

MALAYSIA

1.

Sector	: All Sectors
Sub-Sector	: -
Industry Classification	: -
Level of Government	: Central
Type of Obligation	: National Treatment Senior Management and Board of Directors
Description of Measure	: For a company incorporated in Malaysia, at least 2 directors must have their principal or only place of residence in Malaysia.
Source of Measure	: Companies Act 1965.

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2.

Sector	: All Sectors
Sub-Sector	: -
Industry Classification	: -
Level of Government	: Central and Regional
Type of Obligation	: National Treatment
Description of Measure	: National Treatment may not apply to any measures affecting land, property and natural resources associated with land, including acquisition, ownership and lease of land and property.
Source of Measure	: <ul style="list-style-type: none">- Federal Constitution.- Malaysia Act 1963.- National Land Code 1965.- Federal Lands Commissioner Act 1957.- Malay Reservations Enactment 1933.- Sabah Land Ordinance 1950.- Sarawak Land Code 1958.- Guidelines on the Acquisition of Properties, Economic Planning Unit.- Administrative Guidelines.

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3.

Sector	: All Sectors
Sub-Sector	: -
Industry Classification	: -
Level of Government	: Central
Type of Obligation	: National Treatment
Description of Measure	: National Treatment may not apply to any measure with respect to treatment of shares in the share capital of a corporation quoted on the official list of the stock exchange, which have been deposited with the central depository, which restricts the rights, benefits, powers and privileges or makes it subject to liabilities, duties and obligations, where such shares are owned by a foreigner ¹ , or the shares are quoted separately as foreign shares on the official list of a stock exchange.
Source of Measure	: Securities Industry (Central Depositories) (Foreign Ownership) Regulations 1996.

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¹ For the purposes of this reservation, the term 'foreigner' can be found in Securities Industry (Central Depositories) (Foreign Ownership) Regulations, 1996.

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4.

Sector	: All Sectors
Sub-Sector	: -
Industry Classification	: -
Level of Government	: Central
Type of Obligation	: National Treatment
Description of Measure	: National Treatment may not apply to any measure with respect to any security to be listed or listed on a stock exchange, and securities subject to regulation governing acquisition of interests or take-overs and mergers.
Source of Measure	: - Capital Market and Services Act 2007. - Companies Act 1965. - The Malaysian Code on Take-overs and Mergers 1998.

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5.

Sector	: All Sectors
Sub-Sector	: -
Industry Classification	: -
Level of Government	: Central and Regional
Type of Obligation	: National Treatment Senior Management and Board of Directors
Description of Measure	: National Treatment and Senior Management and Board of Directors may not apply to privatisation, or divestment of assets through transfer or disposal of equity interests or assets owned wholly or partially by the Government or Government-linked entity ² .

All privatised projects are subjected to Malaysia's development policies and the Privatisation Master Plan with regards to foreign participation. Privatisation projects must be at least 75% Malaysian owned. Foreign participation may be considered in the following cases:

- Where foreign expertise is needed to upgrade efficiency and such expertise is not available locally.
- Where their participation is necessary to promote export market;
- Where local capital is insufficient; and
- Where the nature of business requires international linkages and exposure.

All conditions imposed on existing privatised entities will continue to be applicable.

Source of Measure	: - Malaysia privatization programme. - Privatisation Master Plan. - Guidelines on Privatisation. - The Ninth Malaysia Plan. - New Economic Policy. - National Development Policy. - GLC Transformation Programme. - Minister of Finance (Incorporation) Act 1957.
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² Government-linked entity includes Government-Linked Company (GLC) and Government-Linked Investment Company (GLIC) where the Government holds control of such entity including ability to appoint Board of Directors, Senior Management and make major decisions for the company.

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6.

Sector	: All Sectors
Sub-Sector	: -
Industry Classification	: -
Level of Government	: Central and Regional
Type of Obligation	: National Treatment Senior Management and Board of Directors
Description of Measure	: National Treatment and Senior Management and Board of Directors may not apply in the event where activities restricted to designated enterprises ³ are liberalized to those other than the designated entities, or in the event where such designated enterprise no longer operate on a non-commercial basis.
Source of Measure	: - Control of Padi and Rice Act 1994. - Industrial Coordination Act 1975. - Government Policy. - Administrative Guidelines.

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³ For illustrative purposes, 'Designated enterprises' may include Padiberas Nasional Berhad (BERNAS) and Kualiti Alam Sdn Bhd.

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7.

Sector	: All Sectors
Sub-Sector	: -
Industry Classification	: -
Level of Government	: Central and Regional
Type of Obligation	: National Treatment Senior Management and Board of Directors
Description of Measure	: National Treatment and Senior Management and Board of Directors may not apply to any measure relating to special preferences to: (i) Bumiputera ⁴ ; and (ii) Bumiputera-status companies ⁵ , trust companies and institutions.
Source of Measure	: - Federal Constitution. - Aboriginal Peoples Act 1954. - Interpretation Ordinance 2005 (Cap.61). - Interpretation (Definition of Native) (Cap.64). - Government Policy. - New Economic Policy. - National Development Policy. - National Vision Policy. - Guidelines on the Acquisition of Properties, Economic Planning Unit. - Administrative Guidelines.

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⁴ The term 'Bumiputera' covers Malays, natives of Sabah and Sarawak, and aborigines.

⁵ The phrase 'Bumiputera-status companies' may be found among others, in the Treasury Circular Letter No. 4 of 1995(aka Surat Pekeliling Perbendaharaan No.4 Tahun 1995)

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8.

Sector	: All Sectors
Sub-Sector	: -
Industry Classification	: -
Level of Government	: Central
Type of Obligation	: National Treatment Senior Management and Board of Directors
Description of Measure	: National Treatment and Senior Management and Board of Directors may not apply in the measures relating to the employment of expatriates. Restrictions may be imposed on the number, duration and type of expatriates employed.
Source of Measure	: - Immigration Act 1959. - Employment (Restriction) 1968 (Revised-1988). - Guidebook on the Employment of Expatriates. - Government Policy.

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9.

Sector	: All Sectors
Sub-Sector	: -
Industry Classification	: -
Level of Government	: Central and Regional
Type of Obligation	: National Treatment
Description of Measure	: National Treatment may not apply to any measures relating to acquisition and ownership of National and State unit trusts.
Source of Measure	: <ul style="list-style-type: none">- Federal Constitution.- New Economic Policy.- National Development Policy.- National Vision Policy- Guidelines on Unit Trust Funds.

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10.

Sector	:	All Sectors
Sub-Sector	:	-
Industry Classification	:	-
Level of Government	:	Central and Regional
Type of Obligation	:	National Treatment
Description of Measure	:	National Treatment may not apply in the issuance of licence/permit. This may include numerical limitations and non-issuance of licences. National Treatment may not apply to conditions ⁶ imposed in the issuance of licence/permit.
Source of Measure	:	<ul style="list-style-type: none">- Government Policy.- Industrial Coordination Act 1975.- Administrative guidelines.

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⁶ For illustrative purposes, this may include compliance with the requirement that employment of workers be reflective of the racial composition of the country and requirement to use local distributors.

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11.

Sector	: All Sectors
Sub-Sector	: -
Industry Classification	: -
Level of Government	: Central and Regional
Type of Obligation	: National Treatment
Description of Measure	: National Treatment may not apply to any measure relating to the rights of statutory bodies. ⁷
Source of Measure	: <ul style="list-style-type: none">- Article 92 of Federal Constitution.- Employees Provident Fund Act 1991.- Tabung Haji Act 1995.- Tabung Angkatan Tentera Act 1973.- State Economic Development Corporation Enactments.- Iskandar Regional Development Authority Act 2007.- Northern Corridor Implementation Authority Act 2008.- East Coast Economic Region Development Council Act 2008.- Regional Corridors Development Authorities Act 2006 .- Sabah Economic Development and Investment Authority (SEDIA) Act 2009.- Administrative Guidelines.

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⁷ Examples of statutory bodies include Employees Provident Fund and Lembaga Tabung Haji.

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12.

Sector	:	Manufacturing Services Incidental to Manufacturing
Sub-Sector	:	-
Industry Classification	:	ISIC Divisions 15 to 36
Level of Government	:	Central and Regional
Type of Obligation	:	National Treatment Senior Management and Board of Directors
Description of Measure	:	For companies/projects that are in existence before the entry into force of this Agreement, conditions imposed in their approvals for licence/permits shall continue to apply. Notwithstanding the liberalisation of similar licence conditions for new companies/projects, or expansion and/or diversification projects, any liberalisation for existing companies/projects shall be considered on a case by case basis.
Source of Measure	:	- Industrial Co-ordination Act 1975. - Government Policy. - Administrative Guidelines.

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Sector	:	Manufacturing Services Incidental to Manufacturing
Sub-Sector	:	-
Industry Classification	:	ISIC (see below) CPC 884-885
Level of Government	:	Central and Regional
Type of Obligation	:	National Treatment
Description of Measure	:	Foreign equity is limited up to 30% in the following activities/products: <ul style="list-style-type: none">• Fabrics and apparels of Batik (ISIC 1711, ISIC 1712, ISIC 1810)• Integrated Portland Cement (ISIC 2694) <p>The following activities/products may be subjected to conditions which may be inconsistent with National Treatment:</p> <p><u>Sectors with specific conditions</u></p> <ul style="list-style-type: none">• Pineapple canning (ISIC 1513)• Palm oil milling and refining (ISIC 1514)• Wood-based products utilizing local logs (ISIC 2010, ISIC 2021, ISIC 2022)• Steel billets/blooms (ISIC 2710)• Arms, weapons, ammunitions, explosive, pyrotechnic products, propellant powders, detonating or safety fuses, and the like (ISIC 2429, ISIC 2927)• Petroleum refining (ISIC 2320)• Manufacture/Assembly of motor vehicles, passenger cars, and commercial vehicles (ISIC 3410) <p><u>Sectors which are currently closed</u></p> <ul style="list-style-type: none">• Sugar refining (ISIC 1542)• Liquors and alcoholic beverages (ISIC 1551-3)• Tobacco processing and cigarettes (ISIC 1600)• Hot rolled steel bars and wire rods (ISIC 2710)• Optical discs, including CD, CD-ROM, VCD, DVD (ISIC 2230)• Biodiesel (ISIC 2411)• Collection, storage, treatment and disposal of hazardous and toxic wastes• Ordinary Portland Cement (non-integrated) (ISIC 2694)
Source of Measure	:	- Industrial Co-ordination Act 1975. - Customs Act 1967.

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14.

Sector	:	Fishery Services Incidental to Fishery
Sub-Sector	:	Capture fisheries
Industry Classification	:	ISIC Division 05 CPC 882
Level of Government	:	Central and Regional
Type of Obligation	:	National Treatment
Description of Measure	:	<p>Foreign fishing vessels⁸ are not allowed to fish or attempt to fish or conduct any research or survey in Malaysia's Exclusive Economic Zone (EEZ).</p> <p>No foreign fishing vessels shall load or unload or land any fish, fuel or supplies or tranship any fish in Malaysian fisheries waters or Malaysian ports without written approval by the Malaysian Government.</p> <p>National Treatment may not apply to any measure relating to tuna fishing. Local equity requirement may be imposed in the establishment of a business operation in Malaysia.</p>
Source of Measure	:	<ul style="list-style-type: none">- Fisheries Act 1985.- Fisheries Development Authority of Malaysia Act 1971.- Exclusive Economic Zone Act 1984.- Continental Shelf Act 1966.- National Land Code.

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⁸ For the purpose of this reservation, the term 'foreign fishing vessels' can be found in Section 2 Fisheries Act 1985 (Act 317)

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15.

Sector	:	Agriculture Services Incidental to Agriculture
Sub-Sector	:	-
Industry Classification	:	ISIC Division 01 CPC 8811 – 8813
Level of Government	:	Central and Regional
Type of Obligation	:	National Treatment
Description of Measure	:	Equity ownership must be in line with the national development objectives of growth with equity in order to meet distributional goals.
Source of Measure	:	- National Agricultural Policy. - Administrative guidelines.

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16.

Sector	: Forestry Services Incidental to Forestry
Sub-Sector	: Extraction and Harvesting of Timber Forest Plantation
Industry Classification	: ISIC Division 02 CPC 8814
Level of Government	: Central and Regional
Type of Obligation	: National Treatment
Description of Measure	: National Treatment may not apply to measures relating to forest plantation. Extraction and harvesting of timber is closed to foreign investors in Peninsular Malaysia and Sabah. However, for Sarawak, local involvement and majority local control is required. Forest areas to be opened for such activities will be gradually reduced in the future to enable the resources to be managed sustainably. For services incidental to extraction and harvesting of timber is closed to foreign investors in Peninsular Malaysia and Sabah. However, for Sarawak, maximum foreign equity ownership allowed is 30%; flexibility could be considered on a case by case basis.
Source of Measure	: - National Forestry Act 1984 (Act 313). - F.M.S Forest Enactment 1934 (Cap. 153). - Johor Forest Enactment (J.En.No.58). - Kedah Forest Enactment (K.En.15 of 1357). - Kelantan Forest Enactment (Kn.En.4 of 1939). - Perlis Forest Enactment (Ps.En.3 of 1370). - S.S Forest Ordinance (Cap. 147). - Sabah Forest Enactment (Sabah En.2 of 68). - Sarawak Forest Ordinance (Swk.Cap.126) - Terengganu Forest Enactment (Tr. No.44 of 1356). - Administrative guidelines.

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17.

Sector	:	Mining and Quarrying Services Incidental to Mining and Quarrying
Sub-Sector	:	Oil and Gas Upstream Industries
Industry Classification	:	ISIC Divisions 10 to 14 CPC 883
Level of Government	:	Central and Regional
Type of Obligation	:	National Treatment Senior Management and Board of Directors
Description of Measure	:	PETRONAS is given the exclusive rights, powers, liberties and privileges to explore, exploit, win and obtain petroleum, whether onshore or offshore of Malaysia.
Source of Measure	:	- Petroleum Development Act 1974. - Petroleum Mining Act 1966.

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18.

Sector	:	Mining and Quarrying Services Incidental to Mining and Quarrying
Sub-Sector	:	Other mining and quarrying activities
Industry Classification	:	ISIC Divisions 10 to 14 CPC 883
Level of Government	:	Central and Regional
Type of Obligation	:	National Treatment Senior Management and Board of Directors
Description of Measure	:	National Treatment and Senior Management and Board of Directors may not apply to any measure relating to mining and quarrying activities. Joint ventures with state or state-linked enterprises may be required.
Source of Measure	:	- Minerals Development Act 1994. - State Mineral Enactments.

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