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**ANNEX III**

**MALAYSIA'S RESERVATIONS TO  
CHAPTER 11 (FINANCIAL SERVICES)**

**HEADNOTES**

1. Commitments under this Chapter 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. To clarify Malaysia's commitments with respect to Article 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 forms<sup>1</sup>.
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 Source of Measure 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 of this Agreement specified in the Obligations Concerned element of an entry do not apply to the sectors, subsectors, and activities identified in the Description element of that entry.

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<sup>1</sup> 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.

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**ANNEX III**

**SECTION A**

**A-1**

<b>Sector:</b>	Financial services
<b>Sub-sector:</b>	All
<b>Level of Government:</b>	Federal
<b>Obligations concerned:</b>	Market Access for Financial Institutions (Article 11.5)
<b>Source of Measures:</b>	<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
<b>Description:</b>	<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"><li>· Reinsurance or retakaful business;</li><li>· Islamic banking business in international currencies other than ringgit;</li><li>· Takaful business in international currencies other than ringgit; and</li><li>· Maritime and aviation loss adjusting business.</li></ul>

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**A-2**

<b>Sector:</b>	Financial Services
<b>Sub-sector:</b>	All
<b>Level of Government:</b>	Federal
<b>Obligations concerned:</b>	Most-Favoured Nation Treatment (Article 11.4) Cross-Border Trade (Article 11.6)
<b>Source of Measures:</b>	<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
<b>Description:</b>	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 <sup>2</sup> by the applicant's home country.

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<sup>2</sup> 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's application to outsource abroad.

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**A-3**

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

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**A-4**

**Sector:** Financial Services

**Sub-sector:** All

**Level of Government:** Federal

**Obligations concerned:** Market Access for Financial Institutions (Article 11.5)

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

**Description:** The carrying on of a licensed business or an approved business regulated by Bank Negara Malaysia (the Bank) requires a license by the Minister of Finance or an approval by the Bank, respectively. A license or an approval will not be granted unless the Minister of Finance or the Bank determines that the application for license or approval will be in the best interest of Malaysia. In making a determination, the Minister and the Bank will have regard to:

- (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<sup>3</sup>.

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

- (i) The Bank shall make an administrative decision on a completed<sup>4</sup> application within 120 days, and shall

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<sup>3</sup> 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.

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promptly notify the applicant of the decision;

(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.

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<sup>4</sup> 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 endeavor to make the decision within a reasonable time thereafter.

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**A-5**

- Sector:** : Financial Services
- Sub-sector:** : All
- Level of Government:** : Federal
- Obligations concerned:** : National Treatment (Article 11.3)
- Source of Measures:** : *Financial Services Act 2013*  
*Islamic Financial Services Act 2013*
- Description:** : 1. No natural person shall hold more than 10% of shares or interest in shares of a licensed commercial bank, investment bank, Islamic bank, licensed insurance company or takaful operator ("maximum permissible holdings").
2. The:
- (a) acquisition of shares or interest-in-shares of a licensed commercial bank, investment bank, Islamic bank, licensed insurance company or takaful operator<sup>5</sup>; and
- (b) exemption from the maximum permissible holdings in a licensed commercial bank, investment bank, Islamic bank, licensed insurance company or takaful operator
- requires approval by the Minister of Finance or Bank Negara Malaysia (the Bank), as the case may be. Approval will not be granted unless the Minister of Finance or the Bank, as the case may be, determines that the application will be in the best interest of Malaysia. In making a determination, the Minister of Finance and the Bank will have regard to:
- (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;

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<sup>5</sup> For greater certainty, approval is only required for acquisition of shares or interest in shares resulting in holding of shares or interest in shares of, or exceeding:

(i) A multiple of 5%

(ii) Percentage holding for a mandatory offer under the Malaysia Code of Take-Overs and Mergers

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- (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<sup>6</sup>.

In accordance with Article 11.13:

- (i) The Bank shall make a decision on a completed<sup>7</sup> application within 120 days, and shall promptly notify the applicant of the decision;
- (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.

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<sup>6</sup> 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.

<sup>7</sup> 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 endeavor to make the decision within a reasonable time thereafter.

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**A-6**

- Sector:** Financial Services
- Sub-sector:** Banking and other financial services (excluding insurance)
- Level of Government:** Federal
- Obligations concerned:** National Treatment (Article 11.3)  
Most-Favoured Nation Treatment (Article 11.4)  
Market Access for Financial Institutions (Article 11.5)
- Source of Measures:** *Financial Services Act 2013*  
*Islamic Financial Services Act 2013*  
Press statement Ref No: 08/11/06 dated 17 August 2011  
Circular on Establishment of New Branches by Locally-Incorporated Foreign Banks
- Description:**
1. In relation to the establishment, closure and relocation of offices<sup>8</sup> by locally incorporated foreign banks in Malaysia, the following restrictions are applicable:
    - (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,
      - (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.
  2. Notwithstanding paragraph 1, locally incorporated foreign banks from TPP countries may establish:
    - (a) An additional eight new physical branches based on a

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<sup>8</sup> Under section 2(1) of the *Financial Services Act 2013*, “office” 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.

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distribution ratio of 1(market centre): 2(semi-urban): 1(non-urban); and

(b) New off-premise automated teller machines, subject to reciprocal treatment<sup>9</sup> from the licensed foreign bank's home country.

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).

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<sup>9</sup> All Malaysian banks in the respective TPP country are accorded, at minimum, the same flexibility to establish additional physical branches and new off-premise automated teller machines accorded by Malaysia under this NCM.

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A-7

**Sector:** Financial Services

**Sub-sector:** Insurance and insurance-related services

**Level of Government:** Federal

**Obligations concerned:** Cross-Border Trade (Article 11.6)

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

**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 purpose of this entry:

**Property** means “movable or immovable property located in Malaysia, including any ship or aircraft registered in Malaysia”.

**Liability** means “liability of a person resident in Malaysia to a third party”.

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 and officers’ liability five years after the date of entry into force of this Agreement.

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**A-8**

<b>Sector:</b>	Financial Services
<b>Sub-sector:</b>	Insurance and insurance-related services
<b>Level of Government:</b>	Federal
<b>Obligations concerned:</b>	Cross-Border Trade (Article 11.6)
<b>Source of Measures:</b>	<i>Financial Services Act 2013</i> <i>Islamic Financial Services Act 2013</i> Guidelines on General Reinsurance Arrangements Guidelines on Takaful Operational Framework
<b>Description:</b>	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 Labuan before obtaining reinsurance or retakaful cover from insurance or reinsurance companies and takaful or retakaful operators abroad.

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**A-9**

<b>Sector:</b>	Financial Services
<b>Sub-sector:</b>	Insurance and insurance-related services
<b>Level of Government:</b>	Federal
<b>Obligations concerned:</b>	National Treatment (Article 11.3) Cross-Border Trade (Article 11.6)
<b>Source of Measures:</b>	<i>Income Tax Act 1967</i>
<b>Description:</b>	Annuity incomes received by policyholders of annuity policies underwritten by domestic-owned life insurers or family takaful operators operating in the territory of Malaysia are exempted from tax.

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**A-10**

<b>Sector:</b>	Financial Services
<b>Sub-sector:</b>	Insurance and insurance-related services
<b>Level of Government:</b>	Federal
<b>Obligations concerned:</b>	National Treatment (Article 11.3)
<b>Source of Measures:</b>	Circular on Voluntary Cessions to Malaysian Reinsurance Berhad
<b>Description:</b>	<p>All licensed general insurance companies operating in Malaysia are required to reinsure 2.5% 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% of the remaining portion of business to be reinsured must be reinsured with Malaysian Reinsurance Berhad.</p>

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**A-11**

**Sector:** Financial Services

**Sub-sector:** Insurance and insurance-related services

**Level of Government:** Federal

**Obligations concerned:** National Treatment (Article 11.3)

**Source of 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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**A-12**

<b>Sector:</b>	Financial Services
<b>Sub-sector:</b>	Banking and other financial services (excluding insurance)
<b>Level of Government:</b>	Federal
<b>Obligations concerned:</b>	National Treatment (Article 11.3) Market Access for Financial Institutions (Article 11.5)
<b>Source of Measures:</b>	<i>Capital Markets and Services Act 2007</i> Licensing Handbook
<b>Description:</b>	Only Malaysian citizens or Malaysian permanent residents are allowed to provide financial planning services through a sole proprietor or partnership.

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**A-13**

**Sector:** Financial Services

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

**Level of Government:** Federal

**Obligations concerned:** National Treatment (Article 11.3)

**Source of Measures:** *Capital Markets and Services Act 2007*  
Licensing Handbook

**Description:** Limitation on foreign shareholding in the capital market

The permissible composition of foreign shareholding in a credit rating agency is limited to 49%. However, this limitation will not be applicable after 31 December 2016.

Limitation on individual shareholding in a stockbroking company

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% of the total paid-up capital of a stockbroking company.

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**A-14**

<b>Sector:</b>	Financial Services
<b>Sub-sector:</b>	Banking and other financial services (excluding insurance)
<b>Level of Government:</b>	Federal
<b>Obligations concerned:</b>	National Treatment (Article 11.3) Market Access for Financial Institutions (Article 11.5)
<b>Source of Measures:</b>	<i>Capital Markets and Services Act 2007</i> Licensing Handbook
<b>Description:</b>	A special scheme broker <sup>10</sup> 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.

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<sup>10</sup> Means a foreign stockbroking company established pursuant to the Application for Establishment of Foreign Stockbroking Companies under the Special Scheme and Application for Establishment of A New Stockbroking Company.

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**A-15**

**Sector:** Financial Services

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

**Level of Government:** Federal

**Obligations concerned:** Market Access for Financial Institutions (Article 11.5)

**Source of Measures:** *Capital Markets and Services Act 2007*  
Licensing Handbook

**Description:** Any person wishing to undertake capital market activities<sup>11</sup> requires authorisation by the Securities Commission Malaysia. Authorisation<sup>12</sup> 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:

- (a) The area of specialisation and level of expertise that can be offered to the capital market including its effect on the productivity, transference of skills and efficiency and quality of capital market services;
- (b) The risk posed on the systemic stability of the capital market including activities and conduct that will likely impact the orderly functioning of the capital market;
- (c) Contribution towards attracting investments, enhancing market linkages and promoting vibrancy in the capital market;
- (d) Ability in developing strategic or nascent sectors in the capital market; or
- (e) The degree and significance of participation of Malaysians in the capital market<sup>13</sup>.

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<sup>11</sup> Capital market activity means any type of regulated activity or capital market services as defined under the *Capital Markets and Services Act 2007*.

<sup>12</sup> Authorisation includes grant of a license, registration or approval, as the case may be.

<sup>13</sup> 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.

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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 completed<sup>14</sup> application within 120 days, and shall promptly notify the applicant of the decision.

(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.

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<sup>14</sup> 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 endeavor to make the decision within a reasonable time thereafter.

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**ANNEX III**

**SECTION B**

**B-1**

<b>Sector:</b>	Financial Services
<b>Sub-sector:</b>	All
<b>Level of Government:</b>	Federal
<b>Obligations concerned:</b>	Most-Favoured Nation Treatment (Article 11.4) Cross-Border Trade (Article 11.6)
<b>Source of Measures:</b>	<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
<b>Description:</b>	Malaysia reserves the right to adopt or maintain any measures related to the non-internationalisation of ringgit which include:  (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;  (c) limitation on the use of ringgit in Malaysia by non-residents.

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**B-2**

<b>Sector:</b>	Financial Services
<b>Sub-sector:</b>	All
<b>Level of Government:</b>	Federal
<b>Obligations concerned:</b>	Cross-Border Trade (Article 11.6)
<b>Source of Measures:</b>	<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
<b>Description:</b>	The purchase of financial service, by a resident from financial service supplier abroad shall be subject to the requirements, restrictions and conditions imposed under the Notices on Foreign Exchange Administration Rules.

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**B-3**

<b>Sector:</b>	Financial Services
<b>Sub-sector:</b>	All
<b>Level of Government:</b>	Federal
<b>Obligations concerned:</b>	National Treatment (Article 11.3)
<b>Source of Measures:</b>	
<b>Description:</b>	<p>Malaysia may grant advantages to one or more development financial institutions<sup>15</sup>, including but not limited to:</p> <ul style="list-style-type: none"><li>· Bank Pembangunan Malaysia Berhad</li><li>· Bank Perusahaan Kecil dan Sederhana Malaysia Berhad</li><li>· Export-Import Bank of Malaysia Berhad</li><li>· Bank Kerjasama Rakyat Malaysia</li><li>· Bank Simpanan Nasional</li><li>· Bank Pertanian Malaysia Berhad</li><li>· Malaysian Industrial Development Finance Berhad</li><li>· Credit Guarantee Corporation Berhad</li><li>· Lembaga Tabung Haji</li><li>· Sabah Development Bank Berhad</li><li>· Sabah Credit Corporation</li><li>· Borneo Development Corporation (Sabah) Sdn. Bhd</li><li>· Borneo Development Corporation (Sarawak) Sdn. Bhd</li><li>· Danajamin Nasional Berhad</li><li>· Cagamas Berhad</li></ul>

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<sup>15</sup> “Development financial institution” means an institution which carries 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.

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**B-4**

<b>Sector:</b>	Financial Services
<b>Sub-sector:</b>	Banking and other financial services (excluding insurance)
<b>Level of Government:</b>	Federal
<b>Obligations concerned:</b>	National Treatment (Article 11.3) Most-Favoured Nation Treatment (Article 11.4) Market Access for Financial Institutions (Article 11.5)
<b>Source of Measures:</b>	<i>Capital Markets and Services Act 2007</i> <i>Securities Industry (Central Depositories) Act 1991</i>
<b>Description:</b>	<p>The establishment or operation of the following:</p> <ul style="list-style-type: none"><li>· securities and derivatives markets (as approved exchanges, exempt exchanges or registered electronic facilities);</li><li>· clearing facility; and</li><li>· central depository,</li></ul> <p>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.</p> <p>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 5% or more of the aggregate of the nominal amount of all the voting shares in the exchange holding company.</p> <p>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%, or such other percentage as may be specified from time to time by the Minister of Finance of the total issued and paid-up capital in the stock exchange, derivatives exchange, approved clearing house or central depository.</p>

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**B-5**

**Sector:** Financial Services

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

**Level of Government:** Federal

**Obligations concerned:** National Treatment (Article 11.3)  
Market Access for Financial Institutions (Article 11.5)

**Source of Measures:**

**Description:** 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:

(a) the supply of any financial service involving what Malaysia deems to be strategically important institutions, including:

- exchanges;
- central depositories;
- repositories;
- clearing and settlement facilities;
- market operators; or

(b) the supply of any financial service, which Malaysia deems necessary:

- for the development of local micro, small and medium enterprises;
- 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.