

ANNEX IV

SCHEDULE OF MALAYSIA

HEADNOTES

*This Annex is similar to that of TPP, together with note of freeze clause under CPTPP (according to WTO Center-VCCI)

1. Commitments under Chapter 17 (State-owned Enterprises and Designated Monopolies) are undertaken subject to the limitations and conditions set forth in these headnotes and in the Schedule below.
2. The preferences referred to in Annex IV – Malaysia – 2 shall not collectively comprise more than 40 per cent of the total value of a state-owned enterprise's annual budget for purchases of goods and services for use in its commercial activities in the territory of Malaysia.
3. Paragraph 2 shall not apply to the following entities with respect to the purchase of goods and services directly related to the scope of business activities indicated below:
 - (a) Majlis Amanah Rakyat (MARA) – developing, encouraging, facilitating and fostering Bumiputera development such as in the areas of entrepreneurship, education and investment;
 - (b) Unit Peneraju Agenda Bumiputera (TERAJU) – leading and coordinating the Bumiputera Agenda with the aim of increasing sustainable Bumiputera participation and involvement in the national economy; and
 - (c) Ekuiti Nasional Berhad (EKUINAS) – the purchase and sale of equity for the purpose of delivering financial value on its investments and enhance equitable Bumiputera participation in the Malaysian economy.

Obligations Concerned: Article 17.4.1(a) and (b) (Non-discriminatory Treatment and Commercial Considerations)
Article 17.4.2(a) and (b) (Non-discriminatory Treatment and Commercial Considerations)
Article 17.6.1(a) (Non-commercial Assistance) and 17.6.2(a), with respect to the production and sale of a good in competition with a like good produced and sold by a covered investment in the territory of Malaysia.

Entity: All state-owned enterprises and designated monopolies

Scope of Non-Conforming Activities: With respect to Article 17.4.1(a) and (b) (Non-discriminatory Treatment and Commercial Considerations) and Article 17.4.2(a) and (b) (Non-discriminatory Treatment and Commercial Considerations), Malaysia may require the Entity to accord preferential treatment in its purchases of goods or services for use in its commercial activities in the territory of Malaysia to goods or services sold by:

- (a) Bumiputera enterprises, pursuant to measures implementing Bumiputera Affirmative Action¹;
- (b) enterprises located in the states of Sabah and Sarawak, pursuant to measures with the objective of promoting economic development in those states; and
- (c) small and medium enterprises.²

This reservation shall not apply with respect to Petroliam Nasional Berhad (PETRONAS), its subsidiaries or any new, reorganised or successor enterprise, when engaging in upstream activities in the oil and gas sector.

With respect to Article 17.6.1(a) (Non-commercial Assistance) and 17.6.2(a), Malaysia, its state enterprises or state-owned enterprises may provide non-commercial assistance to Bumiputera enterprises, pursuant to measures implementing Bumiputera Affirmative Action.

¹ “Bumiputera Affirmative Action” is any measure that confers, safeguards, provides preference or render assistance, benefits or other forms of rights or interests to Bumiputera companies. Malaysia reserves the right to accord and grant Bumiputera status to eligible companies.

² The term “small and medium enterprises” has the same meaning as in Guidelines for New SME Definition, October 2013, or any successive definitions introduced by the Government of Malaysia.

- Obligations Concerned:** Article 17.4.1(a) (Non-discriminatory Treatment and Commercial Considerations)
Article 17.4.1(b) (Non-discriminatory Treatment and Commercial Considerations)
- Entity:** Petroliam Nasional Berhad (PETRONAS), its subsidiaries or any new, reorganised or successor enterprise.
- Scope of Non-Conforming Activities:** With respect to Article 17.4.1(a) (Non-discriminatory Treatment and Commercial Considerations) and 17.4.1(b), the Entity may accord preferences to Malaysian enterprises in its purchase of goods or services when engaging in upstream activities in the oil and gas sector in the territory of Malaysia except for the following goods or services:
- (a) Seismic Data Acquisition;
 - (b) Directional Drilling Services, Gyro While Drilling Services, Measurement While Drilling Services and Logging While Drilling Services;
 - (c) Cementing Related Services;
 - (d) Gas Turbines and Related Maintenance and Repair Services;
 - (e) Control Valve Services;
 - (f) Oil Country Tubular Goods;
 - (g) Induction Motors Services;
 - (h) Distributed Control System (DCS) Services;
 - (i) Transformer Services;
 - (j) Structural Steel;
 - (k) Linepipes; and
 - (l) Process Pipes.

~~For the first year after signature of this Agreement, the preferences referred to above shall not comprise more than 70 per cent of the total value of the Entity's annual budget for purchases of goods and services for use in its upstream activities~~

~~in the territory of Malaysia.~~

*(This clause is freeze under CPTPP)

As a result of the suspension, the Parties agree that the phrase "after signature of this Agreement" shall refer to after the entry into force of this Agreement for Malaysia. Therefore, the Parties understand that the references in the Scope to:

- (a) "the first year" shall be the first one year period;
 - (b) "the second and third years" shall be the second and third one year periods;
 - (c) "the fourth year" shall be the fourth one year period;
 - (d) "the fifth year" shall be the fifth one year period; and
 - (e) "the sixth year" shall be the sixth one year period,
- counted from the date of entry into force of this Agreement for Malaysia.

~~For the second and third years after signature of this Agreement, the preferences shall not comprise more than 65 per cent of the total value of the Entity's annual budget for purchases of goods and services for use in its upstream activities in the territory of Malaysia.~~

~~For the fourth year after signature of this Agreement, the preferences shall not comprise more than 60 per cent of the Entity's annual budget for purchases of goods and services for use in its upstream activities in the territory of Malaysia.~~

~~For the fifth year after signature of this Agreement, the preferences shall not comprise more than 50 per cent of the Entity's annual budget for purchases of goods and services for use in its upstream activities in the territory of Malaysia.~~

~~For the sixth year after signature of this Agreement and thereafter, the preferences shall not comprise more than 40 per cent of the Entity's annual budget for purchases of goods and services for use in its upstream activities in the territory of Malaysia.~~

Note: *Petroleum Development Act 1974* (PDA 1974) vested PETRONAS with the entire ownership in, and the exclusive rights, powers, liberties and privileges of exploring, exploiting, winning and obtaining and commercialising of conventional and unconventional petroleum and hydrocarbon resources, whether onshore or offshore of Malaysia.

In addition, pursuant to PDA 1974, PETRONAS is designated as the sole entity that may award petroleum arrangements and other related contracts for exploration, development and production activities in Malaysia.

Parties recognise that the fact that PETRONAS is the sole authority designated to award petroleum arrangements and other related contracts to other companies to engage in exploration, development and production of petroleum and hydrocarbon resources does not mean that PETRONAS is a designated monopoly for the purposes of Article 17.4.2 (Non-discriminatory Treatment and Commercial Considerations).

Obligations Concerned:	Article 17.4.1(a) (Non-discriminatory Treatment and Commercial Considerations) Article 17.4.1(c) (Non-discriminatory Treatment and Commercial Considerations)
Entity:	Petroleum Nasional Berhad (PETRONAS), its subsidiaries or any new, reorganised or successor enterprise.
Scope of Non-Conforming Activities:	<p>With respect to Article 17.4.1(a) (Non-discriminatory Treatment and Commercial Considerations), the Entity may sell natural gas and its byproducts at below market rates:</p> <ul style="list-style-type: none"> (a) to consumers in the power or non-power sector or to residential consumers, in the territory of Malaysia for the purpose of ensuring adequate supply and affordable prices for the general public; and (b) to the general public in the territory of Malaysia for the use of Natural Gas Vehicles for the purpose of promoting the use of gas fuel for environmental purposes. <p>With respect to Article 17.4.1(c) (Non-discriminatory Treatment and Commercial Considerations), Malaysia may accord preferences to Malaysian persons in the sale of such goods.</p>

Obligations Concerned: Article 17.6.1(a) (Non-commercial Assistance), with respect to the production and sale of a good in competition with a like good produced and sold by a covered investment in the territory of Malaysia

Article 17.6.1(b) (Non-commercial Assistance)

Entity: PetroliaM Nasional Berhad (PETRONAS), its subsidiaries or any new, reorganised or successor enterprise.

Scope of Non-Conforming Activities: With respect to Article 17.6.1(a) (Non-commercial Assistance) and Article 17.6.1(b), Malaysia may provide the Entity with non-commercial assistance in the following circumstances:

- (a) to compensate the Entity for carrying out government-mandated projects in the territory of Malaysia outside the oil and gas sector with social implications and economic development objectives; and
- (b) to compensate the Entity for the sale of natural gas and its byproducts at below market rates:
 - (i) to consumers in the power or non-power sector, or to residential consumers, in the territory of Malaysia for the purpose of ensuring adequate supply and affordable prices for the general public; and
 - (ii) to the general public in the territory of Malaysia for the use of Natural Gas Vehicles for the purpose of promoting the use of gas fuel for environmental purposes,

provided that the government-mandated project does not itself confer an advantage to the Entity in its commercial activities.

With respect to Article 17.6.1(a) (Non-discriminatory Treatment and Commercial Considerations), Malaysia may provide the Entity with non-commercial assistance as compensation for carrying out government-mandated projects in the oil and gas sector necessary to ensure an adequate and sustainable supply of hydrocarbons or to develop capacity in the domestic oil and gas sector, provided that the government-mandated project does not itself confer an advantage to the Entity in its commercial activities.

Obligations Concerned:	Article 17.4.1(a) (Non-discriminatory Treatment and Commercial Considerations) Article 17.4.1(b) (Non-discriminatory Treatment and Commercial Considerations)
Entity:	Felda Global Ventures Berhad or any new, reorganised or successor enterprise or entity.
Scope of Non-Conforming Activities:	With respect to Article 17.4.1(a) (Non-discriminatory Treatment and Commercial Considerations) and Article 17.4.1(b), Felda Global Ventures Berhad may accord preferential treatment in its purchases of goods for the purpose of commercial resale to goods produced by its members or settlers who are participants in Federal Land Development Authority development schemes.
Measures:	<i>Land Development Ordinance 1956</i>

Obligations Concerned: Article 17.4.1(a) (Non-discriminatory Treatment and Commercial Considerations)
Article 17.4.1(c) (Non-discriminatory Treatment and Commercial Considerations)

Entity: All existing and future Development Financial Institutions

Scope of Non-Conforming Activities: With respect to Article 17.4.1(a) (Non-discriminatory Treatment and Commercial Considerations) and Article 17.4.1(c), the Entity provides financial services within the territory of Malaysia for the purposes of promoting development. Such financial services are not intended to displace or impede financial services supplied by privately-owned enterprises from the relevant market.

The Entity may accord preferences to Malaysian persons in the supply of such financial services.

“Development Financial Institutions” means institutions which carry on any activity, whether for profit or otherwise, with or without any Government funding, with the purpose of promoting development in the financial, industrial, agricultural, commercial or other economic sector, including the provision of capital or other credit facility; and for the purposes of this definition, “development” includes the commencement of any new industrial, agricultural, commercial or other economic venture or the expansion or improvement of any such existing venture. “Development Financial Institutions” includes but is not limited to:

- (a) Bank Pembangunan Malaysia Berhad;
- (b) Bank Perusahaan Kecil dan Sederhana Malaysia Berhad;
- (c) Export-Import Bank of Malaysia Berhad;
- (d) Bank Kerjasama Rakyat Malaysia;
- (e) Bank Simpanan Nasional;
- (f) Bank Pertanian Malaysia Berhad;
- (g) Malaysian Industrial Development Finance Berhad;
- (h) Credit Guarantee Corporation Berhad;

- (i) Lembaga Tabung Haji;
- (j) Sabah Development Bank Berhad;
- (k) Sabah Credit Corporation;
- (l) Borneo Development Corporation (Sabah) Sdn. Bhd.;
- (m) Borneo Development Corporation (Sarawak) Sdn. Bhd.;
- (n) Danajamin Nasional Berhad; and
- (o) Cagamas Berhad.

Measures:

Development Financial Institutions Act 2002