



**BRIEFING ON
STATE OWNED ENTERPRISES AND
DESIGNATED MONOPOLIES CHAPTER OF
COMPREHENSIVE AND PROGRESSIVE AGREEMENT
FOR TRANS PACIFIC PARTNERSHIP**

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Disciplines on State Owned Enterprises – is it needed?

By Virtue of Government Ownership:-

- **Level Playing Field**
- **Accountability**
- **Transparency**
- **Efficiency**
- **Public Fund**
- **Better Governance**

CHAPTER

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State-Owned Enterprises



State Owned Enterprises Chapter contains disciplines on SOEs that are involved in commercial activities

Objective:-

- To ensure level playing field between State Owned Enterprises and Private entities that compete in the market

Scope:-

- Applies to activities of SOE and Designated Monopolies that affect trade or investment between Parties in free trade area

KEY OBLIGATIONS OF SOE CHAPTER

DELEGATED AUTHORITY

•Any SOE, State Enterprise or Designated Monopoly when exercising any regulatory, administrative or other governmental authority that the Party has directed or delegated to such entities to carry out:-

should be done in a manner consistent with the obligations of the Party under TPPA

KEY OBLIGATIONS OF SOE CHAPTER

COMMERCIAL CONSIDERATIONS AND NON DISCRIMINATORY TREATMENT

- **Government to ensure SOEs/Designated Monopolies act in accordance with commercial considerations/non discriminatory manner in its purchase or sale of goods or services**

KEY OBLIGATIONS OF SOE CHAPTER

NON-COMMERCIAL ASSISTANCE

- **Government/SOE not to cause adverse effect to the interest of another Party through the use of non-commercial assistance to another SOE.**
- **Not to cause injury to domestic industry through use of non commercial assistance for production and sale of goods by SOEs in the territory of the other Party where a like good is produced and sold.**

KEY OBLIGATIONS OF SOE CHAPTER

COURTS AND ADMINISTRATIVE BODIES

- **Government to provide its courts with jurisdiction for civil claims against a foreign SOE;**
- **Administrative bodies should exercise regulatory functions in an impartial manner**

KEY OBLIGATIONS OF SOE CHAPTER

TRANSPARENCY

- **Within 6 months after entry into force of TPPA, to provide or make publicly available list of SOEs**
- **Notify designation of monopoly or expansion of scope of existing monopoly**
- **To provide information relating to SOEs including total revenue/total assets/financing/loan guarantees/goods or services received/shares cumulatively owned; Government Programs on NCA**
- **Need to indicate how it affects trade and investment between Parties**
- **No requirement to provide confidential business information**

KEY OBLIGATIONS OF SOE CHAPTER

OTHER OBLIGATIONS

- **Technical Assistance**
- **Committee on SOE and Designated Monopolies**
- **Further Negotiations – Sub Central SOEs and Adverse Effect of NCA in non party markets (services)**

There were concerns.....

Preferential Treatment provided to specific programs/SME for purchase of goods and services would be affected



Government would be prohibited from providing subsidies

Sensitive information of SOEs would have to be divulged



GENERAL FLEXIBILITIES

General Flexibilities (1)

EXCLUSION

- **Independent Pension Fund.**
- **Sovereign Wealth Fund.**
- **SOEs owned by Sub Central Government.**
- **Government Procurement.**
- **Activities of SOE based on public service mandate excluded from commercial considerations obligation.**
- **Non Commercial Assistance obligations does not apply to:-**
 - Domestic Services**
 - Intra Group Transactions**

General Flexibilities (2)

EXCLUSION

- **Threshold – SOE with Annual Revenue SDR 200million excluded from most obligations.**
- **National or global economic emergency.**

The Chapter does not prevent:-

- **Central bank or Monetary Authority in supervising monetary credit policy and exchange rate policy**
- **Financial Regulatory Body including Securities or Futures Exchange in exercising regulatory functions over financial service suppliers**
- **Party or SOE from undertaking activities for the purpose of resolution of a failing or failed financial institution**

MALAYSIA'S COUNTRY SPECIFIC FLEXIBILITIES

Country Specific Flexibilities for Malaysia (1)

EXCLUSION

- **Cumulative Preferences of 40 percent for purchases of goods and services by SOEs in pursuance of**
- **PETRONAS**
- **Khazanah Nasional Berhad**
- **SOE with Annual Revenue of SDR 500 million**
- **Felda Global Ventures**
- **Development Financial Institutions**

THANK YOU

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