

Government Procurement

Presentation Outline

- Objectives
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- Structure of Chapter
- General Principles
- Malaysia's Market Access Offer
- Safeguards and Flexibilities
- Exclusions
- Implementation of Bumiputera Policy
- Benefits to Government
- Benefits to Malaysian Suppliers

Objectives

- The GP Chapter consists of **GP text** and Parties' commitments in **market access offer**.
- **GP text:**
 - Establishes general principles and detailed procedural requirements for compliance by TPP Parties including recourse on complaints and challenges.
 - Ensures good governance through competitive, open, fair and transparent conditions for participation of TPP suppliers in GP.
- **Market access offer:**
 - Allows TPP suppliers to access the Parties' GP market for procurement covered under the Agreement.
 - Enables Government to achieve best value for money through competitive pricing and wider range of goods and services.

Scope

- The obligations under the GP text apply to Parties' market access offer, referred to as **covered procurement**.
- **Covered procurement** is procurement:
 - i. of goods, services and construction services
 - ii. above procurement thresholds
 - iii. by procuring entities -
 - Central Govt. Entities (federal ministries and agencies)
 - Sub-Central Govt. Entities (state govt. and local authorities)
 - Other Entities (statutory bodies and govt. companies)
 - iv. not excluded under this Agreement
- Each Party will commit its covered procurement for suppliers of other TPP Parties to participate in its GP.

Structure of Chapter

1

GP TEXT

- Consists of 24 [Articles](#)

Examples of Articles

General principles

National treatment, Non-discrimination, Prohibition of offsets

Publication of procurement information

Notices of intended procurement

Technical specifications

Procurement method

Open tendering, Selective tendering, Limited tendering

Treatment of tenders and awarding of contract

Domestic review

Complaints and challenge mechanism by suppliers

2

MARKET ACCESS OFFERS (MAO)

- Comprises of 10 [Sections](#)

Elements of MAO

Thresholds:

Goods, Services, Construction Services

Entities:

Central Govt., Sub-Central Govt., Other Entities

Schedule of:

Goods, Services, Construction Services

General Notes

Country-specific exclusions

Threshold Adjustment Formula

Procurement Information

Transitional Measures

Higher thresholds, delayed application of obligations

General Principles

National Treatment

- TPP companies/products must be treated equally as local companies/products.

Non-Discrimination

- Prohibits discriminatory practices i.e. preferential treatment to Malaysian companies, certain groups & Malaysian products/services.

Transparency

- Publish information on GP measures (e.g. law, policy, procedures), tender advertisement and award decisions.
- Include among others, technical specifications and evaluation criteria in the tender documentation.

Offsets

- Prohibits imposition of offsets.
- Defined as any conditions or undertakings that require:
use of domestic content, domestic suppliers, licensing of technology, technology transfer, investment, counter-trade or similar actions to encourage local development or to improve a Party's balance-of-payments accounts.

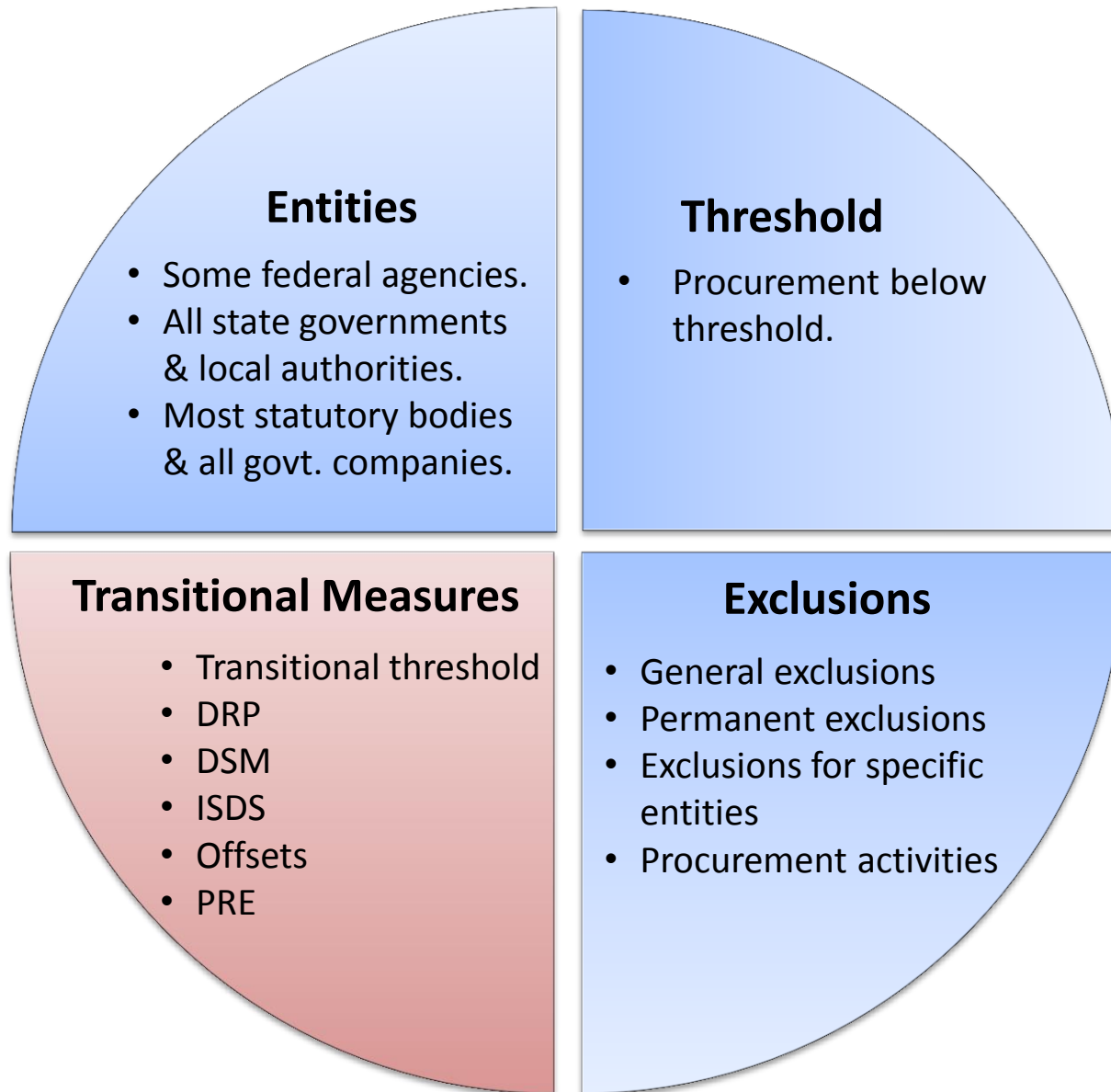
Use of Electronic Means

- Provide GP opportunities to be undertaken through electronic means.
- Publication of GP information, advertisement and tender award.
- Encourage use of electronic means to shorten the time period of tender advertisement.

Malaysia's Market Access Offer

| | | |
|--|-------------------------------|---|
| THRESHOLD Central Govt. Entities | GOODS | SDR 130,000 through transitional measures |
| | SERVICES | SDR 130,000 through transitional measures |
| | CONSTRUCTION SERVICES | SDR 63 million through transitional measures |
| LIST OF ENTITIES | CENTRAL GOVERNMENT | All Ministries based on listed agencies under the respective Ministries |
| | SUB-CENTRAL GOVERNMENT | None |
| | OTHER ENTITIES | 4 statutory bodies under MITI |
| SCHEDULE | GOODS | All goods under UN Provisional CPC 01 - 49 except 6 item |
| | SERVICES | Most services under UN Provisional CPC 61 - 99 |
| | CONSTRUCTION SERVICES | All types of works under UN Provisional CPC 51 except 2 activities |
| GENERAL NOTES | EXCLUSIONS | Country-specific exclusions |

Safeguards and Flexibilities



Safeguards and Flexibilities

– Transitional Measures

1) Transition **thresholds** after entry into force for Malaysia:

| Section A (Central Govt. Entities) | Initial Threshold | Landing Threshold | Transition Period (Years) |
|---------------------------------------|--|--|------------------------------|
| Goods | SDR1.5 million (RM7.5 million) | SDR130,000 (RM650,000) | 7 |
| Services | SDR 2 million (RM10 million) | SDR130,000 (RM650,000) | 9 |
| Construction Services | SDR63 million (RM315 million) | SDR14 million (RM70 million) | 20 |

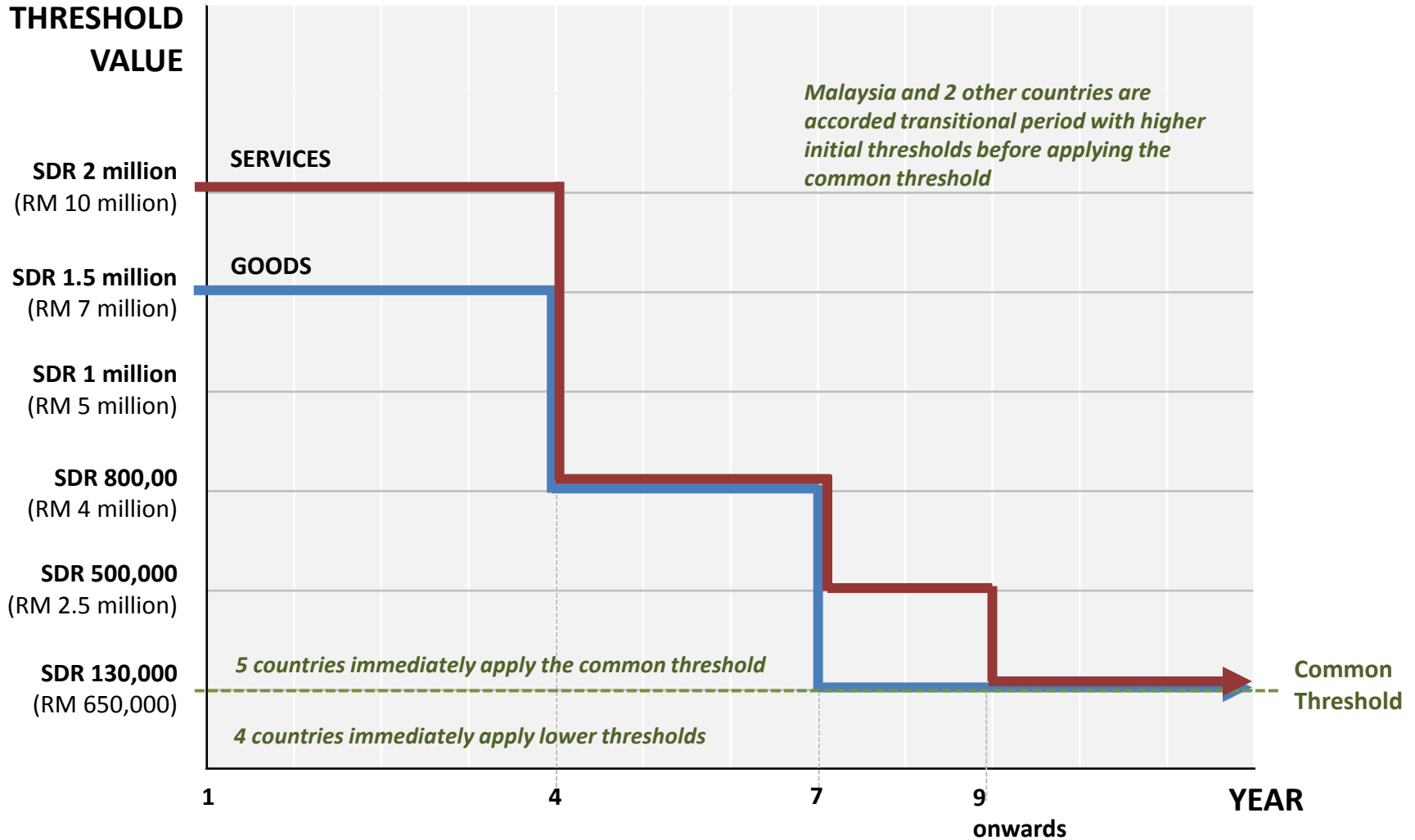
| Section C (Other Entities) | Initial Threshold | Landing Threshold | Transition Period (Years) |
|-------------------------------|---|--|------------------------------|
| Goods | SDR2 million (RM10 million) | SDR150,000 (RM750,000) | 7 |
| Services | SDR 2 million (RM10 million) | SDR150,000 (RM750,000) | 9 |
| Construction Services | SDR63 million (RM315 million) | SDR14 million (RM70 million) | 20 |

Note: Thresholds are quoted in IMF Special Drawing Rights (SDR). Value in RM is for comparison purposes only and subject to exchange rates.

Disclaimer: This document is for information purposes only, and does not constitute legal advice.

Transitional Thresholds for Goods and Services under Central Government Entities of Malaysia

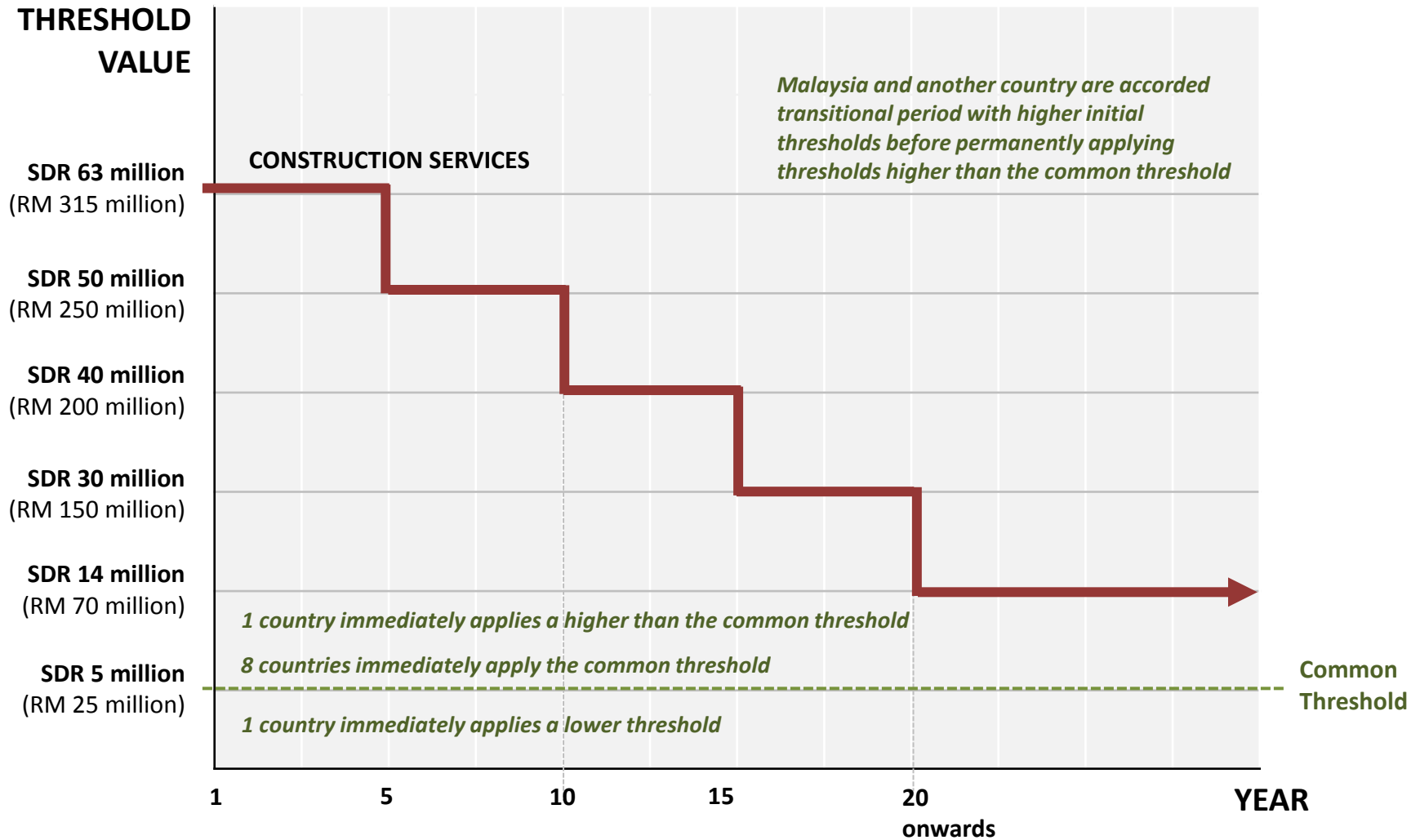
Goods (7 years) & Services (9 years)



Note: Thresholds are quoted in IMF Special Drawing Rights (SDR). Value in RM is for comparison purposes only and subject to exchange rates.

Transitional Thresholds for Construction Services under Central Government Entities of Malaysia

Construction Services (20 years)



Note: Thresholds are quoted in IMF Special Drawing Rights (SDR). Value in RM is for comparison purposes only and subject to exchange rates.

Safeguards and Flexibilities

– Transitional Measures (Cont'd)

2) Delayed application of **Domestic Review Procedures (DRP)**

Transition period: 3 years

Interim measures: Internal administrative procedures to address complaints and challenges

3) Delayed application of **Dispute Settlement Mechanism (DSM)**

Transition period: 5 years

Interim measures: Consultation with TPP Party that raises concerns with Malaysia's implementation of GP Chapter

4) Dispute mechanism under **Investor-State Dispute Settlement (ISDS)**

Transition period: 3 years for contracts below SDR 1.5 million (goods), SDR 2 million (services), SDR 63 million (construction services)

Interim measures: Disputes/claims to be brought based on contract terms and existing law

Safeguards and Flexibilities

– Transitional Measures (Cont'd)

- 5) Delayed application for prohibition of **Offsets** clause
 - Transition period: 12 years
 - Interim measures: Offsets can be implemented by 17 Ministries

- 6) Implementation of GP measures under **economic stimulus package**
 - Transition period: 25 years
 - Interim measures: Procurement funded by an economic stimulus package (supplementary budget) only in response to a severe nationwide economic crisis

Exclusions for all TPP Countries

General Exclusions

- ✓ Security
- ✓ Protection of public morals, order and safety
- ✓ Protection of human, animal/ plant life or health
- ✓ Protection of intellectual property
- ✓ Goods/service of a person with disabilities, of philanthropic or not-for-profit institutions, or of prison labour
- ✓ Non-contractual agreements/assistance e.g. grants, loans, subsidies
- ✓ International assistance, incl. development aid
- ✓ Funded by international org. or foreign/international grants, loans or other assistance
- ✓ International agreement relating to stationing of troops/joint implementation by countries of a project
- ✓ For consumption outside the territory of Party

Exclusions for Malaysia

Permanent Exclusions

- ✓ Istana Negara
- ✓ Rural development & poverty eradication programmes
- ✓ Public Private Partnership
- ✓ Local handicraft, national treasures & national heritage
- ✓ Religious purposes
- ✓ R&D
- ✓ National celebration except construction services

Exclusions for Specific Entities

- ✓ KDN: Security considerations
- ✓ KPKT: Program Perumahan Rakyat
- ✓ MOE: Uniforms, text books and milk and food programmes for pre-school and school children
- ✓ MOA: Procurement and distribution of inputs for agro-food production

Exclusions of Procurement Activities

- ✓ Goods - rice, electrical energy, natural water
- ✓ Services - financial services, plasma fractionation services, hotel & restaurant services, postal services, sewage services, sanitation services
- ✓ Construction services - dredging services, slope works

Implementation of Bumiputera Policy

| Activity | Bumiputera Measure | | | | | | | | |
|--------------------------------------|--|--------------|---------------------------------------|-----------------|-----|------------------------------|----|------------------|----|
| Registration of company | Preserve the right to grant <u>Bumiputera status</u> to eligible companies based on the Bumiputera definition adopted for GP | | | | | | | | |
| Procurement of construction services | Set aside for <u>Bumiputera contractors</u> up to 30% | | | | | | | | |
| Procurement of goods and services | Maintain margin of price preference (MOP) for Bumiputera manufacturers based on current percentages <table border="1" data-bbox="784 685 1676 1068"> <thead> <tr> <th data-bbox="784 685 1329 836">Tender Value</th> <th data-bbox="1336 685 1676 836">% of MOP for Bumiputera manufacturers</th> </tr> </thead> <tbody> <tr> <td data-bbox="784 842 1329 911">Up to RM10 mill</td> <td data-bbox="1336 842 1676 911">10%</td> </tr> <tr> <td data-bbox="784 916 1329 985">Above RM10 mill - RM100 mill</td> <td data-bbox="1336 916 1676 985">5%</td> </tr> <tr> <td data-bbox="784 991 1329 1059">Above RM100 mill</td> <td data-bbox="1336 991 1676 1059">3%</td> </tr> </tbody> </table> | Tender Value | % of MOP for Bumiputera manufacturers | Up to RM10 mill | 10% | Above RM10 mill - RM100 mill | 5% | Above RM100 mill | 3% |
| Tender Value | % of MOP for Bumiputera manufacturers | | | | | | | | |
| Up to RM10 mill | 10% | | | | | | | | |
| Above RM10 mill - RM100 mill | 5% | | | | | | | | |
| Above RM100 mill | 3% | | | | | | | | |

Implementation of Bumiputera Policy (Cont'd)

| Activity | Bumiputera measures | | | | | | | | | | | | | | |
|-----------------------------------|---|---|---|-----------------------------|-----|------------------------------|----|-----------------------------|----|----------------------------|----|-----------------------------|------|-----------------|---|
| Procurement of goods and services | Bumiputera suppliers that provide goods/services from Malaysia or other TPP countries will enjoy MOP based on the current percentages. | | | | | | | | | | | | | | |
| | <table border="1"> <thead> <tr> <th data-bbox="707 396 1441 651">Tender Value</th> <th data-bbox="1441 396 1816 651">% of MOP for Bumiputera <i>(providing Malaysian or TPP products /services)</i></th> </tr> </thead> <tbody> <tr> <td data-bbox="707 651 1441 729">Above RM100,000 - RM500,000</td> <td data-bbox="1441 651 1816 729">10%</td> </tr> <tr> <td data-bbox="707 729 1441 808">Above RM500,000 - RM1.5 mill</td> <td data-bbox="1441 729 1816 808">7%</td> </tr> <tr> <td data-bbox="707 808 1441 886">Above RM1.5 mill - RM5 mill</td> <td data-bbox="1441 808 1816 886">5%</td> </tr> <tr> <td data-bbox="707 886 1441 965">Above RM5 mill - RM10 mill</td> <td data-bbox="1441 886 1816 965">3%</td> </tr> <tr> <td data-bbox="707 965 1441 1043">Above RM10 mill - RM15 mill</td> <td data-bbox="1441 965 1816 1043">2.5%</td> </tr> <tr> <td data-bbox="707 1043 1441 1122">Above RM15 mill</td> <td data-bbox="1441 1043 1816 1122">-</td> </tr> </tbody> </table> | Tender Value | % of MOP for Bumiputera <i>(providing Malaysian or TPP products /services)</i> | Above RM100,000 - RM500,000 | 10% | Above RM500,000 - RM1.5 mill | 7% | Above RM1.5 mill - RM5 mill | 5% | Above RM5 mill - RM10 mill | 3% | Above RM10 mill - RM15 mill | 2.5% | Above RM15 mill | - |
| | Tender Value | % of MOP for Bumiputera <i>(providing Malaysian or TPP products /services)</i> | | | | | | | | | | | | | |
| | Above RM100,000 - RM500,000 | 10% | | | | | | | | | | | | | |
| | Above RM500,000 - RM1.5 mill | 7% | | | | | | | | | | | | | |
| | Above RM1.5 mill - RM5 mill | 5% | | | | | | | | | | | | | |
| | Above RM5 mill - RM10 mill | 3% | | | | | | | | | | | | | |
| | Above RM10 mill - RM15 mill | 2.5% | | | | | | | | | | | | | |
| Above RM15 mill | - | | | | | | | | | | | | | | |

Implementation of Bumiputera Policy (Cont'd)

| Activity | Bumiputera measures | | | | | | | | | | | | | | |
|-----------------------------------|---|--------------|---|-----------------------------|-----|------------------------------|------|-----------------------------|------|----------------------------|------|-----------------------------|-------|-----------------|---|
| Procurement of goods and services | <p data-bbox="710 251 1837 337">Bumiputera suppliers that provide non-TPP goods/services will still enjoy MOP but with lower percentage.</p> <table border="1" data-bbox="813 339 1785 958"> <thead> <tr> <th data-bbox="819 344 1456 515">Tender Value</th> <th data-bbox="1456 344 1779 515">% of MOP for Bumiputera (providing non-TPP products/services)</th> </tr> </thead> <tbody> <tr> <td data-bbox="819 515 1456 591">Above RM100,000 - RM500,000</td> <td data-bbox="1456 515 1779 591">10%</td> </tr> <tr> <td data-bbox="819 591 1456 666">Above RM500,000 - RM1.5 mill</td> <td data-bbox="1456 591 1779 666">3.5%</td> </tr> <tr> <td data-bbox="819 666 1456 742">Above RM1.5 mill - RM5 mill</td> <td data-bbox="1456 666 1779 742">2.5%</td> </tr> <tr> <td data-bbox="819 742 1456 818">Above RM5 mill - RM10 mill</td> <td data-bbox="1456 742 1779 818">1.5%</td> </tr> <tr> <td data-bbox="819 818 1456 893">Above RM10 mill - RM15 mill</td> <td data-bbox="1456 818 1779 893">1.25%</td> </tr> <tr> <td data-bbox="819 893 1456 958">Above RM15 mill</td> <td data-bbox="1456 893 1779 958">-</td> </tr> </tbody> </table> <p data-bbox="710 979 1837 1051">Note: This is a new MOP which non-Bumiputera and TPP suppliers providing their goods/services will also enjoy, but only for covered procurement.</p> | Tender Value | % of MOP for Bumiputera (providing non-TPP products/services) | Above RM100,000 - RM500,000 | 10% | Above RM500,000 - RM1.5 mill | 3.5% | Above RM1.5 mill - RM5 mill | 2.5% | Above RM5 mill - RM10 mill | 1.5% | Above RM10 mill - RM15 mill | 1.25% | Above RM15 mill | - |
| Tender Value | % of MOP for Bumiputera (providing non-TPP products/services) | | | | | | | | | | | | | | |
| Above RM100,000 - RM500,000 | 10% | | | | | | | | | | | | | | |
| Above RM500,000 - RM1.5 mill | 3.5% | | | | | | | | | | | | | | |
| Above RM1.5 mill - RM5 mill | 2.5% | | | | | | | | | | | | | | |
| Above RM5 mill - RM10 mill | 1.5% | | | | | | | | | | | | | | |
| Above RM10 mill - RM15 mill | 1.25% | | | | | | | | | | | | | | |
| Above RM15 mill | - | | | | | | | | | | | | | | |
| Central Contract | Maintain the current implementation of existing items under Central Contract for Bumiputera. | | | | | | | | | | | | | | |
| Panel Contract | Non-Bumiputera and TPP suppliers to compete with Bumiputera suppliers in providing goods/services under Panel Contract. | | | | | | | | | | | | | | |

Benefits to Government

- The GP Chapter adopts good governance and best practices, enhances transparency in procurement processes and thus, brings greater alignment of Malaysia's GP to international practices.
- Government will be seen in a positive light through improvements of its GP regime to a higher level based on international standards compliance.
- TPP as a platform for Malaysia to improve its global position, such as in the Global Competitiveness Index and Corruption Perception Index.
- The Government will have better selections and obtain best value for money based on wider range of offers from local and international suppliers as a result from competitive bids.

Benefits to Malaysian Suppliers

Domestic Market...

- GP will be conducted in a more transparent manner and increases accessibility of GP information.
- The GP Chapter provides predictability to suppliers on the whole procurement process and reduce risk of doing business.
- Suppliers are provided an avenue through Domestic Review mechanism to lodge complaints and challenge the agencies on irregularities of GP obligations throughout the whole tendering process as well as enable them to obtain fast and effective remedies.

Benefits to Malaysian Suppliers

Going abroad...

- Malaysian suppliers are able to expand and penetrate overseas market through wider GP market access opportunities for their products and services. For example, the Buy American Act restricts products and services that come from non-FTA country to be supplied to the US Government. With TPP, this restriction will be waived for Malaysian products, services and suppliers.
- Malaysian suppliers will be treated equally as local companies in other TPP countries when participating in their GP.
- Malaysian suppliers are able to establish networking and integrated supply chain with TPP suppliers which they will enjoy from trade facilitation, reduced trade barriers and lower tariffs on imported materials/components.
- Malaysian suppliers will be accorded with investment protection under ISDS for GP contracts awarded to them by other TPP countries.

Thank you