

ANNEX II

SCHEDULE OF MALAYSIA

Sector: Land and Real Estate

Obligations Concerned: National Treatment (Article 9.4)

Description: Investment

Acquisitions or dealings of land by non-citizens and enterprises owned by foreign nationals must be approved by the relevant State Authority, subject to such conditions and restrictions as may be imposed by that Authority.

Existing Measures:

- Land Acquisition Act, 1960* [Act 486]
- Land Conservation Act 1960* [Act 385]
- National Land Code 1965* [Act 625]
- National Land Code (Penang and Malacca Titles) Act 1963* [Act 518]
- Strata Titles Act 1985* [Act 318]
- Building and Common Property (Maintenance and Management) Act 2007* [Act 663]
- Strata Management Act 2013* [Act 757]
- Federal Lands Commissioner Act 1957(Revised 1988)* [Act 349]
- Land (Group Settlement Areas) Act 1960* [Act 530]
- Malay Reservations Enactment 1933* [F.M.S Cap 142]
- Kedah Enactment No 63 (Malay Reservations)*
- Kelantan Malay Reservations Enactment, 1930*
- Kelantan Land Settlement Act 1955 (Revised 1991)* [Act 460]
- Perlis Malay Reservations Enactment 1935*
- Perlis Land Settlement Enactment 1966*
- Johore Malay Reservation Enactment 1936*
- Terengganu Malay Reservation Enactment 1941*
- Terengganu Settlement Enactment 1856*
- Sabah Land Ordinance* [Sabah Cap 68]
- Sabah Land Acquisition Ordinance* [Sabah Cap 69]
- Sarawak Land Code 1958* [Sarawak Cap 81]
- Local Government Act 1976* [Act 171]
- Town and Country Planning Act 1976* [Act 172]

Federal Territory (Planning) Act 1982 [Act 267]
Federal Capital Act 1960 [Act 190]
Street, Drainage and Building Act 1974 [Act 133]

Sector:	Oil and Gas
Obligations Concerned:	National Treatment (Article 9.4 and 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> Petroliaam Nasional Berhad (PETRONAS) and its successor are vested with the entire ownership in, and the exclusive rights, powers, liberties and privileges, which shall be irrevocable, in exploring, exploiting, winning and obtaining petroleum whether onshore or offshore of Malaysia. PETRONAS in its role as the exclusive owner of the petroleum resources, decides on the form and conditions of contractual arrangements available for foreign participation and selection of the contract parties.
Existing Measures:	<i>Petroleum Development Act 1974</i> [Act 144]

Sector: All

Obligations Concerned: National Treatment (Article 9.4 and 10.3)
Most-Favoured-Nation Treatment (Article 9.5 and 10.4)
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: Investment and Cross-Border Trade in Services

Malaysia reserves the right to adopt or maintain any measures affecting the:

- (a) full or partial devolvement to the private sector of services provided in the exercise of governmental authority;
- (b) divestment of its equity interests in, or the assets of, an enterprise that is wholly or partially owned by the Malaysian government; and
- (c) privatisation of government owned entities or assets.

The description above pertains only to the initial transfer or disposal of such interest, and for subsequent transfers or disposals that are for strategic sectors announced through the Malaysia Plan.

For greater certainty, where Malaysia transfers any interest in an existing state enterprise to another state enterprise, such transfer shall not be considered to be an initial transfer. Where the transfer or disposal of an interest in an existing state enterprise is undertaken either partially or sequentially, the right shall apply separately to each phase.

Existing Measures: *Minister of Finance (Incorporation) Act 1957* [Act 375]
Privatisation Master Plan
Guidelines on Privatisation

Sector:	All
Obligations Concerned:	National Treatment (Article 9.4 and 10.3) Performance Requirements (Article 9.10) Market Access (Article 10.5)
Description:	<u>Investment and Cross-Border Trade in Services</u> Malaysia reserves the right to adopt or maintain any measure that provides assistance to Bumiputera for the purpose of supporting Bumiputera participation in the Malaysian market through the creation of new and additional licences or permits for Bumiputera eligible to receive such assistance, provided that such measures shall not affect the rights of existing licence and permit holders or future applicants for licences and permits in sectors where foreign participation is permitted.
Existing Measures:	Policies and Ministerial statements Federal Constitution <i>Aboriginal Peoples Act 1954</i> [Act 134] <i>Interpretation (Definition of Native) Ordinance 1952</i> [Cap. 64] Treasury Circular Year 2014

Sector: All

Obligations Concerned: National Treatment (Article 9.4)

Description: Investment

Malaysia reserves the right to adopt or maintain any measure relating to National and State unit trusts.

Sector: All

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

Description: Investment and Cross-Border Trade in Services

Malaysia reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.

Malaysia reserves the right to adopt or maintain any measure that accords differential treatment 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.

With regard to the sectors listed below, Malaysia reserves the right to adopt or maintain any measure that accords rights, preferences and differential treatment to countries under any international agreement in force or signed after the date of entry into force of this Agreement involving:

- (a) aviation matters;
- (b) maritime and port;
- (c) broadcasting;
- (d) space transportation¹; and
- (e) fisheries.

¹ Any such measure shall be implemented in a manner consistent with Malaysia's commitments under Article II of GATS. For greater certainty, subparagraph (d) does not apply with respect to Malaysia's obligations under Article 11.4 (Most-Favoured Nation Treatment), to the sectors or sub-sectors for which Malaysia has made specific commitments under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement, nor to the sectors for which the following entries are made in the Schedule of Malaysia to Annex I: Annex I – Malaysia – 7, Annex I – Malaysia – 8, Annex I – Malaysia – 11, Annex I – Malaysia – 12, and Annex I – Malaysia – 23.

Sector:	Manufacture, assembly, marketing and distribution of explosives, weapons, ammunitions, as well as military-related equipment / devices, and similar products
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> Malaysia reserves the right to adopt or maintain any measures affecting the arms and explosives sector.
Existing Measures:	Section 4, <i>Industrial Co-Ordination Act 1975</i> [Act 156] <i>Explosives Act 1957</i> [Act 207] <i>Arms Act 1960</i> [Act 206]

Sector:	Gaming, Betting and Gambling including supply and suppliers of betting and gambling equipment, wholesale and retail of gambling equipment
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> Malaysia reserves the right to adopt or maintain any measures relating to the provision of gaming, betting and gambling including supply and suppliers of betting and gambling equipment, wholesale and retail.
Existing Measures:	<i>Lotteries Act 1952</i> [Act 288] <i>Common Gaming Houses Act 1953</i> [Act 289] <i>Pool Betting Act 1967</i> [Act 384] <i>Betting Act 1953</i> [Act 495] <i>Racing (Totalisator Board) Act 1961</i> [Act 494] <i>Racing Club (Public Sweepstakes) Act 1965</i> [Act 404] Customs (Prohibition of Imports) Order 2008 (P.U. (A) 86/2008)

Sector:	Non-medical utilisation/application of atomic energy for: (a) electric power plants based on fossil fuel/materials; (b) nuclear power generation including nuclear fuel cycle; and (c) electric power generation.
Obligations Concerned:	National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) 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> Malaysia reserves the right to adopt or maintain any measures relating to non-medical utilisation or application of atomic energy for: (a) electric power plants based on fossil fuel or materials; (b) nuclear power generation including nuclear fuel cycle; and (c) electric power generation.
Existing Measures:	<i>Atomic Energy Licensing Act 1984</i> [Act 304]

Sector:	Cultural Services
Obligations Concerned:	National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) 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> Malaysia reserves the right to review the following products following their importation and distribution in the Malaysian market to ensure their consistency with Malaysia's decency standards: books, magazines, periodicals or newspapers, works of art and films imported into Malaysia, programming licensed for broadcast on television, cable and satellite stations. In addition, prior approval is required for any arts, filming and performances by foreign artist and such activities shall comply with the Central Agency for Application for Filming and Performance by Foreign Artistes (PUSPAL) Guidelines. Such review and pre-approval shall be administered in an objective, transparent and impartial manner, and consistent, where applicable, with Article 2.3 (National Treatment) and the <i>Communications and Multimedia Act 1998</i> [Act 588].
Existing Measures:	<i>Printing Presses and Publications Act 1984</i> [Act 301] <i>Akta Perbadanan Kemajuan Filem Nasional Malaysia 1981</i> [Act 244] <i>Akta Perbadanan Kemajuan Kraftangan Malaysia 1979</i> [Act 222] Dasar Industri Kreatif Negara (DIKN) 2010 Central Agency Committee for Application for Filming and Performance by Foreign Artistes (PUSPAL) Guidelines

Sector: Wholesale and Distribution Services

Obligations Concerned: National Treatment (Article 9.4 and Article 10.3)
Local Presence (Article 10.6)

Description: Investment and Cross-Border Trade in Services

Malaysia reserves the right to adopt or maintain any measures relating to wholesale and distribution services for rice, sugar (other than refined sugar for food and beverage manufacturers), flour, liquor and alcoholic beverages, tobacco and cigarettes products.

Sector:	Sewage and Refuse Disposal Sanitation and other Environmental Protection Services
Obligations Concerned:	National Treatment (Article 9.4)
Description:	<u>Investment</u> Malaysia reserves the right to adopt or maintain any measures relating to the collection, treatment and disposal of hazardous waste (excluding carbon gases).
Existing Measures:	<i>Environmental Quality Act 1974</i> [Act 127]

Sector: Air Transport 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: Cross-Border Trade in Services

Malaysia reserves the right to adopt and maintain any measure affecting:

- (a) airport operation services;
- (b) aircraft repair and maintenance services;
- (c) ground handling services; and
- (d) specialty air services; and

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- (e) air transport services covering passenger and freight transportation frequencies and routing by air.

Sector:	Passenger Road Transportation Services covering taxi services and scheduled passenger road transportation
Obligations Concerned:	National Treatment (Article 9.4 and Article 10.3) Performance Requirements (Article 9.10) Local Presence (Article 10.6)
Description:	<u>Investment and Cross-Border Trade in Services</u> Malaysia reserves the right to adopt or maintain any measures relating to passenger and scheduled passenger road transportation services covering urban and sub-urban regular transportation, railway, taxi services; and bus, taxi and rail station services.

Sector:	Legal Services covering mediation and Shari'a law
Obligations Concerned:	National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)
Description:	<u>Investment and Cross-Border Trade in Services</u> Malaysia reserves the right to adopt or maintain any measures relating to mediation and Shari'a law.

Sector:	All
Obligations Concerned:	National Treatment (Article 9.4 and Article 10.3)
Description:	<u>Investment and Cross-Border Trade in Services</u> Malaysia reserves the right to adopt or maintain any measures related to the non-internationalisation of ringgit which includes: (a) the requirement for international settlement to be made in foreign currency; (b) limitation on the access to ringgit financing by non-residents for use outside Malaysia; and (c) limitation on the use of ringgit in Malaysia by non-residents.
Existing Measures:	<i>Central Bank of Malaysia Act 2009</i> [Act 701] <i>Financial Services Act 2013</i> [Act 758] <i>Islamic Financial Services Act 2013</i> [Act 759] Notices on Foreign Exchange Administration Rules

Sector:	Social Services
Obligations Concerned:	National Treatment (Article 9.4 and Article 10.3) Most-Favoured-Nation Treatment (Article 9.5 and Article 10.4) Performance Requirements (Article 9.10) Senior Management and Boards of Directors (Article 9.11) Local Presence (Article 10.6)
Description:	<u>Investment and Cross-Border Trade in Services</u> Malaysia reserves the right to adopt or maintain any measure with respect to the supply of law enforcement and correctional services, and the following services to the extent they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health and child care.