

ANNEX II

SCHEDULE OF BRUNEI DARUSSALAM

Sector:	All
Obligations Concerned:	National Treatment (Article 9.4 and Article 10.3) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)
Description:	<u>Investment and Cross-Border Trade in Services</u> 1. Brunei Darussalam reserves the right to adopt or maintain any measure relating to the privatisation, corporatisation, commercialisation or divestment of Government assets, entities or agencies including: (a) limitations on ownership of assets; (b) transfer or disposal of equity interests or their assets; (c) the right of foreign investors or their investments to control their assets; and (d) nationality of the senior management or members of the board of directors. 2. This entry pertains only to the initial transfer or disposal of interest in Government assets, entities or agencies. Brunei Darussalam does not reserve this right with respect to subsequent transfers or disposals of Government interest in such assets, entities or agencies. 3. For greater certainty: (a) where Brunei Darussalam transfers an interest in an existing state enterprise to another state enterprise, such transfer shall not be considered to be an initial transfer or disposal

of the interest for purposes of this entry; and

- (b) where Brunei Darussalam transfers or disposes of an interest in an existing state enterprise in multiple phases, subparagraph (a) shall apply separately to each such phase.

Sector: All

Obligations Concerned: National Treatment (Article 9.4)
Most-Favoured-Nation Treatment (Article 9.5)¹

Description: Investment

Brunei Darussalam reserves the right to adopt or maintain any measure relating to all land transactions other than strata title, which shall be subject to approval and consent by His Majesty-in-Council, including but not limited to:

- (a) ownership and lease of land;
- (b) conditions on which such land shall be held;
and
- (c) reciprocal arrangements on ownership or
lease of diplomatic properties.

¹ Applies only in respect of subparagraph (c).

Sector: All

Obligations Concerned: Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4)

Description: Investment and Cross-Border Trade in Services

Brunei Darussalam reserves the right to adopt or maintain any measure that accords differential treatment:

- (a) to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement;
- (b) to ASEAN Member States under any ASEAN agreement open to participation by any ASEAN Member State, in force or signed after the date of entry into force of this Agreement; and
- (c) to countries under any international agreement in force or signed after the date of entry into force of this Agreement involving:
 - (i) air services; and
 - (ii) maritime and port matters.

Sector: All

Obligations Concerned: Market Access (Article 10.5)

Description: Cross-Border Trade in Services

Brunei Darussalam reserves the right to adopt or maintain any measure with respect to the supply of a service by the presence of natural persons, including on the total number of foreign natural persons that may be employed in any sector, subject to the provisions of Chapter 12 (Temporary Entry for Business Persons), and in a manner that is not inconsistent with Brunei Darussalam's obligations under Article XVI of GATS.

Sector:	Fisheries and Services Incidental to Fisheries
Obligations Concerned:	National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4)
Description:	<u>Investment and Cross-Border Trade in Services</u> Brunei Darussalam reserves the right to adopt or maintain any measure relating to any fisheries and services related to fisheries activity in its territory, including its exclusive economic zone, including but not limited to: (a) any differential treatment to foreign nationals due to the application of reciprocity of commitments relating to artisanal fishery activity; and (b) ensuring the availability and sustainability of fisheries resources.

Sector: Logging

Obligations Concerned: National Treatment (Article 9.4)

Description: Investment

Brunei Darussalam reserves the right to adopt or maintain any measure relating to logging activities.

Sector: Silica Sand

Obligations Concerned: National Treatment (Article 9.4)
Performance Requirements (Article 9.10)

Description: Investment

Brunei Darussalam reserves the right to adopt or maintain any measure with respect to the commercialisation of activities relating to silica sand deposits, including mining, quarrying, manufacture and export of such deposits.

Sector: Petroleum

Obligations Concerned: Most-Favoured-Nation Treatment (Article 9.5)

Description: Investment

1. Brunei Darussalam has no existing statutes, regulations or other similar measures that mandate preferential treatment to be accorded to investors of another Party or their investments as compared to investors of any other Party, or of any non-Party, or their investments.

2. With respect to the making of or entry into petroleum mining agreements for the exploration, exploitation, development, and production rights of petroleum in the territory of Brunei Darussalam, and collateral agreements^{2, 3} Brunei Darussalam reserves the right to continue to exercise discretion⁴ to accord investors of another Party or their investments less favourable treatment than that it accords, in like circumstances, to investors of any other Party, or of any non-Party, or their investments, except that:

(a) Brunei Darussalam shall not adopt any statute, regulation or other similar measure⁵ that mandates according investors of another Party or their investments treatment less

² For greater certainty, the expression “making of or entry into petroleum mining agreements for the exploration, exploitation, development, and production rights of petroleum in the territory of Brunei Darussalam, and collateral agreements” includes: (a) the negotiation, determination and amendment of any terms and conditions in petroleum mining agreements for the exploration, exploitation, development, and production rights of petroleum, and collateral agreements, or the renewal or extension of the term of such agreements; and (b) any decision by Brunei Darussalam to conduct a bid or tender or other process in relation to any proposed petroleum mining agreement, for the exploration, exploitation, development, and production rights of petroleum in the territory of Brunei Darussalam, and collateral agreements, and, if any such bid or tender or other process is conducted, the terms and conditions on which any such bid or tender or other process is conducted.

³ For greater certainty, the expression “collateral agreements” shall include shareholders’ participation agreements and agreements providing fiscal incentives with respect to petroleum mining agreements.

⁴ For greater certainty, the discretion under this paragraph may be exercised pursuant to any measure that Brunei Darussalam may adopt or maintain.

⁵ For greater certainty, the expression “other similar measure(s)” used in paragraphs 1 and 2(a) of this entry excludes any decisions or guidance by any member of the Cabinet with respect to the making of or entry into, or amendment of, an individual petroleum mining agreement or collateral agreements. For greater certainty, any such decision or guidance, shall not be subject to the dispute settlement provisions of this Agreement with respect to Article 9.5 (Most-Favoured-Nation Treatment).

favourable than that it accords, in like circumstances, to investors of any other Party, or of any non-Party, or their investments; and

- (b) Brunei Darussalam shall accord investors of another Party or their investments treatment no less favourable than that it accords, in like circumstances, to investors of any other Party, or of any non-Party, or their investments, under any bilateral or multilateral international agreement that enters into force or is signed after the date of entry into force of this Agreement.

3. The terms “petroleum mining agreement”, “collateral agreement” and “petroleum” used herein shall have the meanings ascribed to them under the Act.

Existing Measures:

Petroleum Mining Act (Chapter 44) (the Act)
Brunei National Petroleum Company Sendirian Berhad
Order, 2002
Petroleum (Pipe-Lines) Act (Chapter 45)
Administrative Measures and Guidelines

Sector: Coal

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)⁶
Most-Favoured-Nation Treatment (Article 9.5)⁷
Performance Requirements (Article 9.10)⁸
Senior Management and Boards of Directors (Article 9.11)

Description: Investment and Cross-Border Trade in Services

1. Subject to paragraph 2, Brunei Darussalam reserves the right to adopt or maintain any measure relating to the exploration, exploitation, development and production of coal reserves in Brunei Darussalam.

2. In the event that Brunei Darussalam determines that it is in its national interest to permit exploration, exploitation, development and production of coal reserves by foreign nationals and enterprises, this entry will not apply in relation to the Senior Management and Boards of Directors obligation. However, in respect of the remaining Obligations Concerned, Brunei Darussalam reserves the right to adopt and maintain any measure:

- (a) relating to the making of or entry into of contracts for the exploration, exploitation, development and production rights of coal in the territory of Brunei Darussalam.⁹ In this

⁶ In the event that Brunei Darussalam determines that it is in its national interest to permit exploration, exploitation, development and production of coal reserves by foreign nationals and enterprises, Article 9.4 (National Treatment) applies only with respect to subparagraph 2(a)(ii) and subparagraph 2(b) of this entry, and Article 10.3 (National Treatment) applies only with respect to subparagraph 2(b)(ii) of this entry.

⁷ In the event that Brunei Darussalam determines that it is in its national interest to permit exploration, exploitation, development and production of coal reserves by foreign nationals and enterprises, Article 9.5 (Most-Favoured-Nation Treatment) applies only with respect to subparagraph 2(a)(i) of this entry.

⁸ In the event that Brunei Darussalam determines that it is in its national interest to permit exploration, exploitation, development and production of coal reserves by foreign nationals and enterprises, Article 9.10 (Performance Requirements) applies only with respect to subparagraph 2(b)(i) of this entry.

⁹ For greater certainty, the expression “making of or entry into of contracts for the exploration, exploitation, development and production rights of coal in the territory of Brunei Darussalam” includes: (a) the negotiation, determination and amendment of any terms and conditions in contracts for the exploration, exploitation, development and production rights of coal, or the renewal or extension of the term of such contracts; and (b) any decision by Brunei Darussalam to conduct a bid or tender or other process in relation to any proposed contracts for the exploration, exploitation, development and production rights of coal in the territory of Brunei Darussalam, and, if any such bid or tender or other process is conducted, the terms and conditions on which any

regard, Brunei Darussalam may:

- (i) exercise discretion¹⁰ to accord investors of another Party, or their investments, less favourable treatment than that it accords, in like circumstances, to investors of any other Party, or of any non-Party, or their investments, except that: Brunei Darussalam shall not adopt any statute or regulation that mandates according investors of another Party, or their investments, treatment less favourable than that it accords, in like circumstances, to investors of any other Party, or of any non-Party, or their investments, and; Brunei Darussalam shall accord investors of another Party, or their investments, treatment no less favourable than that it accords, in like circumstances, to investors of any other Party, or of any non-Party, or their investments, under any bilateral or multilateral international agreement that enters into force or is signed after the date of entry into force of this Agreement; and
- (ii) require an investor of another Party, or its investment, engaged in the exploration, exploitation, development and production of coal reserves to form a joint venture or a similar arrangement with a

such bid or tender or other process is conducted.

¹⁰ For greater certainty, the discretion under this paragraph may be exercised pursuant to any measure that Brunei Darussalam may adopt or maintain.

Bruneian enterprise. However, such an investor of another Party, or its investment, shall, upon request, be permitted to hold the majority share in the joint venture or similar arrangement.¹¹ Brunei Darussalam may require as a contractual term that, during the exploration or development period, all relevant costs with respect to the maximum participating interest of the Bruneian enterprise be borne by the partner that is an investor of another Party. Consequently, on the expiration of the carry interest period, the Bruneian enterprise will bear the costs of future operations in proportion to its participating interests in the contract; and may require as a contractual term that a Bruneian enterprise may acquire a participating interest, or increase its participating interest, in the joint venture or similar arrangement upon the occurrence of a stipulated event; and

- (b) requiring foreign enterprises acting as operators in the exploration, exploitation, development and production of coal to:
 - (i) provide a portion of coal or its derivatives in Brunei Darussalam for domestic use (“domestic supply obligations”) as outlined in a contract, provided that such measure is not more restrictive than the requirements stipulated in Annex I – Brunei Darussalam – 35; and

¹¹ For greater certainty, this does not preclude a Bruneian enterprise from holding a majority share in a joint venture or other similar arrangement as a result of commercial negotiations between such an investor of another Party, or its investment, and that Bruneian enterprise.

- (ii) unless as may otherwise be authorised by Brunei Darussalam, purchase the services listed in Appendix I – A to Annex I – Brunei Darussalam – 36 either from Brunei nationals or Bruneian enterprises, or foreign nationals or enterprises under a contract, provided that they engage Brunei nationals or Bruneian enterprises to provide other services.

3. Any non-conforming measure adopted or maintained after the signature of this Agreement in relation to paragraph 2(a)(ii) and paragraph 2(b) above shall be deemed to be an existing non-conforming measure and subject to paragraphs 1, 5, 6 and 7 of Article 9.12 (Non-Conforming Measures).

Sector:	Private Health Services
Sub-Sector:	Pharmacists, nurses, midwives and allied health services Private laboratory services Private radiology services
Obligations Concerned:	National Treatment (Article 9.4 and Article 10.3) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)
Description:	<u>Investment and Cross-Border Trade in Services</u> 1. Brunei Darussalam reserves the right to adopt or maintain any measure relating to the private practice of pharmacists, nurses, midwives and allied health services. 2. Brunei Darussalam reserves the right to adopt or maintain any measure relating to the establishment of private laboratory services and private radiology services.

Sector:	Private Health Services
Sub-Sector:	Private health centres or clinics
Obligations Concerned:	Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5)
Description:	<u>Investment and Cross-Border Trade in Services</u> Brunei Darussalam reserves the right to adopt or maintain any measure relating to the establishment of private health centres or clinics, including but not limited to: (a) requiring that such private health centres or clinics be established in the form of a joint venture with a Brunei national; (b) limiting the number of private health centres or clinics that can be established in Brunei Darussalam; (c) requiring such private health centre or clinic to carry out research and development within the territory of Brunei Darussalam, or transfer of technology; and (d) requiring a majority of the senior managers in the private health centres or clinics to be of Bruneian nationality.

Sector:	Broadcasting Services
Obligations Concerned:	National Treatment (Article 9.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)
Description:	<u>Investment and Cross-Border Trade in Services</u> Brunei Darussalam reserves the right to adopt or maintain any measure relating to any licensable free-to-air or subscription broadcasting services offered on a scheduled programming basis. These measures include, but are not limited to ownership, control and funding of an enterprise providing the aforementioned services.

Sector:	Business Services
Sub-Sector:	Professional services Legal services
Obligations Concerned:	National Treatment (Article 9.4 and Article 10.3) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)
Description:	<u>Investment and Cross-Border Trade in Services</u> 1. Brunei Darussalam reserves the right to adopt or maintain any measure relating to the supply of legal services in Brunei Darussalam, in relation to the laws of Brunei Darussalam. 2. This entry does not apply to the supply of legal services in Brunei Darussalam in relation to international law or home country law, which is set out in Annex I – Brunei Darussalam – 29.

Sector:	Printing, publishing and reproduction of newspapers including matters relating to the collection and publication of news and the distribution of newspapers
Obligations Concerned:	National Treatment (Article 9.4) Performance Requirements (Article 9.10)
Description:	<u>Investment</u> Brunei Darussalam reserves the right to adopt or maintain any measure relating to the printing, publishing and reproduction of newspapers including matters relating to the collection and publication of news and the distribution of newspapers.

Sector:	Transport Services
Sub-Sector:	Air transport services
Obligations Concerned:	National Treatment (Article 9.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11)
Description:	<u>Investment</u> Brunei Darussalam reserves the right to adopt or maintain any measure related to air transport services including, but not limited to: (a) the ownership, operation and management of airports and heliports in Brunei Darussalam; (b) the supply of ground handling operations; and (c) specialty air services, except in relation to flight training as provided for in Annex I – Brunei Darussalam – 27.

Sector:	Private Educational Services
Obligations Concerned:	National Treatment (Article 9.4 and Article 10.3) Senior Management and Boards of Directors (Article 9.11) Market Access (Article 10.5) Local Presence (Article 10.6)
Description:	<u>Investment and Cross-Border Trade in Services</u> Brunei Darussalam reserves the right to adopt or maintain any measure relating to the supply of private pre-primary, primary and secondary education services, other than private educational services supplied by international schools for Brunei Darussalam citizens, including the following: (a) equity shareholding by foreign nationals or companies in the ownership of schools and higher learning institutions; (b) the total number of schools and higher learning institutions that may be established in Brunei Darussalam; (c) the total number of employees, including teachers; or (d) the nationality of senior management or boards of directors.

Sector: Electricity Services

Obligations Concerned: Performance Requirements (Article 9.10)
Market Access (Article 10.5)

Description: Investment and Cross-Border Trade in Services

Brunei Darussalam reserves the right to adopt or maintain any measure relating to the generation, supply, transmission and distribution of electrical energy.

Sector:	Transport Services
Sub-Sector:	Land transport services
Obligations Concerned:	National Treatment (Article 9.4 and Article 10.3) Market Access (Article 10.5) Local Presence (Article 10.6)
Description:	<u>Investment and Cross-Border Trade in Services</u> Brunei Darussalam reserves the right to adopt or maintain any measure relating to the supply of land transport services including, but not limited to, passenger transportation, freight transportation, and commercial vehicle with operator, pushing and towing services, maintenance and repair of road transport equipment, and supporting services for road transport services.

Sector:	Trade Services
Sub-Sector:	Supply of potable water for human consumption
Obligations Concerned:	National Treatment (Article 9.4 and Article 10.3) Performance Requirements (Article 9.10) Market Access (Article 10.5)
Description:	<u>Investment and Cross-Border Trade in Services</u> 1. Brunei Darussalam reserves the right to adopt or maintain any measure relating to the supply of potable water, including, but not limited to: (a) the supply of water as a public utility; (b) the extraction of ground water; and (c) the export of water. 2. For greater certainty, this entry is limited to the supply of potable water that may be used or required for any purpose or activity, and does not include additional restrictions on any activities utilising potable water including the manufacturing of bottled water which is an activity addressed in Annex I – Brunei Darussalam – 3.

Sector:	Business Services
Sub-Sector:	Valuers (appraisers) and estate agents
Obligations Concerned:	National Treatment (Article 9.4 and Article 10.3) Market Access (Article 10.5) Local Presence (Article 10.6)
Description:	<u>Investment and Cross-Border Trade in Services</u> Brunei Darussalam reserves the right to adopt or maintain any measure relating to the supply of valuers (appraisers) and estate agent services.

Sector:	Business Services
Sub-Sector:	Taxation
Obligations Concerned:	National Treatment (Article 9.4 and Article 10.3) Market Access (Article 10.5) Local Presence (Article 10.6)
Description:	<u>Investment and Cross-Border Trade in Services</u> Brunei Darussalam reserves the right to adopt or maintain any measure relating to the representation of taxpayers (either by individuals or enterprises) in tax matters, including, but not limited to, preparing and furnishing of income tax returns, filing responses to notices issued by tax authority and filing notices of objection and handling payment in relation to tax.

Sector:	Trade Services
Sub-Sector:	Wholesale trade services and retail trade services of tobacco
Obligations Concerned:	Market Access (Article 10.5)
Description:	<u>Cross-Border Trade in Services</u> Brunei Darussalam reserves the right to adopt or maintain any measure relating to the supply of wholesale and retail trade services of tobacco products.