

ANNEX III

SCHEDULE OF MALAYSIA

HEADNOTES

1. Commitments under Chapter 11 (Financial Services) are undertaken subject to the limitations and conditions set forth in these headnotes and the Schedule below.

2. For greater certainty, all financial institutions offering Islamic financial products and services will be subject to the Shariah requirements as determined by financial services regulators in Malaysia. Shariah requirements may be measures for the purposes of Article 11.11.1 (Exceptions).

3. 11.5 (Market Access for Financial Institutions), juridical persons supplying financial services and constituted under the laws, regulations and guidelines of Malaysia, are subject to non-discriminatory limitations on juridical form.¹

4. For entries in:

- (a) Section A, all elements of the entry shall be considered in their totality for the purpose of its interpretation. Where there is any discrepancy between the **Measures** element and the **Description** element of that entry, the **Description** element shall prevail to the extent of that discrepancy.
- (b) Section B, in accordance with Article 11.10.2 (Non-Conforming Measures), the Articles specified in the **Obligations Concerned** element of an entry shall not apply to the sectors, subsectors, and activities identified in the **Description** element of that entry.

¹ For example, partnerships and sole proprietorships are generally not acceptable juridical forms for depository financial institutions in Malaysia. This headnote is not itself intended to affect, or otherwise limit, the choice of a financial institution of the other Party between setting up as a branch or subsidiary.

ANNEX III

Section A

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| Sector: | Financial Services |
| Sub-Sector: | All |
| Obligations Concerned: | Market Access for Financial Institutions (Article 11.5) |
| Level of Government: | Central |
| Measures: | <i>Financial Services Act 2013</i> <i>Islamic Financial Services Act 2013</i> <i>Money Services Business Act 2011</i> Guidelines on International Islamic Bank Guidelines on Establishment of International Takaful Operator Guideline on Electronic Money Guidelines on Application for Registration and Operation of Retakaful Operator BNM Press Statement (Ref. 06/10/10) dated 25 June 2010 Requirements for Operating Remittance Service Credit Card Guidelines <i>Capital Markets and Services Act 2007</i> Licensing Handbook |
| Description: | <p>Financial institutions supplying financial services in the territory of Malaysia must be constituted as locally-incorporated companies under the laws of Malaysia.</p> <p>This requirement is not applicable to persons solely carrying out:</p> <ul style="list-style-type: none">(a) reinsurance or retakaful business;(b) Islamic banking business in international currencies other than ringgit;(c) takaful business in international currencies other than ringgit; and |

(d) maritime and aviation loss adjusting business.

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| Sector: | Financial Services |
| Sub-Sector: | All |
| Obligations Concerned: | Most-Favoured-Nation Treatment (Article 11.4) Cross-Border Trade (Article 11.6) |
| Level of Government: | Central |
| Measures: | <i>Financial Services Act 2013</i> <i>Islamic Financial Services Act 2013</i> Guidelines on Outsourcing of Banking Operations Guidelines on Outsourcing of Islamic Banking Operations Guidelines on Outsourcing for Insurers Guidelines on Outsourcing for Takaful Operators |
| Description: | Approval for licensed banking institutions and insurance companies or takaful operators in Malaysia to outsource any of their activities abroad is subject to reciprocal treatment ² country. |

² A licensed foreign financial institution from any country that allows Malaysian-owned financial institutions operating in its country to outsource their activities abroad (under the same conditions as the country allows a domestic financial institution) will be allowed to outsource their activities abroad, subject to complying with other relevant requirements established by Bank Negara Malaysia. If such country has entered into a Free Trade Agreement with Malaysia and the country has undertaken an obligation to provide national treatment in relation to outsourcing by financial institutions, that fact shall be a positive factor in the consideration of such financial institution to outsource abroad.

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| Sector: | Financial Services |
| Sub-Sector: | All |
| Obligations Concerned: | Senior Management and Boards of Directors (Article 11.9) |
| Level of Government: | Central |
| Measures: | Section 122 of the <i>Companies Act 1965</i> |
| Description: | At least two directors of a company incorporated in Malaysia must be ordinarily resident or have principal residence within Malaysia. |

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| Sector: | Financial Services |
| Sub-Sector: | All |
| Obligations Concerned: | Market Access for Financial Institutions (Article 11.5) |
| Level of Government: | Central |
| Measures: | <i>Financial Services Act 2013</i> <i>Islamic Financial Services Act 2013</i> |
| Description: | <p>The carrying on of a licensed business or an approved business regulated by Bank Negara Malaysia (the Bank) requires a licence by the Minister of Finance or an approval by the Bank, respectively. A licence or an approval will not be granted unless the Minister of Finance or the Bank determines that the application for licence or approval will be in the best interest of Malaysia. In making a determination, the Minister and the Bank will have regard to:</p> <ul style="list-style-type: none"> (a) the effect of the investment on the level and nature of economic activity in Malaysia, including the effect on productivity, efficiency and quality of financial services; (b) the contribution towards enhancing international trade and investment linkages between Malaysia and other countries; (c) the effect of the investment on the stability of the financial system, including on conduct and behaviours that could pose a risk to the financial system; or (d) the degree and significance of participation of Malaysians in the financial sector.³ |

³ The key considerations will be that control of a significant share of domestically-owned financial institutions remains with Malaysians and that Malaysians continue to have an economically meaningful share of the financial sector.

In accordance with Article 11.13 (Transparency and Administration of Certain Measures):

- (i) the Bank shall make an administrative decision on a complete⁴ application within 120 days, and shall promptly notify the applicant of the decision; and
- (ii) on the request of an unsuccessful applicant, the Bank shall, to the extent practicable, provide to the applicant the reasons as to why the application was not in the best interest of Malaysia.

⁴ An application shall not be considered complete until all relevant hearings are held and all necessary information received. Where it is not practicable for a decision to be made within 120 days, the Bank shall notify the applicant without undue delay and shall endeavour to make the decision within a reasonable time thereafter.

Sector: Financial Services

Sub-Sector: All

Obligations Concerned: National Treatment (Article 11.3)

Level of Government: Central

Measures: *Financial Services Act 2013*
Islamic Financial Services Act 2013

Description:

- (i) the effect of the investment on the level and nature of economic activity in Malaysia, including the effect on productivity, efficiency and quality of financial services;
- (ii) the contribution towards enhancing international trade and investment linkages between Malaysia and other countries;
- (iii) the effect of the investment on the stability of the financial system, including on conduct and behaviours that could pose a risk to the financial system; or
- (iv) the degree and significance of participation of Malaysians in the financial sector.⁶

3. In accordance with Article 11.13 (Transparency and Administration of Certain Measures):

- (a) the Bank shall make a decision on a complete⁷ application within 120 days, and shall promptly notify the applicant of the decision; and
- (b) on the request of an unsuccessful applicant, the Bank shall, to the extent practicable, provide to the applicant the reasons as to why the application was not in the best interest of Malaysia.

⁶ The key considerations will be that control of a significant share of domestically-owned financial institutions remains with Malaysians and that Malaysians continue to have an economically meaningful share of the financial sector.

⁷ An application shall not be considered complete until all relevant hearings are held and all necessary information received. Where it is not practicable for a decision to be made within 120 days, the Bank shall notify the applicant without undue delay and shall endeavour to make the decision within a reasonable time thereafter.

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| Sector: | Financial Services |
| Sub-Sector: | Banking and other financial services (excluding insurance) |
| Obligations Concerned: | National Treatment (Article 11.3) Most-Favoured-Nation Treatment (Article 11.4) Market Access for Financial Institutions (Article 11.5) |
| Level of Government: | Central |
| Measures: | <i>Financial Services Act 2013</i> <i>Islamic Financial Services Act 2013</i> Press statement Ref No: 08/11/06 dated 17 August 2011 Circular on Establishment of New Branches by Locally-Incorporated Foreign Banks |
| Description: | <p>1. In relation to the establishment, closure and relocation of offices⁸ by locally incorporated foreign banks in Malaysia, the following restrictions are applicable:</p> <ul style="list-style-type: none"> (a) with effect from 29 December 2005, locally incorporated foreign banks may only establish up to eight new physical branches subject to a distribution ratio of 1(market centre): 2(semi-urban): 1(non-urban). However: <ul style="list-style-type: none"> (i) locally incorporated foreign banks are permitted to retain the number of branches established as at 29 December 2005; (ii) the distribution ratio is not applicable if the locally incorporated foreign bank has less than eight physical branches as of 17 August 2011. (b) locally incorporated foreign banks may not establish new off-premise electronic terminals. |

⁸ Under section 2(1) of the *Financial Services Act 2013* refers to a place where or at which any business of any person is carried out, including the head office in Malaysia, or any other office, a branch, an agency, a mobile place of business, a place of business set up and maintained for a limited period only, or an electronic terminal.

2. Notwithstanding paragraph 1, locally incorporated foreign banks from other Parties may establish:

- (a) an additional eight new physical branches based on a distribution ratio of 1(market centre): 2(semi-urban): 1(non-urban); and
- (b) new off-premise automated teller machines, subject to reciprocal treatment⁹ from the licensed foreign

3. In relation to the establishment and relocation of offices by locally incorporated foreign Islamic banks in Malaysia, the establishment of physical branches by locally incorporated foreign Islamic banks is subject to a distribution ratio of 1(market centre): 1(non-market centre).

⁹ All Malaysian banks in the relevant Party are accorded, at minimum, the same flexibility to establish additional physical branches and new off-premise automated teller machines accorded by Malaysia under this entry.

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| Sector: | Financial Services |
| Sub-Sector: | Insurance and insurance-related services |
| Obligations Concerned: | Cross-Border Trade (Article 11.6) |
| Level of Government: | Central |
| Measures: | <i>Financial Services Act 2013</i> <i>Islamic Financial Services Act 2013</i> |
| Description: | Approval for purchase of insurance or takaful cover for property and liability risks from insurance companies or takaful operators abroad is only granted if such insurance or takaful coverage is not available from licensed insurance companies or takaful operators. |

For the purposes of this entry:

to a third party; and

property means movable or immovable property located in Malaysia, including any ship or aircraft registered in Malaysia.

This limitation is not applicable for direct insurance of risks relating to:

- (a) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom;
 - (b) goods in international transit;
 - (c) product liability; and
 - (d) directors
- date of entry into force of this Agreement.

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| Sector: | Financial Services |
| Sub-Sector: | Insurance and insurance-related services |
| Obligations Concerned: | Cross-Border Trade (Article 11.6) |
| Level of Government: | Central |
| Measures: | <i>Financial Services Act 2013</i> <i>Islamic Financial Services Act 2013</i> Guidelines on General Reinsurance Arrangements Guidelines on Takaful Operational Framework |
| Description: | All licensed general insurance companies and takaful operators in Malaysia must first accord priority to insurance or reinsurance companies and takaful or retakaful operators licensed in Malaysia, followed by those in Labuan, before obtaining reinsurance or retakaful cover from insurance or reinsurance companies and takaful or retakaful operators abroad. |

Sector:

Financial Services

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| Sector: | Financial Services |
| Sub-Sector: | Insurance and insurance-related services |
| Obligations Concerned: | National Treatment (Article 11.3) |
| Level of Government: | Central |
| Measures: | Circular on Voluntary Cessions to Malaysian Reinsurance Berhad |
| Description: | <p>All licensed general insurance companies operating in Malaysia are required to reinsure 2.5 per cent for all insurance classes with Malaysian Reinsurance Berhad.</p> <p>In addition, if a licensed general insurance company reinsures a further portion of its underwritten business beyond the percentage specified above, 15 per cent of the remaining portion of business to be reinsured must be reinsured with Malaysian Reinsurance Berhad.</p> |

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| Sector: | Financial Services |
| Sub-Sector: | Insurance and insurance-related services |
| Obligations Concerned: | National Treatment (Article 11.3) |
| Level of Government: | Central |
| Measures: | - |
| Description: | Malaysia reserves the right to adopt or maintain any measures in relation to the development of the pension system in Malaysia. Such measures will cease to be applicable three years after the date of entry into force of this Agreement. |

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| Sector: | Financial Services |
| Sub-Sector: | Banking and other financial services (excluding insurance) |
| Obligations Concerned: | National Treatment (Article 11.3) Market Access for Financial Institutions (Article 11.5) |
| Level of Government: | Central |
| Measures: | <i>Capital Markets and Services Act 2007</i> Licensing Handbook |
| Description: | Only Malaysian nationals are allowed to provide financial planning services through a sole-proprietorship or partnership. |

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| Sector: | Financial Services |
| Sub-Sector: | Banking and other financial services (excluding insurance) |
| Obligations Concerned: | National Treatment (Article 11.3) |
| Level of Government: | Central |
| Measures: | <i>Capital Markets and Services Act 2007</i> Licensing Handbook |
| Description: | <p><u>Limitation on foreign shareholding in the capital market</u></p> <p>The permissible composition of foreign shareholding in a credit rating agency is limited to 49 per cent. However, this limitation will not be applicable after 31 December 2016.</p> <p><u>Limitation on individual shareholding in a stockbroking company</u></p> <p>Foreign investors are only allowed to own shares in a stockbroking company as corporations. In contrast, Malaysians are allowed to hold shares in a stockbroking company either as individuals or corporations. Malaysians wishing to own shares as individuals are only allowed to hold up to a maximum of 10 per cent of the total paid-up capital of a stockbroking company.</p> |

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| Sector: | Financial Services |
| Sub-Sector: | Banking and other financial services (excluding insurance) |
| Obligations Concerned: | National Treatment (Article 11.3) Market Access for Financial Institutions (Article 11.5) |
| Level of Government: | Central |
| Measures: | <i>Capital Markets and Services Act 2007</i> Licensing Handbook |
| Description: | A special scheme broker ¹⁰ is only allowed to carry out the range of activities as stipulated in Appendix 1 of the Licensing Handbook. Branching is not allowed for a special scheme broker. |

¹⁰

Establishment of Foreign Stockbroking Companies under the Special Scheme and Application for Establishment of A New Stockbroking Company.

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| Sector: | Financial Services |
| Sub-Sector: | Banking and other financial services (excluding insurance) |
| Obligations Concerned: | Market Access for Financial Institutions (Article 11.5) |
| Level of Government: | Central |
| Measures: | <i>Capital Markets and Services Act 2007</i> Licensing Handbook |
| Description: | Any person wishing to undertake capital market activities ¹¹ requires authorisation by the Securities Commission Malaysia. Authorisation ¹² will not be granted unless the application is determined to be in the best interest of Malaysia. In making a determination, the Securities Commission Malaysia will give regard to any one or more of the following: |

- (e) the degree and significance of participation of Malaysians in the capital market¹³.

In accordance with Article 11.13 (Transparency and Administration of Certain Measures):

- (i) the Securities Commission Malaysia shall, to the extent practicable make an administrative determination on a complete¹⁴ application within 120 days, and shall promptly notify the applicant of the decision; and
- (ii) on the request of an unsuccessful applicant, the Securities Commission Malaysia shall, to the extent practicable, provide to the applicant reasons as to why the application was not in the best interest of Malaysia.

¹³ The key considerations will be that the control of a significant share of capital market activities including intermediation activities remains with Malaysians, and that Malaysians continue to have an economically meaningful participation in the capital market sector.

¹⁴ An application shall not be considered complete until all relevant hearings are held and all necessary information received. Where it is not practicable for a decision to be made within 120 days, the Securities Commission Malaysia shall notify the applicant without undue delay and shall endeavour to make the decision within a reasonable time thereafter.

ANNEX III

Section B

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| Sector: | Financial Services |
| Sub-Sector: | All |
| Obligations Concerned: | Most-Favoured-Nation Treatment (Article 11.4) Cross-Border Trade (Article 11.6) |
| Level of Government: | Central |
| Description: | Malaysia reserves the right to adopt or maintain any measures related to the non-internationalisation of ringgit which include: <ul style="list-style-type: none">(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> <i>Financial Services Act 2013</i> <i>Islamic Financial Services Act 2013</i> Notices on Foreign Exchange Administration Rules |

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| Sector: | Financial Services |
| Sub-Sector: | All |
| Obligations Concerned: | Cross-Border Trade (Article 11.6) |
| Level of Government: | Central |
| Description: | The purchase of a financial service by a resident from a financial service supplier abroad shall be subject to the requirements, restrictions and conditions imposed under the Notices on Foreign |

Sector: Financial Services

Sub-Sector: All

Obligations Concerned: National Treatment (Article 11.3)

Level of Government: Central

Description: Malaysia may grant advantages to one or more development financial institutions¹⁵, including but 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.;

¹⁵

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

new industrial, agricultural, commercial or other economic venture or the expansion or improvement of any such existing venture.

- (m) Borneo Development Corporation (Sarawak) Sdn. Bhd.;
- (n) *Danajamin Nasional Berhad*; and
- (o) *Cagamas Berhad*.

Existing Measures: -

Sector: Financial Services

Sub-Sector: Banking and other financial services (excluding insurance)

Obligations Concerned: National Treatment (Article 11.3)
Most-Favoured-Nation Treatment (Article 11.4)
Market Access for Financial Institutions (Article 11.5)

Level of Government: Central

Description: The establishment or operation of the following:

- (a) securities and derivatives markets (as approved exchanges, exempt exchanges or recognised markets);
- (b) clearing facility; and
- (c) central depository,

is subject to the written approval, including the imposition of terms and conditions for approval, either from the Minister of Finance on the recommendation of the Securities Commission Malaysia, or from the Securities Commission Malaysia, where applicable. For greater certainty, this measure will not affect the participation of financial institutions in any such markets, clearing facility or central depository.

Written approval from the Minister of Finance is required before a person (alone or acting in concert with other persons) can acquire voting shares of an exchange holding company of five per cent or more of the aggregate of the nominal amount of all the voting shares in the exchange holding company.

Written approval from the Minister of Finance is required before an exchange holding company can reduce its shareholding in a stock exchange, a derivatives exchange, an approved clearing house or a central depository, to a level below 75 per cent, or su

Existing Measures:

Capital Markets and Services Act 2007

Securities Industry (Central Depositories) Act 1991

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|-------------------------------|---|
| Sector: | Financial Services |
| Sub-Sector: | Banking and other financial services (excluding insurance) |
| Obligations Concerned: | National Treatment (Article 11.3) Market Access for Financial Institutions (Article 11.5) |
| Level of Government: | Central |
| Description: | <p>Malaysia reserves the right to provide subsidies or grant advantages to financial institutions that are integral for the orderly functioning and development of the capital market. This includes subsidies and advantages granted in connection with:</p> <ul style="list-style-type: none"> (a) the supply of any financial service involving what Malaysia deems to be strategically important institutions, including: <ul style="list-style-type: none"> (i) exchanges; (ii) central depositories; (iii) repositories; (iv) clearing and settlement facilities; and (v) market operators; and (b) the supply of any financial service, which Malaysia deems necessary: <ul style="list-style-type: none"> (i) for the development of local micro, small and medium enterprises; or (ii) to facilitate or enable the supply of any service to Malaysian enterprises that is not being supplied in Malaysia or that is not being supplied efficiently. |
| Existing Measures: | - |