while the surplus in the Solidarity Fund represented 0.6% of GDP. As projected in the last actuarial valuation in 2008⁶², those ratios will continue to grow over the next 15 years or so. For ISAs, the cumulative surpluses could reach close to 3% of GDP in 2015 and 6% of GDP by 2024. For the Solidarity Fund, the cumulative surpluses could reach about 1% of GDP in 2015 and 2.3% by 2024.

⁶¹ Estimated by the Central Bank of Chile at 120,232,603 million pesos (data accessed on April 22, 2012).

⁶² 2008 Actuarial Report for the Chilean UI Scheme (Spanish): <http://www.spensiones.cl/redirect/files/doctrab/DT00033.pdf>.

Globally, those results reflect the restrictive conditions for benefits and low benefits adopted under the Chilean UI scheme in 2002 and show that significant benefit improvements could be provided without increasing current contributions. Those conclusions are taken from the 2010 report of the independent Committee of employer and worker users, as submitted to government authorities⁶³. The Committee added in its report that the emphasis placed on ISAs within the UI system was not compatible with the objectives of a UI scheme, because it effectively placed most of the costs of unemployment on those least able to afford them, namely workers with discontinuous work patterns, low wages and variable earnings. The Committee went on to propose a number of benefit improvements that could reinforce the insurance features of the UI scheme without jeopardizing its financial sustainability.

Benefits paid

The total benefits paid under the Chilean UI scheme have equalled 36% of the contributions collected since 2002, with a ratio of 42% for the ISAs and of only 14% for the Solidarity Fund. The relevant data are shown in the following table.

Table 36: Total Contributions and Benefits under the Chilean UI Scheme, from 2002 to 2011

	Contributions	Benefits	Payout Ratios
	<i>---- (in millions of Chilean pesos) ----</i>		
ISAs	2,512,983	1,056,176	42%
Solidarity Fund	663,436	90,722	14%
Both funds combined	3,176,419	1,146,898	36%

The low payout ratio for the ISAs (42%) flows from the design of the Chilean UI scheme: it is driven by the need to set a uniformly high contribution rate to ensure at least a basic amount of individual savings for unemployed permanent workers – the group who were the scheme’s primary targets. Thus, their total ISA contribution was set at 2.2% of insured wages, as seen earlier in Table 2, since lower contributions would not have provided them with worthwhile income from their ISAs. In spite of this contribution rate, the group only receives modest benefits (starting at 50% of previous earnings in the first month and decreasing thereafter to 25% by the sixth month), amongst the lowest seen internationally. For temporary workers, the situation is even less favourable, considering that their 2.8% contribution rate corresponds to a maximum entitlement of two months of benefits, at even lower rates (35% and 30% of their previous earnings).

The payout ratio is even lower for the Solidarity Fund than under the ISAs, at only 14%. Apart from restrictive conditions for insurance benefits and the low benefit rates, this is also attributed to the low take-up of insurance benefits, it being estimated in a 2009 study⁶⁴ that only 13% of those who were eligible for insurance benefits did in fact ask for them – as compared to take-up rates ranging from 46% to 77% in other countries.

⁶³ The Committee’s nine reports since 2002 are available in Spanish at <http://www.safp.cl/573/article-3829.html>.

⁶⁴ Analysis of the Usage of UI Benefits, at <http://www.spensiones.cl/redirect/files/doctrab/DT00051.pdf>.

These low take-up rates were also seen as a problem by the employer-worker Committee of Users. The Committee recommended a number of public information steps to help remedy that situation. However, such measures might not be the entire answer to the problem, since the 2009 study suggested that the low take-up was also due to the low level of benefits: many jobseekers were not willing to invest their time to apply for benefits, in light of the minimal payments they could receive. This would be especially so for temporary workers who form a major part of the unemployed population, and whose low earnings would only entitle them to minimum benefits.

A different perspective on the Chilean UI scheme can be obtained by examining the number of beneficiaries and the sources of payments made to them, namely whether the benefits were made out of the ISAs or the Solidarity Fund. The average number of unemployed is also shown in Table 7 below. The table shows that almost 90% of all payments are made out of ISAs, 6% come from the Solidarity Fund and the rest come from both sources (when ISA funds are insufficient to cover a full month, the balance of the monthly payment will come from the Solidarity Fund, provided someone is eligible and has opted for them).

Table 37: Average Number of Benefit Recipients from 2003 to 2011 under the Chilean UI Scheme, by Source of Payment, compared to the Average Number of Unemployed

	Sources of Payments* ¹				Unemployed (average number)	Ratio, Total Recipients over Unemployed* ²
	ISA	Solidarity Fund	Mixed	Total Recipients		
2003	8,346	0	6	8,352	609,133	1.4%
2004	36,439	890	632	37,961	662,729	5.7%
2005	57,155	2,433	1,565	61,153	627,421	9.7%
2006	78,357	3,135	2,113	83,606	531,763	15.7%
2007	90,379	3,738	2,902	97,018	494,327	19.6%
2008	102,024	4,386	3,161	109,570	562,400	19.5%
2009	127,400	12,842	6,462	146,703	707,718	20.7%
2010	106,773	15,825	9,562	132,159	626,085	21.1%
2011	120,516	8,650	7,404	136,570	575,381	23.7%
Average	80,821	5,766	3,756	90,344	599,662	15.1%
Distribution	89%	6%	4%	100%		

*¹ Source: Superintendence of Pensions of Chile (www.safp.cl).

*² Source: National Institute of Statistics of Chile (www.ine.cl).

Though the effective UI coverage seems to be trending upwards, to a current level of about 23%, it must be borne in mind that ISA benefits can be paid for any job termination, even misconduct, and that no active job search is required unless someone opts for insurance benefits from the Solidarity Fund. In addition, the first month of ISA benefits can be paid even if someone returns to work immediately. These rules reflect the premise that individuals are free to draw at will on their own savings. As a result, the calculated ratio of total recipients to unemployed is an overestimation of the UI scheme's effective coverage of the unemployed.

Conclusion

The final word on the Chilean UI scheme is given to the OECD, from its 2012 Country Analysis:

“To better protect workers against unemployment and enhance efficiency, Chile should build on recent efforts to strengthen unemployment benefits further. When the system was introduced in 2002 the government started out with moderate benefits to assess sustainability first. Since then benefits have increased somewhat. The system is based on individual savings accounts and a complementary insurance fund, but savings in individual accounts are low for most workers; a large minority have accumulated less than one month’s minimum wage.”

A more extensive extract of that report is found in Appendix 2.

Appendix 1 – Claim Form for Unemployment Benefits in Chile

AFC Chile ADMINISTRADORA DE FONDOS DE CESANTIA		SOLICITUD DE PRESTACION POR SEGURO DE DESEMPLEO			
Tipo Solicitante : 1 = Titular <input type="checkbox"/> 2 = Mandatario <input type="checkbox"/>		FOLIO <input style="width: 100px;" type="text"/>		FECHA DE RECEPCION	
		REGION	AFP	SUCURSAL	DIA MES AÑO
Documentación Recepcionada : <input type="checkbox"/> Original Poder Notarial <input type="checkbox"/> Fotocopia Poder Legalizada <input type="checkbox"/> Inquilino <input type="checkbox"/> Carta de Despido <input type="checkbox"/> Liquidación de Seguro <input type="checkbox"/> Otros Detallar _____					
SECCION 1: DATOS DEL AFILIADO (Dejar un espacio en blanco entre los apellidos y nombres)					
RUT	APELLIDO PATERNO	APELLIDO MATERNO	NOMBRES		
FECHA NACIMIENTO	SEXO	PROFESION U OFICIO	ESTADO CIVIL		
DIA MES AÑO	1- Masc. <input type="checkbox"/> 2- Fem. <input type="checkbox"/>		Soltero (e) <input type="checkbox"/> Viudo (a) <input type="checkbox"/> Casado (e) <input type="checkbox"/>		
NIVEL DE EDUCACION	1- Sin Estudios 2- Educ. Básica 3- Educ. Media Clásica - Hímanica 4- Media Técnica - Profesional 5- Centro de Formación Técnica o las titulos Profesional 6- Universidad Pregrado 7- Universidad Postgrado				Nº de Años Aprobados
DOMICILIO ACTUAL					
Calle		Nº	Dep. N°/ Bloq/ Sector/ Población/ Mila	Región	Ciudad
Comuna		Cajilla		Correo	
Código Postal	Teléfono		E-Mail		
SECCION 2: DATOS DEL EMPLEO (Llenar por la Agencia de acuerdo al finiquito)					
1.- CODIGO ACTIVIDAD ECONOMICA		CODIGO		RUT EMPLEADOR	
2.- NOMBRE O RAZON SOCIAL EMPLEADOR					
FECHA TERMINACION DE RELACION LABORAL					
DIA MES AÑO					
2.1 DOMICILIO					
CALLE	Nº	DEPTO.	POBL./VILLA	COMUNA	REGION TELEFONO
3.- CAUSAL DE TERMINO DE CONTRATO					
<input type="checkbox"/> Art. 159 N° 1: Mutuo acuerdo <input type="checkbox"/> Art. 159 N° 2: Renuncia <input type="checkbox"/> Art. 159 N° 4: Venimiento de plazo <input type="checkbox"/> Art. 159 N° 5: Término de trabajo o servicio <input type="checkbox"/> Art. 159 N° 6: Caso fortuito o fuerza mayor <input type="checkbox"/> Art. 160: Causal imputable al trabajador <input type="checkbox"/> Art. 161: Necesidades de la empresa <input type="checkbox"/> Art. 171, inciso 1					
SECCION 3: OPCION FONDO DE CESANTIA SOLIDARIO			Sección 3.1: Carga Familiar (Sólo si opta Fondo de Cesantía Solidario)		
Sólo para trabajadores con causal de despido: Art. 159 -N°s o Art. 161, ambos del Código de Trabajo. SI <input type="checkbox"/> NO <input type="checkbox"/>			N° Cargas <input type="text"/> Monto Pagado Última Lq. Seguro \$ <input style="width: 100px;" type="text"/>		
SECCION 4: OTRAS INFORMACIONES					
SELECCION MODALIDAD DE PAGO			4.- Depósitos en:		
1.- Efectivo <input type="checkbox"/>			a) Cta. Cte. <input type="checkbox"/>		
2.- Cheque nominativo domicilio <input type="checkbox"/>			b) Cta. Ahorro <input type="checkbox"/>		
3.- Giros postales o radiales <input type="checkbox"/>			c) Cta. Vista <input type="checkbox"/>		
En caso del N° 4a o 4b indicar: Nombre Banco y Suc.:			N° Cta. Cte., Vista o Ahorro:		
FECHA DEL PRIMER PAGO PRESTACION :			LUGAR DE PAGO :		
SECCION 4.1: ACTUALIZACIONES					
ACTUALIZA BENEFICIARIOS SI <input type="checkbox"/> NO <input type="checkbox"/>					
En caso de actualizar beneficiarios adjuntar formulario definido para este efecto.					
SECCION 5: MANDATARIO					
RUT	APELLIDO PATERNO	APELLIDO MATERNO	NOMBRES		
OBSERVACION LA AGENCIA DEBERA RECEPCIONAR ORIGINAL DEL PODER LEGAL O FOTOCOPIA LEGALIZADA ANTE NOTARIO					
DECLARO BAJO JURAMENTO QUE TODOS LOS DATOS CONTENIDOS EN LA PRESENTE SOLICITUD CORRESPONDEN FIELMENTE A LA VERDAD.			CERTIFICO QUE HE TENIDO ANTE MI VISTA LOS DOCUMENTOS DE IDENTIFICACION DEL SOLICITANTE: FINQUITO Y AUTORIZACION DE CARGAS FAMILIARES, SI CORRESPONDE Y QUE LOS DATOS ALLI CONSIGNADOS CORRESPONDEN A AQUELLOS CONTENIDOS EN ESTA SOLICITUD.		
FIRMA DEL TRABAJADOR O DEL MANDATARIO			FIRMA - TIMBRE NOMBRE Y RUT FUNCIONARIO AFC		

Appendix 2 – Extract from the OECD’s 2012 Country Analysis for Chile, addressing the UI Scheme in Chile

Page 31⁶⁵:

“To better protect workers against unemployment and enhance efficiency, Chile should build on recent efforts to strengthen unemployment benefits further. When the system was introduced in 2002 the government started out with moderate benefits to assess sustainability first. Since then benefits have increased somewhat. The system is based on individual savings accounts and a complementary insurance fund, but savings in individual accounts are low for most workers; a large minority have accumulated less than one month’s minimum wage. Access to the insurance fund was very restrictive until recently, so that most workers could benefit only from savings in their individual accounts. A recent reform eased access to the insurance fund, thereby improving chances for workers with indefinite contracts to obtain five monthly payments, declining from 50% to 30% of previous wages. Temporary workers can now access the insurance fund for two monthly payments with replacement rates of 35% and 30%. However, only around 15% of eligible workers exercise their right to use the fund, suggesting a lack of information about the new system. To address this, the government will require the administrator of the funds to carry out information campaigns, and this is welcome. Once it is better established, strengthening unemployment benefits further could help contribute to higher productivity, as this allows workers to search longer for a better job match. While unemployment benefits can undermine work incentives, this effect is unlikely to dominate in Chile because replacement rates and the duration of benefit receipt are very low ... Chile could gradually increase the unemployment benefit duration and/ or replacement rates, while carefully evaluating the effect on the quality of job matches and job search intensity.

Extending unemployment benefits would be an opportunity to limit severance pay and make it more neutral. Currently, severance pay is the main pillar of protection against unemployment, but it is not effective for many workers and it is likely to contribute to labour market duality. Temporary workers and workers with short tenure, who are not eligible for severance pay, account for the bulk of job turnover. Only 6% of dismissed workers are eligible for severance pay, suggesting that employers go to a considerable length to avoid paying it. There seems to be a dual labour market, where a part of the workforce has considerable job security, but the rest face unstable work relationships with lower chances for training and career progression and a higher risk of paying the cost of crises. Severance pay has been shown to reduce the employment chances of young workers (Pages and Montenegro, 2009) and productivity and output growth (Caballero et al., 2006; Micco and Pages, 2006). In return for lower severance pay, employers could be required to provide higher contributions to the individual savings accounts of all workers or to the unemployment insurance fund, which would avoid higher costs for indefinite contracts and thus the ensuing distortions. This could enhance acceptance of the reform, as workers consider severance pay as an acquired right.”

⁶⁵ Source : OECD Economic Surveys: Chile 2012; page 31.