

# The Impact of the Trans Pacific Partnership Agreement on Penang

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## **Abstract**

In this report, we summarise the Trans Pacific Partnership Agreement (TPPA) and highlight some of the exclusion clauses available to Malaysia. We then look in detail the impact of specific clauses of the TPPA on different segments of the Penang's economy. We evaluate the opportunities and threats arising thereon and make some suggestions for the government and businesses. We focus on 4 sectors that collectively represent Penang's economy: manufacturing, services, construction and agriculture. Within manufacturing, we discuss the impact of Foreign Direct Investment, trade (exports and imports), tariffs (including non-tariff measures), firm competitiveness and labour. For services, we look at shared services outsourcing, tourism (including medical tourism) and finance. We also touch on government procurement on a sub-central government level.

## **1.0 Background of TPPA:**

### **What is the TPPA?**

The Trans-Pacific Partnership Agreement (TPPA) is a free trade agreement (FTA) which involves a variety of socioeconomic policy issues. Currently it has 12 prospective member countries which include Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States (US) and Vietnam. The membership in the TPPA is opened to all 21 member states of Asia-Pacific Economic Cooperation (APEC).

The TPPA was reached on 5 October 2015 in Atlanta, US, after 7 years of negotiations. The leading TPPA negotiations team for Malaysia comprises 16 ministries and agencies, led by the Ministry of International Trade and Industry (MITI), joined the third round negotiations in Brunei Darussalam. They went on for another 16 rounds of negotiations and before the agreement was finally concluded in the 19<sup>th</sup> Round.

The text of the TPPA was released by TPP member countries on 5 November 2015, and it contains 6350 page further divided to 3 parts: [Main text](#), [Annexes](#) and [Side letters](#). The main text consists of 30 chapters which is totaling to 595 pages. The annexes, which contain the carve-outs and exclusion clauses for the participating countries, take up the lion share of 5,755 pages. In addition, side letters are also attached to be part of the Agreement.

### **Why is there a need for the TPPA?**

The Parliament of Malaysia debated and passed a motion in support of signing the TPPA on 27 January 2016. The stated aims of the agreement are to promote economic growth; support the creation and retention of jobs; enhance innovation, productivity and competitiveness; raise living standards; reduce poverty in respective countries; and promote transparency, good governance, and enhanced labor and environmental protections<sup>1</sup>. The TPP prospective member countries see the agreement as an important step towards the ultimate goal of open trade and regional integration across the region<sup>2</sup>.

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<sup>1</sup> Summary of the Trans-Pacific Partnership Agreement. <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2015/october/summary-trans-pacific-partnership>

<sup>2</sup> Ibid

In a [brief](#) issued by the MITI on the TPPA in the official website, the ministry has stated the rationale for joining TPPA. It is basically summed up in the opening statement:

“The Government views the TPP as an important initiative as Malaysia seeks to expand market access opportunities, enhance our competitive advantage, builds investor confidence in the country which draws foreign investments and builds capacity through FTAs.”<sup>3</sup>

### **What is new about the TPPA?**

Before the TPPA, Malaysia had signed 13 FTAs, seven through bilateral agreements (2005 – Japan, 2007- Pakistan, 2009 – New Zealand, 2010 – Chile, 2011 – India, 2012 – Australia, 2014- Turkey) and another six through ASEAN (1992- ASEAN Free Trade Area, 2004 – China, 2006 – South Korea, 2008 – Japan, 2009 – India, 2009 – Australia & New Zealand). Therefore, among the 12 prospective TPP member countries, only US, Canada, Mexico and Peru have not entered any FTAs with Malaysia.

TPPA is different to any previously known FTAs, it is best illustrated by the TPPA content. The structure of TPPA chapters can be divided to three categories (Table 1). Chapters listed in “Standard legal chapters” and “Traditional trade issues” are normally found in most of standard FTAs. New scopes such as government procurement, state-owned enterprises, intellectual property, labour and environment, previously are not found in any bilateral or multilateral FTAs signed by Malaysia before.

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<sup>3</sup> Brief on the Trans Pacific Partnership Agreement.

Table 1: TPPA Chapters by category

Standard Legal Chapters	Traditional Trade Issues	New Issues/Scopes
1 – Initial Provisions	2 – National Treatment and Market Access for Goods	15 – Government Procurement
27 – Administrative & Institutional Provisions	3 – Rules of Origin and Origin Procedures	17 – State-Owned Enterprises and Designated Monopolies
28 – Dispute Settlement	4 – Textiles and Apparel	18 – Intellectual Property
29 – Exceptions and General Provisions	5 – Customs Administration and Trade Facilitation	19 – Labour
30 – Final Provisions	6 – Trade Remedies	20 – Environment
	7 – Sanitary and Phytosanitary Measures	23 – Development
	8 – Technical Barriers to Trade	24 – Small and Medium-Sized Enterprises
	9 – Investment	25 – Regulatory Coherence
	10 – Cross Border Trade in Services	26 – Transparency and Anti-Corruption
	11 – Financial Services	
	12 – Temporary Entry for Business Persons	
	13 – Telecommunications	
	14 – Electronic Commerce	
	16 – Competition Policy	
	21 – Cooperation and Capacity Building	
	22 – Competitiveness and Business Facilitation	

## **1.1 Safeguards, carve-outs, exemptions and non-conforming measures afforded to Malaysia in the TPPA**

The Federal government claimed that they had defended their positions as well as raised concerns during the TPPA negotiations for areas such as i) Government Procurement, ii) Intellectual Property, iii) State-owned Enterprises, iv) Labour and Environment, based on the current prevailing laws, regulation and policies.

Unless elsewhere mentioned about Malaysia explicitly in the TPPA main text itself, Annex I-IV (Schedule of Malaysia), Annex 15-A, Annex 17-F and Annex 18-C should form the basis of the specific safeguards, carve-outs, exemptions and non-conformity measures that the TPPA negotiations team had fought and gained for Malaysia. Tariff schedule of Malaysia and Appendix A (Tariff Rate quotas for Malaysia) will not be analysed in this section.

TPPA adopts a “negative-list” approach, implying that the TPP member countries’ markets are fully open to TPP investors and suppliers, except where they have taken exceptions in country-specific Annexes. Annex I contains exceptions based on current measures on which the member state accepts an obligation not to make its measures more restrictive in the future and to bind any future liberalization. Annex II contains exceptions based on measures and policies which the member state retains full discretion in the future. Annex III lists out non-conforming measures in financial services, whereas Annex IV spells out the non-conforming measures regarding state-owned enterprises and designated monopolies.

Penang Institute will analyse the exception measures afforded to Malaysia by TPPA’s obligations (see Table 1), chapters (see Table 2), and sectors (see Table 3).

“National treatment” mentioned in the Article 9.4, 10.3 and 11.3, worries the Federal government and agencies the most. It was mentioned 45 times in Annex I, Annex II and Annex III. This obligation would accord treatment to TPP investors no less favourable than the member state accords to its own investors. The government and agencies also rule out the obligations about “Market Access” and “Local Presence” 23 and 21 times, respectively.

Under the obligation “Market Access”, the government or authority cannot impose limitations on the number of service suppliers, the total value of service transactions, the total number of service

operations or employed persons, nor can it restrict or require the TPP service suppliers to set up specific legal entity or joint venture as a condition for the cross-border supply of a service. The government or authority cannot require a TPP service supplier to establish or maintain a representative office or to be resident in the territory, under the obligation “Local Presence”.

Another two contentious obligations “Performance Requirements” and “Senior Management and Boards of Directors” will be carved out in 13 and 15 areas, respectively, for Malaysia. Basically, these obligations broadly ban the member state to impose or enforce certain requirements or commitments in exchange of rights to trade or invest in that territory.

Table 1: Non-conforming measures afforded to Malaysia by obligation in the TPPA

OBLIGATIONS CONCERNED	Schedule of Malaysia				Total
	Annex I	Annex II	Annex III	Annex IV	
Cross-Border Trade (Article 11.6)			6		6
Local Presence (Article 10.6)	12	9			21
Market Access (Article 10.5 & 11.5)	7	8	8		23
Most-Favoured-Nation Treatment (Article 9.5, 10.4 & 11.4)		6	4		10
National Treatment (Article 9.4, 10.3 & 11.3)	18	16	11		45
Performance Requirements (Article 9.9)	3	10			13
Senior Management and Boards of Directors (Article 9.10 & 11.9)	5	9	1		15
Non-discriminatory treatment and commercial considerations (Article 17.4)				12	12
Non-commercial Assistance (Article 17.6)				4	4

The Federal government and agencies strived hard to make Malaysia-specific exceptions in 6 out of 30 TPPA chapters (Table 2). Most concerns are with the “Investment”, “Cross-Border Trade in Services” and “Financial Services” chapters. The Federal government also gained concessions to protect their procurement and state-owned enterprises, to a certain extent. For “Intellectual Property”, the government also managed to mandate patent holders to come to Malaysia within 18 months to apply for marketing approval for their pharmaceutical products from the date that the product is first granted marketing approval in any country. Otherwise, the product will forfeit the data exclusivity measure stipulated in the TPPA text.

Table 2: Non-conforming measures afforded to Malaysia by chapter in the TPPA

CHAPTERS CONCERNED	Schedule of Malaysia				Annex 15-A	Annex 17-F	Annex 18-C	Total
	Annex I	Annex II	Annex III	Annex IV				
Chapter 9: Investment	17	17						34
Chapter 10: Cross-Border Trade in Services	17	13						30
Chapter 11: Financial Services			20					20
Chapter 15: Government Procurement					10			10
Chapter 17: State-Owned Enterprises and Designated Monopolies				6		2		8
Chapter 18: Intellectual Property							2	2

The safeguards, carve-outs and exemptions are obtained by the TPPA negotiations team across many sectors, encompassing many policy areas (Table 3). Financial services received the most attention, 20 items exclusively listed in Annex III. 6 items in the non-conforming measures concerning all sectors in Malaysia, including Bumiputera-policies, privatisation of government owned entities or assets, National and State unit trusts, preferential treatment to ASEAN member states or under any existing free trade agreements, registration of business and non-internationalisation of Ringgit policy.

Other important areas include retail sector (wholesale and distribution services), professional qualification licensing (legal, engineering, architectural, surveying, medical and dental, real estate, customs agent, broker, tourist guide, patent/trademark agent services), transportation (Air, road and maritime transport services), oil and gas, utilities, construction, telecommunication, education, cultural and social services.

Of particular importance to the state and Federal government are the items in Annex II regarding “land & real estate” and “Oil & Gas”, respectively. The former item gives the state authority full rights to approve, as well as impose conditions and restrictions for the dealings of land by non-citizens and enterprises owned by foreign nationals. The latter item gives full exclusive rights, powers, liberties and privileges to PETRONAS in handling petroleum in Malaysia.

Table 3: Non-conforming measures afforded to Malaysia in the TPPA by sector

SECTORS	Schedule of Malaysia			Total
	Annex I	Annex II	Annex III	
Air Transport Services	0	1		1
All Sectors	1	5		6
Communications Services	1	0		1
Construction and Related Engineering Services	1	0		1
Cultural Services	0	1		1
Customs Agents and Brokers	1	0		1
Distribution Services	1	0		1
Education Services	1	0		1
Financial services	0	0	20	20
Freight road transportation services	1	0		1
Gaming, Betting and Gambling	0	1		1
Land and Real Estate	0	1		1
Legal services (other than arbitration)	1	0		1
Legal Services covering mediation and Shari'a law	0	1		1
Manufacture, assembly, marketing and distribution of explosives, weapons, ammunitions, as well as military-related equipment/ devices, and similar products	0	1		1
Manufacturing	2	0		2
Marine Capture Fisheries	1	0		1
Non-medical utilization/application of atomic energy for: Electric power plants based on fossil fuel/materials; Nuclear power generation including nuclear fuel cycle; and Electric power generation	0	1		1
Oil and Gas	1	1		2
Passenger road transportation services covering taxi services and scheduled passenger road transportation	0	1		1
Patent Agent Services, Trademark Agent Services	1	0		1
Private Healthcare Facilities and Services, Allied Health Services	1	0		1
Professional Services covering Engineering Services Quantity Surveying Services Land Surveying Services Architectural Services	1	0		1
Real Estate Services on a fee or contract basis	1	0		1
Sewage and Refuse Disposal, Sanitation and other Environmental Protection Services	0	1		1
Social services	0	1		1
Tourist guide services	1	0		1
Transport Services	1	0		1
Utilities	1	0		1
Wholesale and Distribution Services	1	1		2



## **1.2 General expectations of the TPPA for Malaysia:**

### **1) International trade and investment from TPP countries in Malaysia will increase:**

PricewaterhouseCooper (PwC)'s report on the economic impact of the TPPA shows that additional investment of USD136-239 billion, and higher export and import growth after Malaysia joined as one of the 12 TPP member countries. PwC estimated an opportunity cost of USD 211billion over 10 years horizon (2018-2027) would be forgone if Malaysia does not join TPPA.

**2) Benefits to consumers:** Cheaper imported goods and services from TPP countries: From high tech consumer goods such as phones, gadgets and home appliances to agricultural products which are not normally grown on Malaysian soil.

**3) More cost competitive for exports to TPP countries:** Tariff and non-tariff elimination measures stated in the TPPA will make Malaysian products appear more cost-competitive. The appeal is enhanced by recent weaker Ringgit currency. Textiles, automotive and E&E industries are touted to make the most gain in export growth. 12 TPP countries collectively accounted for about 40% of the global economy serving a population of more than 800 million. The large market opportunities for trade would encourage SMEs to consider increasing production output and expand the market to TPP countries.

**4) More job opportunities created:** Through increased TPP foreign investments and rising demand for local goods, more job opportunities would be created.

**5) Malaysian investors and suppliers could venture into new markets with lower trade barrier than before:** Four countries which have no free trade agreements (FTA) with Malaysia: Canada, Mexico, Peru and USA, already accounted for about 74% of the total TPP market size. Malaysian goods and services from export-oriented firms can access the markets in all TPP countries with favourable status of national treatment. Malaysian suppliers can even bid for foreign TPP government procurements.

**6) Majority of Malaysian national interest would be protected:** Institute Strategic and International Studies (ISIS) Malaysia has concluded a study and found that Malaysia's participation in the TPPA is coherent with national interest.

### **1.3 General concerns of the TPPA for Malaysia:**

**1) Domestic trade or business displacement by foreign suppliers:** Most vulnerable business groups are non-bumiputera and non-international trading SMEs since they are not included in the exclusion clauses. These SMEs might worry that their domestic trade or business being displaced by foreign suppliers who might have equal rights and treatment under the TPPA. If this is the case, more local companies would have to shut down and more local jobs would be made redundant unless they innovate and change.

**2) Increase economic inequality or widening wealth gap in the society:** TPPA is likely to favour big local and foreign corporations which ply and thrive on international trade or have large capital for investment. Small and micro firms and majority of the individuals is likely to get fewer favourable deals or be in a way able to capitalise on it.

**3) Trade diversion instead of trade creation:** Increase movement of imports and exports rather than creating values due to the elimination of tariffs and non-tariffs under the TPPA.

**4) Negative list approach in the TPPA expose unprotected local businesses:** Besides the safeguard, carved-out and exemption areas listed in the Annexes, the unprotected local businesses in other areas will be exposed to intense competition in which foreign competitors enjoy national treatment.

**5) Prohibition on performance requirement:** TPPA will bar the use of transfer of technology or knowledge as an investment condition, the host country will likely benefit little from future TPP foreign investments.

**6) Restriction on the Federal and state governments to set certain local policies:** “National treatment” and “minimum standard of treatment” accorded to foreign investors and suppliers might constrain the Federal and state governments from setting local policies and guidelines that it favours local businesses. For example, ‘Buy national/local products’ campaign by the state might contravene the articles under TPPA.

**7) More expensive patented products, especially medical drugs and treatment:** Incentives for the market monopoly patent holders to set higher price for their products due to stronger IP protection given under the TPPA. This might affect the welfare of consumers significantly, especially in healthcare.

**8) Differential treatment to local companies:** Given that bumiputera companies will be accorded extensive safeguard or carved-out measures, this would mean that non-bumiputera local companies will be affected by the full implementation of the TPPA. This might lead to creative window dressing by non-bumiputera companies without undertaking value enhancing business combinations.

**9) Risk of Federal government facing ISDS tribunals:** The threat still exist for the Federal government (after 3 transitional years) to face ISDS tribunals by some investors, despite some improved measures laid down on paper. International observers reserve some doubts about the independence of the ISDS tribunal trial process<sup>4</sup>, based on past records.

## **1.4 General recommendations**

### **Government**

The TPPA would benefit and hurt certain parts of the society and businesses. By safeguarding certain policies within the exclusion clauses, the Federal government have secured the acceptance of the TPPA. Nevertheless, the Federal government should work towards increasing the competitiveness of these protected segments of the economy.

The Federal government should also work towards helping parts of the society and businesses transition in the TPPA. These individuals and businesses should be supported to adapt to the higher level of competition.

To maximize the outcome from the TPPA for Malaysia and Penang, the Federal government should support the improvement of local infrastructure. This should be undertaken with the Penang state governments such that the local industries and society can capitalise on the TPPA.

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<sup>4</sup> <http://www.citizen.org/documents/analysis-tpp-text-november-2015.pdf>

## **Businesses**

There will no doubt be winners and losers arising from the TPPA. During the transition period towards full implementation, businesses should embark on an evaluation of their competitive strengths and weaknesses.

Businesses which are positioned to benefit from TPPA should capitalise on the larger opportunities and ease in venturing to TPP markets. Businesses who are expected to lose out should strategically change so that they can cope with the new competition. Through increased competition, businesses should take opportunity to innovate more and become niche players. This will benefit the economy as a whole.

The opening up of new markets in TPP countries offer the opportunity for businesses to form partnership, collaborations, joint ventures etc. to enable them to move up the value chain.

Business should also embrace a different way of undertaking businesses, which might necessitate changes. For example, government procurement above a certain level is open to foreign competitors. Likewise, all businesses need to adopt International Labour Organisation (ILO) principles in the work place. Hence, businesses that have previously thrived exploiting protected nature of government procurement or non-compliance with ILO principles would need to change.

## **2.0 TPPA Impact on Penang– Sector Analysis:**

### **2.1 Manufacturing**

#### **2.1.1 Foreign Direct Investment**

<p><b>The Trend:</b></p> <p>Penang has been a major receiver of Foreign Direct Investments (FDIs) in Malaysia. According to the International Trade and Industry Ministry's statistics, FDIs accounted for RM64.9 billion of RM86.1 billion total investments received by Penang from 1980 to 2014 that created over 400,000 jobs.</p>	
<p><b>TPPA Impact:</b></p> <ul style="list-style-type: none"><li>• Penang has an open economy. It is likely that Penang will benefit from the TPPA as a receiver of FDIs, especially in industrial sectors.</li><li>• Penang's services sector is likely to expand. Therefore more FDIs towards this sector are expected.</li></ul>	
<p><b>Relevant TPPA Chapters and Articles:</b></p> <p>Chapter 9 (Investment), Chapter 10 (Cross-Border Trade in Services), Chapter 18 (Intellectual Property), Chapter 19 (Labour), Chapter 23 (Development)</p> <p>Article 9.4 and 10.3: National Treatment; Article 9.5: Most-Favoured-Nation Treatment; Article 9.6: Minimum Standard of Treatment; Article 9.9: Prohibition of Performance Requirements; Article 9.10: Senior Management and Board of Directors; Article 9.25: Interpretation of Annexes; Article 10.5: Market Access ; Article 10.6: Local Presence; Article 23.5: Education, Science and Technology, Research and Innovation, Annex 9-L (Investment Agreement)</p>	
<p><b>Opportunities/Benefits:</b></p> <ul style="list-style-type: none"><li>• Further investments and improvement of Penang's industrial basis.</li><li>• Creation of jobs for the local workforce.</li><li>• Enhancement of Penang's export-oriented business environment.</li></ul>	<p><b>Challenges/Threats:</b></p> <ul style="list-style-type: none"><li>• As MNCs's pay packages are more attractive, local businesses might not be able to attract sufficiently good talents to develop. Therefore, relying too much on FDI's might hinder the domestic economy from increasing value-added exports and transform towards a knowledge-based economy.</li></ul>

- Knowledge-transfer from international corporations to Penang.
- Further diversification of the state's economy.

- FDIs into lower value-added production (ie. packaging/product assembly plant) require larger number of foreign unskilled or semi-skilled labour.
- Skilled workers shortage for higher value-added industry
- High investment costs for the Federal and State Government to upgrade Penang's infrastructure to attract FDI's to value adding industries.
- TPP investors will get national treatment for their investment projects and business operation as long as they meet the conditions set out in the Annex I and Annex II.
- The Federal and state government cannot set any requirement conditions for investments, such as on the transfer of technology, production process or other proprietary knowledge.
- High protection of investor's rights and interest - risk of ISDS tribunal if the government is found breaching the TPPA obligations and if it caused losses of expected profits to some TPP investors due to regulatory or policy changes.

**Policy Recommendation:**

- ❖ The Federal and State Government should focus to attract investments from value-adding industries.
- ❖ The State Government should create an environment together with MNCs, where local businesses can learn from international companies.
- ❖ The Federal and State Government should work with the trade chamber to help local companies transition to the requirements needed in TPPA. For example, alert local SMEs to fulfil certain labour requirements (e.g. ILO standards) and on how to become trade partners of international organizations.
- ❖ FDIs should be the basis of enhancing the local business environment away from a low-wage production hub towards a knowledge-based economy.
- ❖ The Federal and State Government should continuously develop and improve Penang's infrastructure to attract more MNCs to continue to invest in Penang. These improvements could be achieved in the proposed Penang Transport Master Plan (PTMP).

## 2.1.2 Trade: Export

<p><b>The Trend:</b></p> <p>Penang is export-oriented, a major trading hub in the northern region of peninsular Malaysia. Industrial zones and parks are long established and many Multinational Companies are located in Penang. The manufacturing sector generates almost half of the state's GDP.</p>	
<p><b>TPPA Impact:</b></p> <ul style="list-style-type: none"> <li>• Export-oriented companies will benefit from a more liberalised market. Especially bigger companies with sound financial foundations will benefit from an internationalized market.</li> <li>• Smaller and medium-sized companies will face more difficulties, as competition with large TPP competitors will get more intense.</li> </ul>	
<p><b>Relevant TPPA Chapters and Articles:</b></p> <p>Chapter 2 (National Treatment and Market Access), Chapter 3 (Rules of Origin and Origin Procedures), Chapter 4 (Textiles and Apparel), Chapter 5 (Customs Administration and Trade Facilitation), Chapter 6 (Trade Remedies), Chapter 8 (Technical Barriers to Trade), Annex 2-A, Annex 2-C, Annex 2-D, Annex 8-E, Annex B (Minimum Data Requirements),</p> <p>Article 2.4 (Elimination of Customs Duties), Article 2.5 (Waiver of Customs Duties), Article 2.11. (Import and Export Restrictions), Article 2.14. (Transparency in Export Licensing Procedures), Article 2.16. (Export Duties, Taxes or other Charges), Article 2.23. (Agricultural Export Subsidies), Article 2.24. (Export Credits, Export Credit Guarantees or Insurance Programmes), Article 2.25. (Agricultural Export State Trading Enterprises), Article 2.26. (Export Restrictions- Food Security), Article 3.2 (Originating Goods), Article 3.3 (Wholly Obtained or Produced Goods), Article 3.4 (Treatment of Recovered Materials Used in Production of a Remanufactured Good), Article 3.6 (Materials Used in Production), Article 3.25. (Obligations Relating Exportations), Article 5.2 (Customs Cooperation), Article 6.2 (Global Safeguards), Article 6.3 (Imposition of a Transitional Safeguard Measure), Article 8.2 (International Standards, Guides, and Recommendations)</p>	
<p><b>Opportunities/Benefits:</b></p> <ul style="list-style-type: none"> <li>• Lower or elimination of tariff or non-tariff measures would benefit medical devices and E&amp;E manufacturing sector in Penang. An increase in export is expected.</li> </ul>	<p><b>Challenges/Threats:</b></p> <ul style="list-style-type: none"> <li>• Penang will be more exposed to global economic changes and therefore be exposed to the volatility coming from overseas.</li> <li>• Without economic and labour structure reform, more foreign labour might be employed to increase the productivity for</li> </ul>

- Possibility of securing more government procurements from TPP countries, esp. the US.
- Secure jobs in Penang and attract more job-seekers in the region.
- Bigger opportunities for local companies to participate in the global market and attract new consumers within Asia and overseas  
Therefore companies should focus on:
  - Grow the bottom line
  - Level the business cycle
  - Use production capabilities fully
  - Strengthen the domestic market
  - Increase competitiveness across all markets
- While exporting can be challenging, it provides firms with new opportunities for growth.

export. Thus, benefits to the local might be diminished.

**Policy Recommendation:**

- ❖ The Federal and State Government should continuously expand Penang's export facilities, i.e. airport, seaport, internet, roads etc.
- ❖ Increase the liveability of Penang to attract high skilled labours to work and live in Penang.
- ❖ Marketing of local products and developing awareness among potential foreign customers requires an investment of resources and energy. The State Government should support and guide local businesses, especially SMEs with lower experiences in international trade and competition.
- ❖ Promoting value-adding industries and high-quality exports to increase the balance of trade, when imports from other TPPA countries are rising. Therefore, industries are encouraged to invest more in R&D and capitalise on the various incentives available.



### 2.1.3 Trade: Import

<p><b>The Trend:</b></p> <p>Penang remains export-oriented and a production hub for both Multinational and Small and Medium-sized companies. With an increase of export activities, imports are likely to rise as well.</p>	
<p><b>TPPA Impact:</b></p> <p>Due to lower trade boundaries, imports are likely to increase. The exchange of goods and services will be eased by lower tariff and custom measures.</p>	
<p><b>Relevant TPPA Chapters and Articles:</b></p> <p>Chapter 2 (National Treatment and Market Access), Chapter 3 (Rules of Origin and Origin Procedures), Chapter 5 (Customs Administration and Trade Facilitation), Chapter 6 (Trade Remedies), Chapter 7 (Sanitary and Phytosanitary Measures), Chapter 8 (Technical Barriers to Trade), Chapter 18 (Intellectual Property), Annex 2-A, Annex 2-D, Annex B (Minimum Data Requirements),</p> <p>Article 2.4 (Elimination of Customs Duties), Article 2.5 (Waiver of Customs Duties), Article 2.11. (Import and Export Restrictions), Article 2.13. (Import Licensing), Article 3.2 (Originating Goods), Article 3.3 (Wholly Obtained or Produced Goods), Article 3.6 (Materials Used in Production), Article 3.24. (Obligations Relating to Importation), Article 3.29. (Refunds and Claims for Preferential Tariff Treatment after Importation), Article 5.2 (Customs Cooperation), Article 6.2 (Global Safeguards), Article 6.3 (Imposition of a Transitional Safeguard Measure), Article 7.7 (Adaptation to Regional Conditions, Including Pest- or Disease-Free Areas and Areas of Low Pest or Disease Prevalence), Article 8.2 (International Standards, Guides, and Recommendations).</p>	
<p><b>Opportunities/Benefits:</b></p> <ul style="list-style-type: none"> <li>• Accessibility of international goods and services, especially from TPP countries.</li> <li>• Fall in prices for International goods, for Malaysian consumers.</li> <li>• Cheaper imported goods for industrial products, construction and medical uses.</li> </ul>	<p><b>Challenges/Threats:</b></p> <ul style="list-style-type: none"> <li>• Declining Balance of Trade, if import growth outpaces export growth.</li> <li>• Stronger dependency on foreign goods.</li> </ul>
<p><b>Policy Recommendation:</b></p>	

- ❖ The Federal and State Government should support companies to the increase of high value-added export, to ensure that balance of trade remains favourable.
- ❖ Upgrade and improve Penang's infrastructure to support higher trade volume.
- ❖ The State Government should support providers of local products to invest into their facilities and production flows, as more competition is expected from the availability of international goods and services.
- ❖ Business organizations and Chambers of Commerce should disseminate information about new opportunities in TPPA to their members. Government agencies such as MITI should provide relevant informative assistance for local producers to take full advantage of the TPPA's new trade rules.

### 2.1.4 Customs Clearance: Tariff measures

**The Trend:** Tariff levels have been reducing over the past decades. However, in certain areas, tariff levels are still high.

**TPPA Impact:**

- Most of the tariffs or customs duties would be eliminated progressively.
- The signatory member country may not increase or adopt new customs duty on an originating good.

**Relevant TPPA Chapters and Articles:**

Chapter 2 (National Treatment and Market Access), Chapter 3 (Rules of Origin and Origin Procedures), Chapter 5 (Customs Administration and Trade Facilitation), Chapter 6 (Trade Remedies), Annex 2-D, Annex B (Minimum Data Requirements),

Article 2.4 (Elimination of Customs Duties), Article 2.5 (Waiver of Customs Duties), Article 2.11. (Import and Export Restrictions), Article 2.13. (Import Licensing), Article 3.2 (Originating Goods), Article 3.3 (Wholly Obtained or Produced Goods), Article 3.6 (Materials Used in Production), Article 3.24. (Obligations Relating to Importation), Article 3.28. (Determinations on Claims for Preferential Tariff Treatment), Article 3.29. (Refunds and Claims for Preferential Tariff Treatment after Importation), Article 5.2 (Customs Cooperation), Article 6.2 (Global Safeguards) , Article 6.3 (Imposition of a Transitional Safeguard Measure), Article 6.4 (Standards for a Transitional Safeguard Measure)

<p style="text-align: center;"><b>Opportunities/Benefits:</b></p> <ul style="list-style-type: none"> <li>• Reduction of tariffs will increase trade and access to imported goods. This should encourage international trade in Penang.</li> <li>• Global and transitional safeguard measures.</li> </ul>	<p style="text-align: center;"><b>Challenges/Threats:</b></p> <ul style="list-style-type: none"> <li>• Excessive reliance on imported goods will reduce balance of trade and reduce domestic production capacity</li> <li>• The contingency of the transitional safeguard measures</li> </ul>
<p><b>Policy Recommendation:</b></p> <ul style="list-style-type: none"> <li>❖ The Federal Government should aim to reduce tariffs for imported vehicles faster than required in the TPPA. Whilst there is a domestic pressure to protect local automotive sector, an accelerated reduction would increase the affordability of imported vehicles.</li> </ul>	

### 2.1.5 Customs Clearance: Non-tariff measures

<p><b>The Trend:</b> Whilst tariffs have been lowered, import restrictions have been imposed stealthily via non-tariff measures.</p>
<p><b>TPPA Impact:</b></p> <ul style="list-style-type: none"> <li>• Reduction in non-tariff measures will open up markets and expose uncompetitive businesses to international trade pressure.</li> <li>• Reduction in non-tariff measures is estimated as the main contributor to the GDP growth gain for Malaysia in future. PwC projects an increase in USD 107-211 billion in GDP over the period 2018-2027 for Malaysia, raising GDP by 0.60 - 1.15 percentage points.</li> </ul>
<p><b>Relevant TPPA Chapters and Articles:</b></p> <p>Chapter 2 (National Treatment and Market Access), Chapter 3 (Rules of Origin and Origin Procedures), Chapter 5 (Customs Administration and Trade Facilitation), Chapter 6 (Trade Remedies), Annex 2-A, Annex 2-C, Annex 2-D</p>

<p style="text-align: center;"><b>Opportunities/Benefits:</b></p> <ul style="list-style-type: none"> <li>• The electronics and electrical, automotive and plastics industries can expect output growth of 0.60 - 1.22, 0.47 - 0.86 and 0.42 - 0.66 percentage points respectively in 2027.</li> <li>• Growth in these industries, which form significant part of Penang's manufacturing sector, would be expected to add to Penang's income.</li> </ul>	<p style="text-align: center;"><b>Challenges/Threats:</b></p> <ul style="list-style-type: none"> <li>• Local culture and nuances which have previously been used as means of non-tariff measures might be at risk of being outlawed.</li> </ul>
<p><b>Policy Recommendation:</b></p> <ul style="list-style-type: none"> <li>❖ The Federal Government should consider provide technical advice to firms to avoid infringing on non-tariff measures.</li> <li>❖ The State Government should protect local culture and traditions (e.g. food).</li> </ul>	

### 2.1.6 Firm Competitiveness

<p><b>The Trend:</b></p> <p>Penang is home to many MNCs and SMEs with a high share contributing to the E&amp;E sector. Compared to the rest of Malaysia, Penang's economy is not dependent on natural resources and its growth can be mainly characterized by sustainable growth driven by MNCs and a diverse SME sector.</p>
<p><b>TPPA Impact:</b></p> <p>Post-TPPA, MNCs are likely to benefit from a more open, liberalized market. Concurrently, SMEs will face more competition from international combatants.</p>
<p><b>Relevant TPPA Chapters and Articles:</b></p> <p>Chapter 10 (Cross-Border Trade in Services), Chapter 16 (Competition Policy), Chapter 22 (Competitiveness and Business Facilitation), Chapter 24 (Small and Medium-sized Enterprises),</p>

Article 15.21. Facilitation of Participation by SMEs, Article 22.2. Committee on Competitiveness and Business Facilitation, Article 24.2. Committee on SMEs

**Opportunities/Benefits:**

- More competition is good for the growth of quality related products
- Companies who adjust early in a new business environment and invest in employees and processes will have an opportunity to gain more post TPPA.

**Challenges/Threats:**

- Companies not able to adapt to a new business environment and refuse to invest into their facilities and staff may find it even more difficult to withstand additional competition from a more liberalized market.
- Penang's/Malaysia's businesses are likely to be challenged by other competitors within the region.

**Policy Recommendation:**

- ❖ Support and encourage local SMEs to upgrade their facilities and invest in staff's education.
- ❖ The State Government should further invest in educational programmes to train and attract talents in and to Penang.
- ❖ Companies should consider joint ventures, mergers and acquisitions with incoming investors (possibly from TPPA countries) to increase their competitiveness.
- ❖ Local companies should adopt international standards /requirements to become or remain suppliers of MNCs. The State Government should strongly promote this to the local business community.
- ❖ Local companies can take advantage of faster receipts of goods and must adopt to faster delivery time requirements of international customers and business partners.
- ❖ Companies should invest into their local offices and production facilities to attract and retain talents. As more competition is expected, a good working atmosphere, flexible working hours and structured career developments becomes more crucial.
- ❖ Companies should specialize on their core competencies and produce innovative products through R&D.
- ❖ Institutions such as Unit Peneraju Agenda Bumiputera (TERAJU), Ekuiti Nasional Berhad (EKUINAS), and Majlis Amanah Rakyat (MARA) should capitalise on the exclusion clause to improve the competitiveness of the Bumiputera companies.

## 2.1.7 Labour Market

<p><b>The Trend:</b></p> <p>Penang's industry relies on foreign labour for low-quality production. On the other hand, Penang seeks to attract more high skilled talents as it suffers from a significant brain drain as well as competition from various other countries.</p>	
<p><b>TPPA Impact:</b></p> <p>With TPPA into force, high-skilled talents have more opportunities within Penang's labour market. Penang would benefit from international talents, if it takes the chance to open up its labour market between other TPP countries</p>	
<p><b>Relevant TPPA Chapters and Articles:</b></p> <p>Chapter 19 (Labour)</p> <p>Article 19.3. (Labour Rights), Article 19.5 (Enforcement of Labour Laws), Article 19.6. (Forced or Compulsory Labour), Article 19.11. (Labour Council), Article 19.12. (Labour Council), Article 19.15. (Labour Consultations)</p>	
<p style="text-align: center;"><b>Opportunities/Benefits:</b></p> <ul style="list-style-type: none"> <li>• An open labour market could attract talents to work and live in Penang.</li> <li>• Penang potentially continues to grow into the State Governments aspiration of becoming an international and intelligent city.</li> </ul>	<p style="text-align: center;"><b>Challenges/Threats:</b></p> <ul style="list-style-type: none"> <li>• Penang faces additional competition with other cities within the TPP community, as others could attract Penang's talents</li> </ul>
<p><b>Policy Recommendation:</b></p> <ul style="list-style-type: none"> <li>❖ The State Government must continue to attract high-skilled labour with state-of-the-art educational facilities and institutions and position itself as an intelligent city.</li> <li>❖ The State Government should continue to keep Penang the most liveable city in Malaysia and one of the most liveable cities in Asia.</li> <li>❖ Companies should invest in high-quality production and facilities of international standard, thereby attracting talents from abroad would be easier.</li> <li>❖ One of the requirements of TPPA is compliant of International Labour Organisation (ILO) standards. Therefore, companies should invest in their staff and offer a working</li> </ul>	

environment that is even better than international labour standards. This is particularly important to attract world class talents.

- ❖ Companies should upskill their staff as part of professional development.

## 2.2 Services

### 2.2.1 Shared Services and Outsourcing

#### **The Trend:**

Rapid rise in number of foreign firms, investment amount and operation size in the sector of Shared Services and Outsourcing (SSO). Penang was named as one of the new emerging Information Technology-Business Process Outsourcing (IT-BPO) destinations by KPMG in 2009. The value of the IT-BPO industry to Penang is estimated to be about USD800 million. Big name companies which already operate in Penang including Citigroup, Wilmar and Air Asia.

Penang has very conducive business-friendly environment, infrastructure support, and high proportion of qualified tertiary educated labour force. Labour wages are still advantageous compared to regional TPP countries such as Singapore and Brunei. Penang has multilingual talents with global-experience.

Penang's Accelerator for Creative, Analytics & Technology (@CAT) and Creative Animation Triggers (CAT) are already in the position to train and cultivate more creative talents

#### **TPPA Impact:**

- Encourage market access to SSO foreign investors
- Free movement of investment capital
- Non-discriminatory national treatment accorded to foreign investors
- Increase demand for high-skilled workers
- Spur economic growth towards the direction of Knowledge Economy

#### **Relevant TPPA Chapters and Articles:**

Chapter 9 (Investment), Chapter 10 (Cross-Border Trade in Services), Chapter 14 (Electronic Commerce), Chapter 18 (Intellectual Property), Chapter 19 (Labour), Chapter 23 (Development)

Article 9.4 and 10.3: National Treatment; Article 9.5: Most-Favoured-Nation Treatment; Article 9.6: Minimum Standard of Treatment; Article 10.5: Market Access ; Article 10.6: Local Presence; Article 9.9: Prohibition of Performance Requirements; Article 9.10: Senior Management and Board of Directors; Article 14.11: Cross-Border Transfer of Information by Electronic Means; Article 14.13:

Location of Computing Facilities; Article 23.5: Education, Science and Technology, Research and Innovation

**Opportunities/Benefits:**

- TPP countries, especially US and Singapore will likely to increase their investments and enlarge their scale of operations in Penang.
- Average household income will increase with the creation of more jobs with higher income.
- Penang State government has the control over land matters and local licensing, as a mean to favour desirable investment projects, to a certain extent.

**Challenges/Threats:**

- Skilled workers shortage
- Competition from TPP regional cities
- TPP investors will get national treatment for their investment projects and business operation as long as they meet the conditions set out in the Annex I and Annex II.
- Federal and state government cannot 'discriminate' qualified investors and set any requirement conditions for investments, on the transfer of technology, production process or other proprietary knowledge.
- Foreign investor's high expectation of transparency and corruption-free environment, and political stability.
- High protection of investor rights and interest - risk of ISDS tribunal if the government is found breaching the TPPA obligations and if it caused losses of expected profits to some TPP investors due to regulatory or policy changes.

**Policy Recommendation:**

- ❖ Penang State Government should leverage on the TPPA to lure more SSO investments which offer people in the state with high income and high skilled jobs. Emphasis should be on the higher value Business Process Outsourcing (BPO) and Knowledge Processing Outsourcing (KPO). Penang could be the hub for SSO in the region.
- ❖ IT infrastructure should be upgraded throughout the State. High quality offices with good connectivity should be set up to encourage creative industries.
- ❖ The new offices for SSO should be equipped with the latest IT technology at competitive prices.
- ❖ Training institutions/providers should work together with the State Government and related agencies to train and increase the number of relevant skilled workers.



- ❖ Local firms are also encouraged to use the available SSO resources in Penang, thus enable more efficient operation and trim further operation cost. To create a strong cluster effect, existing SSO operations in Penang can be registered so that new businesses can be channeled to the right operator in the most efficient way.

## 2.2.2 Tourism

<p><b>The Trend:</b></p> <p>Significant increase in the number of visitors following the inscription of George Town as one of the UNESCO World Heritage Sites on the 7th of July 2008. Tourism-related businesses are flourishing and many facilities are upgraded to meet the demand.</p>	
<p><b>TPPA Impact:</b></p> <ul style="list-style-type: none"> <li>• Foreign firms are free to invest in tourism-related facilities and businesses, subject to approvals from federal, state and local government. Exceptions are stipulated in the Annex I and II.</li> <li>• More tourists will visit Penang, encourage tourism-related economic activities and create more job opportunities</li> </ul>	
<p><b>Relevant TPPA Chapters and Articles:</b></p> <p>Chapter 9 (Investment), Chapter 10 (Cross-Border Trade in Services), Chapter 16 (Competition Policy), Chapter 19 (Labour), Chapter 20 (Environment), Chapter 23 (Development), Annex I, Annex II, Annex 15-A</p> <p>Article 9.4 and 10.3: National Treatment; Article 9.5: Most-Favoured-Nation Treatment; Article 9.6: Minimum Standard of Treatment; Article 10.5: Market Access ; Article 10.6: Local Presence; Article 9.9: Prohibition of Performance Requirements; Article 9.10: Senior Management and Board of Directors; Article 20.3: General Commitments; Annex I (13), Annex II (13 &amp; 14), Annex 15-A (Section A)</p>	
<p><b>Opportunities/Benefits:</b></p> <ul style="list-style-type: none"> <li>• More investments in tourism-related businesses, services and properties from TPP countries, especially Singapore.</li> </ul>	<p><b>Challenges/Threats:</b></p> <ul style="list-style-type: none"> <li>• Foreigner-owned local incorporates will have more advantages and post strong competition with local businesses.</li> </ul>

<ul style="list-style-type: none"> <li>• Create more tourism-related job opportunities to local people, given that foreigners are not allowed to operate Malaysian cuisine restaurants, supermarkets, mini markets, textile shops and so on.</li> <li>• The local Batik/textile industry is protected.</li> <li>• More opportunities for the local residents and domestic businesses because foreigners are not allowed to be tour guides or provide domestic transport services.</li> <li>• The state and local governments have significant liberty and influence in decision-making and granting approvals to the investors.</li> <li>• The state and local governments can impose requirements on investors e.g. environmental measures, and ask all operators to comply with laws and regulations that are not inconsistent with TPPA.</li> </ul>	<ul style="list-style-type: none"> <li>• Foreigners could own and operate hypermarkets, departmental stores, franchise businesses and convenience stores, once they fulfil certain conditions set in Annex I</li> <li>• Foreign investment in hoteliers and eateries might displace or drive out the traditional businesses in the historic town enclave, thus might affect the intangible value of the UNESCO World Heritage site.</li> <li>• Overdevelopment in tourism might affect the local environment and multicultural dynamics.</li> <li>• Bad traffic jam could be a major turn-off or bad experience for tourists.</li> </ul>
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<p><b>Policy Recommendation:</b></p> <ul style="list-style-type: none"> <li>❖ Penang state government should maintain high standard in evaluating incoming tourism-related investment projects, by balancing environmental needs and nature resources with touristic requirement.</li> <li>❖ Tangible and intangible value of the heritage site should be preserved as these set Penang apart.</li> <li>❖ Property development in the UNESCO World Heritage Site must be in compliant with UNESCO values and principles.</li> <li>❖ The Federal government should invest in public transportation system to meet the demand from increasing numbers of tourists.</li> <li>❖ International connectivity should be enhanced to attract high spending tourists.</li> <li>❖ Local firms and residents should take the opportunities to promote the unique and diverse images of Penang. Local businesses should be more creative to sell their products and services catering to rising number of tourists and to continuously improve their products.</li> </ul>
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# Medical Tourism and Health Care Industry

<p><b>The Trend:</b></p> <p>Increase in medical tourists number over past years, albeit slowdown of incoming Indonesian patients. Growth in medical devices manufacturing sector in Penang, where more than 90% of the products are for export.</p>	
<p><b>TPPA Impact:</b></p> <ul style="list-style-type: none"> <li>• More investment in health care services and medical devices manufacturing market</li> <li>• Marginally or not significantly increase of TPP medical tourists</li> <li>• Increase export of medical devices produced in Penang</li> </ul>	
<p><b>Relevant TPPA Chapters and Articles:</b></p> <p>Chapter 8 (Technical Barriers to Trade), Chapter 9 (Investment), Chapter 10 (Cross-Border Trade in Services), Chapter 18 (Intellectual Property), Chapter 23 (Development), Annex I, Annex II, Annex 15-A</p> <p>Article 9.4 and 10.3: National Treatment ; Article 9.5: Most-Favoured-Nation Treatment; Article 9.6: Minimum Standard of Treatment; Article 10.5: Market Access ; Article 10.6: Local Presence; Article 9.9: Prohibition of Performance Requirements; Article 9.10: Senior Management and Board of Directors; Article 9.15: Investment and Environmental, Health and other Regulatory Objectives ; Article 18.6: Understandings Regarding Certain Public Health Measures; Annex I (11), Annex II (17), Annex 8-C &amp; 8-E, Annex 9-B (3b)</p>	
<p><b>Opportunities/Benefits:</b></p> <ul style="list-style-type: none"> <li>• Lower import cost for some medical diagnostic equipment and products (with tariff, and non-tariff measures removed). Large majority are imported from Japan and USA.</li> <li>• More state-of-art healthcare facilities, products and equipments would be brought in from TPP countries at lower cost, increase the medical technology appeal of Penang as the hub of medical tourism.</li> </ul>	<p><b>Challenges/Threats:</b></p> <ul style="list-style-type: none"> <li>• Possibly higher cost for some patented drugs and treatments. The prices of patented drugs are subject to the price setting by the drug companies who would gain stronger IP protection from the TPPA with the advantages of data exclusivity and market monopoly.</li> <li>• Low presence of local IPs, means that foreign enterprises which own more IPs would have more advantage in market competition in Malaysia.</li> </ul>

<ul style="list-style-type: none"> <li>• More opportunities for local investors and health professionals (currently about 4% of total labour force) because foreigners are not allowed to: <ul style="list-style-type: none"> <li>○ Establish blood bank, maternity home, psychiatric hospital, pathology laboratory, and to practise as general dental practitioners, general medical practitioners, general nurses including midwifery.</li> <li>○ Provide specialised dental services or operate a specialised medical facility except in Oral and Maxillo-Facial Reconstructive Surgery.</li> <li>○ Provide allied health services that covers many professions from the biomedical fields.</li> </ul> </li> <li>• Ministry of Health and state health departments could continue adopt, maintain or enforce appropriate health regulatory measures, given the exception stated in Annex 9-B (3b).</li> <li>• Malaysia reserves the right to provide social services in public training, health and child care, for a public purpose [Annex II (17)].</li> <li>• Strong Intellectual Property (IP) rights protection would incentivise local firms into R&amp;D and be innovative to produce own IP.</li> <li>• Medical devices manufacturers become more cost competitive in export, after reduction or elimination of tariff and non-tariff measures</li> </ul>	<ul style="list-style-type: none"> <li>• Arrival of more medical tourists, means that more medical resources would be required to meet the demand, and this might reduce the accessibility of local patients.</li> </ul>
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**Policy Recommendation:**

- ❖ The Federal and state government need to ensure that locals have access to quality and affordable medical care while developing medical tourism. The distribution of medical resources must be equitable and fair for public and private sector.
- ❖ The Federal and state government should encourage more investments in medical education and training of more medical professionals and care givers.
- ❖ The state government should introduce more social health services such as the Free Mammogram health screening programme, for the healthier Penang initiative.

- ❖ The state government should ensure that the children of the low income have access to health care as part of the Agenda Ekonomi Saksama anti-poverty programme.
- ❖ Penang-based healthcare service providers should consider expanding their service capacity to meet the demand gap, while other investors into this sector are welcome in Penang.
- ❖ The inward migration of locally trained medical experts and nurses to Penang, would help to relieve the professional labour shortage.
- ❖ Local medical equipment producers are encouraged to invest more into R&D and produce more IPs, to strengthen their firms' competitiveness in the global market.

### 2.2.3 Finance

#### **The Trend:**

Due to increase and expanding trade, business and construction operations in Penang, financial sector is experiencing growth and financial services are in increasing demand.

#### **TPPA Impact:**

- More cross-border financial services and sales
- Introduction of new financial services and products
- More paperless trading among businesses
- Easier application for foreign business persons to gain temporary entry

#### **Relevant TPPA Chapters and Articles:**

Chapter 9 (Investment), Chapter 10 (Cross-Border Trade in Services), Chapter 11 (Financial Services), Chapter 12 (Temporary Entry for Business Persons), Chapter 14 (Electronic Commerce), Chapter 29 (Exceptions and General Provisions), Annex III, Annex IV

Article 11.3: National Treatment; Article 11.4: Most-Favoured-Nation Treatment; Article 11.5: Market Access for Financial Institutions ; Article 11.6: Cross-Border Trade; Article 11.7 New Financial Services; Article 11.9: Senior Management and Board of Directors; Article 11.10: Non-conforming Measures; Article 14.11: Cross-Border Transfer of Information by Electronic Means; Article 12.4: Grant of Temporary Entry; Article 12.5: Business Travel, Article 29.3: Temporary Safeguard Measures, Annex III A1-A15 and B1-B5, Annex IV (6).

### **Opportunities/Benefits:**

- More diverse new financial services and products would be offered by TPP countries (especially United States), to serve Penang's growing business/commerce communities.
- Opportunities for collaboration or partnership between domestic and TPP foreign firms on untapped financial market segments.
- The latest electronic commerce technology might be brought to and used in Penang, therefore increase the safety and efficiency of business transactions and financial activities.
- Create more finance positions for local people and encourage inward migration of high-skilled talents.
- Free movement of business persons across TPP borders, would encourage TPP nationals including Malaysians going abroad without bothersome immigration restrictions.
- Financial activities are largely still actively controlled, monitored and safeguarded by Bank Negara Malaysia (BNM), as stipulated in the protective measures in Annex III.
- Regarding the market access to new financial products which might have potential element of toxic derivatives, authorisation must be obtained from the Federal Government and BNM. Under Article 11.7, the authority could refuse the authorisation within a reasonable period of time, only for prudential reasons.
- To promote development, Development Financial Institutions may accord preferences to Malaysian persons in the supply of financial services [Annex IV (6)].

### **Challenges/Threats:**

- Except certain limitations stipulated in Article 29.3 and Annex III, the use of capital controls is still restrictive (ie. only in the event of serious balance of payments and external financial difficulties or threats, or in exceptional circumstances) and probably not adequate to regulate capital flows to promote financial stability.
- Finance handling by the Federal government in terms of procurements and certain state-owned enterprises might leave bad impression to foreign investors. Some investment might be deterred by the bad impression.

**Policy Recommendation:**

- ❖ The Federal and state government should strengthen the position of Penang as the financial hub in the northern region of Malaysia and IMT-Golden Triangle, by actively promoting and encouraging more financial services providers to enter and expand the financial market.
- ❖ The Federal and state government should encourage and assist new local tech or business-startups as they represent the promising future economic growth and innovation to the state.
- ❖ The Federal and state government should lead by example, adopting and providing electronic means of transaction for all their services.
- ❖ The Federal and State government could attract world-class business schools from TPP countries to set up their branch campuses in Penang.
- ❖ Local commerce chambers should disseminate the relevant TPPA information to their members on how to take advantage of and preparing for the TPPA coming into force. Opportunities for the local financial sector to expand, should be highlighted.

### 2.3. Construction sector and Penang Transport Master Plan

**The Trend:**

Property market in Penang has experienced rapid growth in the past decade. Increased number of construction projects for more housing and commercial units could be noticed until the end of 2014. A slowdown for construction began since middle of last year. Whereas, public construction for high impact projects such as the Penang Transport Master Plan (PTMP) is still under planning.

In August 2015, Penang state government has appointed SRS Consortium as the Project Delivery Partner (PDP) for the PTMP. SRS Consortium has proposed to raise fund (RM27bil) for the PTMP through land reclamations in the southern coast of Penang Island. Two proposed reclaimed islands at area size of 3,400 acres would be auctioned to finance the construction such as one LRT line connecting the airport and Komtar, two Monorail lines serving up until Air Itam and Tanjung Bungah, and Pan-Island-Link expressway. First phase of constructions will take up to 8 years.

**TPPA Impact:**

- Market access and lower trade barrier to TPP construction materials and machinery suppliers.
- Opportunities for local developers to venture into TPP construction markets.

**Relevant TPPA Chapters and Articles:**

Chapter 9 (Investment ),Chapter 15 (Government Procurement), Annex I, Annex II

Article 9.2.2: Scope; Article 9.4: National Treatment; Article 9.5: Most-Favoured-Nation Treatment; Article 9.6: Minimum Standard of Treatment; Article 9.9: Prohibition of Performance Requirements; Article 9.10: Senior Management and Board of Directors; Article 9.11: Non-conforming Measures; Annex I (6 ), Annex I (17), Annex II (1), Annex II(14)

**Opportunities/Benefits:**

- Cheaper import of construction materials and machineries from TPP countries, especially USA and Japan.
- TPP countries may provide advanced technology in public transportation at lower cost due to lower trade barrier and favourable investment terms.
- More engineers, architects and professional surveyors will be employed and supplied from Malaysia, as the restriction is stipulated in Annex I (6). Foreigners will only be subject to a temporary registration.
- Malaysia reserves the right to adopt or maintain any measures relating to passenger and scheduled passenger road transportation services, including bus and rail services [Annex II (14)].
- 89% of registered local contractors by CIDB are SMEs, growth in construction sector due to PTMP would mean more contract opportunities for local contractors.

**Challenges/Threats:**

- The construction sector in Malaysia is still too reliant on foreign labour (35% sector employment in 2013). More active growth of the sector, at present, it would mean more foreign labour are needed.

**Policy Recommendation:**

- ❖ Local contractors and developers should source their construction materials and machinery from TPP countries if they are more competitively priced.
- ❖ Local construction firms should venture into TPP construction market.



- ❖ Malaysia should welcome the investment bids from TPP contractors in public projects, if they could bring advanced technology for public use (e.g. in public transportation and amenities).
- ❖ The Federal and State government should disseminate relevant information to domestic contractors and developers on how they can gain from the TPPA, and increase their competitiveness.

### 2.3.1 Penang state and local government procurement

#### The Trend:

Since the introduction of e-procurement open tender system in the Penang state government's online portal in 2008, Quotations Commission (for procurement less than RM200,000) and Tender Board had administrated many local and state-level procurements. From July 2012 until 7<sup>th</sup> January 2016, a total of 1,740 and 422 procurement projects have passed through the independent panels of Quotations Commission and Tender Board, respectively. The open tender system works well to save money and produce the best results for the state government.

#### TPPA Impact:

- Market access to TPP contractors and services suppliers
- Annex 15-A (section B) for Malaysia in Government procurement chapter does not include sub-central government entities, ie. state and local governments
- Annex 15-A (section J) gives Malaysia a period of five years transition period following the date of entry into force of TPPA regarding government procurement
- Annex 17-D (e) concedes more liberties for state-owned enterprises at sub-central government level.

#### Relevant TPPA Chapters and Articles:

Chapter 10 (Cross-Border Trade in Services), Chapter 15 (Government Procurement), Annex I, Annex II, Annex 15-A, Annex 17-D

Article 10.7: Non-conforming Measures; Article 15.2: Scope; Annex I (6), Annex I (17), Annex II (1), Annex II (4), Annex 15-A (section B and J), Annex 17-D (e): Application to Sub-Central State-Owned Enterprises and Designated Monopolies

### **Opportunities/Benefits:**

- The open tender system can remain with certain exemptions for state owned enterprises. Foreign contractors could bid for local projects, thereby increasing value for money.
- Class F contractors for work procurement under RM200,000 , under the license directive from the Ministry of Finance, they are exclusively for Bumiputeras. Stipulated in Annex II(4), Malaysia reserves the right to adopt or maintain any measures that provides assistance to Bumiputera for the purpose of supporting Bumiputera participation in the Malaysian market. Therefore, it would be safe to assume that all state procurements under RM200,000 will not be contested by foreign or non-Bumiputera contractors.
- The state government preserves its functions in granting approvals concerning any acquisition or dealings of land by foreigners or foreign-owned enterprises.
- Article 9.4 & 10.3 (National Treatment), Article 9.5 & 10.4 (Most-Favoured-Nation Treatment), Article 10.5 (Market Access), Article 10.6 (Local Presence), Article 9.9 (Performance Requirements) and Article 9.10 (Senior Management and Board of Directors) do not apply to local governments.
- In terms of government procurement and government-supported subsidies or grants (including loans, guarantees and insurance), Article 9.4 9.5 and 9.10 do not apply too.

### **Challenges/Threats:**

- Unless it is otherwise specified in the Annex I and II, there will be bigger competition for government procurement projects.
- Foreign contractors and service providers might have advantages in terms of technology and expertise, thus outbidding local contractors without transfer of technology and knowhow.

**Policy Recommendation:**

- ❖ Although TPPA does not interfere with the contract awarding decisions made by sub-central government entities, the State and local governments should work towards more transparent and open system for all projects as a principle.
- ❖ Penang state government who has practiced open tender system could continue for all government procurement contracts, including PTMP contracts.
- ❖ Local contractors and suppliers should be encouraged to take part in the open tender of government procurement contracts.
- ❖ Penang state government should disseminate relevant information to domestic contractors and developers on how they can gain benefits from all trade agreements signed by Malaysia, and thus increase their competitiveness.
- ❖ Local contractors should joint venture with foreign contractors to bid for local and foreign projects to increase technology knowhow and expertise.
- ❖ Local contractors and service providers should be encouraged to venture into the government procurements available in TPP countries, whenever they see fits.

## 2.4 Agriculture

**The Trend:**

Penang experiences higher GDP growth rate in agriculture (4.0% in 2014, compared to Malaysia's 2.1% in 2014), albeit from a lower base. Penang has also comparable percentage share of agriculture SMEs to the national level, although proportion of agriculture sector GDP in Penang is four times lower. Aquaculture sector contributes the most to the agriculture sector growth in Penang.

**TPPA Impact:**

- Lower trade barrier and tariff elimination for agricultural products
- Any form of agricultural export subsidies will be eliminated and shall not be introduced in future

**Relevant TPPA Chapters and Articles:**

Chapter 2 (National Treatment and Market Access), Chapter 3 (Rules of Origin and Origin Procedures), Chapter 7 (Sanitary and Phytosanitary Measures), Chapter 9 (Investment), Chapter 20 (Environment), Annex II, Annex IV

Article 2.3: National Treatment; Article 2.4: Elimination of Customs Duties; Article 2.5: Waiver of Customs Duties; Article 2.23: Agricultural Export Subsidies; Article 2.25: Agricultural Export State

Trading Enterprises; Article 2.26: Export Restrictions – Food Security; Article 2.28: Agricultural Safeguards; Article 2.29: Trade of Products of Modern Biotechnology; Article 3.1: Definitions; Article 3.2: Originating Goods; Article 7.7: Adaptation to Regional Conditions, Including Pest- or Disease-Free Areas and Areas of Low Pest or Disease Prevalence; Article 7.9: Science and Risk Analysis; Article 9.2.2: Scope; Article 9.4: National Treatment; Article 9.5: Most-Favoured-Nation Treatment; Article 9.6: Minimum Standard of Treatment; Article 9.9: Prohibition of Performance Requirements; Article 9.10: Senior Management and Board of Directors, Article 20.16: Marine Capture Fisheries, Annex II (11): Wholesale and Distribution Services, Annex IV (5): Felda Global Ventures Berhad, Annex IV (6): Development Financial Institutions

**Opportunities/Benefits:**

- Local producers might be able to increase their export to TPP countries, due to lower trade barrier and tariff elimination. Malaysia is a strong exporter in fishery products. Aquaculture is a fast growing industry in Penang which enjoys 36.7% and 20.9% annual growth rate respectively in wholesale value and production quantity from 2009-2014.
- Cheaper import of agricultural products from TPP countries, especially those do not grow on Malaysian soil. Consumers would gain benefit.
- Majority of agricultural lands would be still controlled by local producers. State government preserves its functions in granting approvals concerning any acquisition or dealings of land by foreigners or foreign-owned enterprises for agricultural purposes.
- Malaysia reserves the right to adopt or maintain any measures relating to wholesale and distribution services of agricultural products. Therefore, local jobs would be protected.
- No fishing subsidies can be introduced, to prevent overfishing environmental issue.

**Challenges/Threats:**

- The effort to ensure self-sufficiency of agricultural products in Malaysia would be hampered by influx of cheaper agricultural products, eg. Vietnamese, Japanese and American rice would increase their market share in Malaysia, suppresses further the local rice price and thus disincentivise local farmers to produce more.
- Genetic-modified (GM) agricultural products may be imported and introduced in the local market in increased quantity. This may raise concern for certain consumers, if no proper labeling to distinguish the products. The Federal and state governments are not allowed to support agricultural sector by giving any form of agricultural export subsidies nor can they introduce these in future.
- State agricultural trading enterprises are not allowed to use trade distorting restrictions or receive special financing or grants on agricultural goods export.
- The growth of property construction sector and industrial sector driven by TPP investments, might convert more agricultural lands or indirectly affect the fishermen’s catch.

- Felda Global Ventures Berhad may accord preferential treatment in its purchases of goods for the purpose of commercial resale to goods produced by its members/settlers. Interest of the Felda farmers could be protected by FGV Berhad.
- To promote development, Bank Pertanian Malaysia Berhad can provide financial services to Malaysians in preference. [Annex IV (6)]

**Policy Recommendation:**

- ❖ The Penang state government should encourage exports from its aquaculture industry, as long as the industry is developed in an environmentally sustainable manner.
- ❖ The state government could grant suitable land or sea-plot approvals to ordinary farmers or aquaculture farmers to support the agriculture sector in the state. Technical assistance and professional advice would also be valuable to increase the competitiveness of local farmers.
- ❖ Local farmers should get more market venues to sell local agricultural products, as a mean to support local sector. Whereas in retail stores, local products may be labelled to highlight the origin.
- ❖ Local farmers should become entrepreneur themselves, consider value-add their products via food processing. For example, use the raw food ingredients they produced into ready-made and higher value meals.
- ❖ Local farmers are also encouraged to grow organic fruits or vegetables, to move up the value chain.
- ❖ The retailers should be made mandatory to display clear label for any GM agricultural products sold in their premises.
- ❖ Department of Biosafety in the Natural Resources and Environment Ministry has to examine the properties of GM products carefully before granting approvals for the release or planting of GM agricultural products under the National Biosafety Act 2007.
- ❖ The state government should focus on agricultural development that is environmentally sustainable especially when it involves arable land.