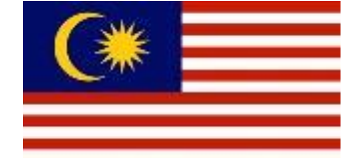
LOCAL CONTENT



Malaysia – Petroleum

September, 2016

The project[1] - background

Resource-rich countries are increasingly inserting requirements for local content ("local content provisions") into their legal framework, through legislation, regulations, contracts, and bidding practices. If successful, a policy to increase local content can lead to job creation, boost the domestic private sector, facilitate technology transfer and build a competitive local workforce. However, local content goals are often unfulfilled and the opportunities are not captured. For example, local content provisions typically require investors to meet targets measured as a percentage of investment, hours worked, equipment supplied, or jobs created. If targets are too high, they may either scare away investment or remain unmet as investors accept the fines or find loopholes. If they are too low, the country will not maximize potential linkages. This shows the importance of the framing of local content provisions. Targets, and other local content objectives, need to be carefully quantified, adapted to the local context and collaborative. Because local content provisions can be key to translating resource investments into sustainable benefits for the local population, this project examines the detail of the existing legal frameworks for local content in a number of countries.

CCSI has conducted a survey of the local content frameworks of a number of countries – identifying the key legislation, regulations, contracts and non-binding policies and frameworks dealing with local content issues in the mining and petroleum sectors[2]. A profile was created for each country, summarizing the provisions in the legal instruments dealing with local content and highlighting examples of high impact clauses[3] – those containing precise language which might be useful as an example to those looking to draft policies to enhance a country's local content[4]. The profiles examine provisions dealing with local employment, training, procurement, technology transfer, local content plans as well as local ownership, depending on the country's approach to and definition of local content. In addition, as key to translating provisions into action, the profiles look at implementation, monitoring and enforcement provisions as well as the government's role in expanding local involvement. Aside from emphasizing the strong clauses, which may be adaptable across countries, the profiles summarize the provisions but do not provide commentary, because local content is so context specific. The profiles are intended as a tool for policy makers, researchers and citizens seeking to understand and compare how local content is dealt with in other countries, and to provide some examples of language that might be adopted in a framework to achieve local content goals. Hyperlinks are provided to the source legislation, regulations, policies and contracts where available.

[1] The project was managed by Perrine Toledano. Research was conducted by Monica Raimondi.

[2] General legislation with provisions that relate to local content (for example, tax laws with incentives for local procurement or employment in any industry), was not included in the review. The review included dedicated mining or petroleum sector or specific local content legislation, regulations, policy and contracts.

[3] Those clauses are framed and singled out by a "thumb up".

[4] Our criteria for assessment of the quality of the provisions were language that is less likely to present a loophole, i.e. less likely to be subject to interpretation due to vagueness and more likely to lead to enforcement because of its clarity in terms of rights and obligations of both parties (state and investor), and reasonable in its obligations on the company. In addition, as mentioned above, we looked for clauses that encourage collaboration between the company and the government in defining local content targets and goals, and those where the government has a role, as well as clauses enabling implementation and monitoring of the requirements and those giving the government strong remedies to enforce companies' compliance.

The impact of international law

The World Trade Organization (WTO)'s agreements and investment treaties can present an obstacle to the realization of local content goals by prohibiting some types of local content requirements (a sub-category of “performance requirements”[1]). CCSI therefore surveyed the relevant WTO agreements and investment treaties in each country profiled to identify the provisions that may prevent, counsel against and/or shield local content standards. These provisions are quoted in the profile in order to show the potential barriers to implementation of local content so that they can be kept in mind when countries enter into these international investment treaties[2]. Free Trade Agreements other than the WTO agreements, some of which may contain investment chapters, are not included in the scope of the review, but may also be relevant and should be similarly kept in mind.

[1]Performance requirements are measures in law, regulation or contract that require investors to meet specified goals when entering, operating or expanding in, or leaving a host country. Some are strictly mandatory; others are imposed as a condition for receiving some sort of added benefit or advantage.

[2]Countries implementing local content requirements should be aware of the possibility of a challenge to those provisions either through the WTO (state-to-state dispute settlement) or arbitration under the bilateral investment treaties (which is investor-state dispute settlement). While the potential for such actions may be low, they remain a risk depending on the circumstances, and particularly should relations between the state and the investor sour over the course of the investment.

Synopsis

Highlights

- The state-owned oil company, Petronas, invested with both regulatory and commercial functions, has been the main driver for the implementation of local content.
- This role is particularly exercised within the frame of the profit sharing contracts (PSCs) signed between the oil companies and Petronas. The local content requirements are all captured in the PSCs as well as in Petronas' licensing requirements of the suppliers of the petroleum sector.
- Oil companies and suppliers alike can be granted special incentives if they contribute to the local economy through industrial linkages and knowledge transfer.
- The Economic Transformation Plan (ETP), launched in 2010 is part of Malaysia's National Transformation Program that aims at transforming the country into a developed one by 2020. The ETP focuses on the 12 National Key Economic Areas (NKEAs), with significant contributions to GNI and one of them in the Petroleum and Energy Sector. Three of the targets for this sector include encouraging investment in the upstream linkages of the sector. The ETP has led to the creation of implementing institutions.

✓	Employment Requirements
✓	Procurement Requirements
✓	Training Requirements
✓	Technology Transfer Requirements
✓	Monitoring and Enforcement Mechanisms
✓	Government Obligations in Support of the Companies' Program

Synopsis

International law

Legislation

Petroleum Development Act 1974
This law establishes the exclusive power and ownership of Petronas over petroleum resources and activities.

Promotion of Investments Act, 1986, ("PIA")
Special incentives are granted to investors contributing to the local economy

Regulation

Petroleum Regulations 1974
These regulations grants Petronas with the licensing authority.

General Guidelines – Application for Petronas License and Registration, 2015
These guidelines articulate Petronas' requirements for licensing suppliers

Policy

Economic Transformation Program 2010 ("ETP")
The ETP embodies the government project to transform Malaysia into a high-income country by 2020. Malaysia aims to become a regional hub by 2017 and private sector plays a crucial role.

Contract

Petroleum Sharing Contracts ("PSC")
PSCs are the main framework for local content. The clauses referred to in this profile belong to the 1998 Model Contract.

Key definitions

"**Industrial linkage programme** means an integrated programme undertaken by a Ministry or government agency in which a small company or medium company which is a manufacturer and supplier is linked to a larger company or to another small company or medium company through the manufacture and supply of parts and components or through technology or research and development" (PIA, Art.2)

Overview

Rights application	•Petronas is vested with the licensing authority and every supplier of the petroleum operations should be licensed by Petronas and is subject to specific licensing requirements including local shareholding.
Plans	•With the annual work program and budget, the contractor must submit annual plans for local hiring, expatriates and trainings. •Contractors need also to submit a 5-year plan to achieve the objectives of maximizing Malaysian participation in the use of local equipment, facilities, goods, materials, supplies, and services required for petroleum operations.
Training and employment	•Malaysian personnel has to be favored unless it lacks the necessary qualifications and adequate experience. •Contractors must train Malaysian personnel for all positions, including those held by expatriate personnel in which local personnel is not competent. •Contractors must train Petronas' personnel upon Petronas' request. They must commit to a minimum training budget and bear all the further expenses for such training.
Procuring goods and services	•Contractors must give priority to locally-manufactured goods, Malaysian suppliers and local services. •Purchase or acquisition of equipment, goods, materials, supplies, and services from outside Malaysia requires Petronas' consent. •Detailed requirements for bids, with information to be submitted at each stage are to be submitted for approval to Petronas.
Technology transfer	•Contractors must pay to Petronas an annual research contribution of 0,5% of the amount of cost oil plus their share of profit oil.
Implementat-ion	•The launch of the Economic Transformation Program has led to the creation of the Malaysia Petroleum Resources Corporation to plan and strategize around the development of the upstream linkages to the petroleum sector. •Special incentives are available for petroleum projects with an extensive linkages program.
Monitoring and enforcement	•Contractors have to report on procurement contracts after the completion of each contract and every quarter. •The operations committee of Petronas and contractors has to assess how contractors perform in terms of maximizing Malaysian participation in the petroleum sector.

Rights and applications

- Companies willing to participate in any business or service supplying equipment, facilities and services to oil and gas upstream companies must obtain a license from Petronas (Petroleum Regulations, Art.3).

- Petronas’ guidelines for licensing and registration set out the requirements to obtain a valid license: The company must be registered with the Registrar of Companies (ROC) as private or public incorporated companies or be as a land surveyor, quantity surveyor, architect or other related professional bodies. The company must have a paid-up capital in the form of ordinary shares of not less than RM100, 000, a stable financial standing and meet the Bumiputera participation requirement for equity, Board of Directors, management, and employees based on the Standardized Work and Equipment Categories (SWEC) list published on the Petronas website (Guidelines, Art. 2).
- If the SWEC require 100% Bumiputera participation, it is only for equity. The minimum Bumiputera requirement for the other levels are:
  - 75% minimum Bumiputera participation for Board of Directors;
  - 75% minimum Bumiputera participation for management; and
  - 51% minimum Bumiputera participation for the applicant's employees (Guidelines, Art. 2).

- The shares of a public company should be held at 35% by Bumiputera (Guidelines, Art. 2)
- If the suitable SWEC category doesn’t exist, the applicant is advised to discuss with the Petronas' Licensing and Registration Section's officer before selecting the closest SWEC. (Guidelines, Art. 4.4.3).
- A foreign company can also participate in the upstream sector by: 1) appointing a local company as an exclusive agent representing it, then the appointed agent company must apply for a license with Petronas and follow the steps described before; and 2) form a new Joint Venture (JV) company with a local company/individual, then the JV company must apply for the license with Petronas (Guidelines, Art. 3).

Training and employment (1)

- Malaysian personnel has to be favored unless it lacks of the necessary qualifications and adequate experience that are acceptable to both Petronas and the contractor. The contractor has to yearly submit to Petronas its manpower requirements, its organization chart and expatriate requirements (PSC, Art. 26.1):

"Together with its submission of the yearly work Programme and Budget, Contractors shall submit its manpower requirements including its organization chart.
Contractors shall first obtain written approval from PETRONAS for any positions to be filled by expatriate personnel including from any third party before such expatriate personnel are employed and shall minimise the employment of such personnel in conducting Petroleum Operations by ensuring that expatriate personnel are employed only to occupy positions for which it has not been possible to obtain Malaysian personnel with the necessary qualifications and adequate experience that are acceptable to both Parties. Contractors shall review its expatriate requirements with PETRONAS annually. In addition to the above, changes in the job functions of expatriate personnel shall require prior PETRONAS' approval."

- Contractors must undertake the development and training of Malaysian personnel for all positions including administrative, technical and executive management positions (PSC, Art. 26.2).

- Contractors must also train Malaysians for specific tasks in order to take over positions held by expatriate personnel (PSC, Art. 26.2).

- Contractors will prepare and yearly submit the training plans to Petronas for its approval (PSC, Art. 26.2).

- With their submission of the yearly work program and budget, contractors will also submit the details of all payments, benefits and privileges accorded for each classified category of Contractors' personnel (both expatriate and Malaysian) (PSC, Art 26.4).

Training and employment (2)

- Upon Petronas' request, contractors should train Petronas' personnel with on-the-job training and where possible with training in the contractors' training institutions, based on a mutually agreed program (PSC, Art. 26.3).

- Contractors must commit to a minimum expense on training of Petronas' personnel (PSC, Art. 26.5):

"Contractors shall provide a minimum of........................... for training of PETRONAS' personnel in respect of Petroleum Operations. PETRONAS and Contractors shall develop and agree on a suitable training programme for such personnel. Contractors shall bear all expenses relating to such training and such expenses shall be cost recoverable."

Procuring goods and services (1)

- Contracts must comply with the national objective of maximizing Malaysian participation in the petroleum operations (PSC, Art. 12.1):

"Contractors shall comply with the national objective of maximising Malaysian participation in the use of local equipment, facilities, goods, materials, supplies and services required for Petroleum Operations. In pursuance of the foregoing, the following shall be observed in the procurement of goods and services:-

(i) the enhancement of effective local, especially Bumiputra, participation in equity, management and employment;

(ii) the acceleration of transfer of technology from Contractors or its Sub-contractors to local, especially Bumiputra firms and companies, with the objective of developing local technical and managerial capabilities;

(iii) the need to minimise outflow of foreign exchange; and

(iv) the development of ancillary industries arising from Petroleum Operations to enhance the growth of the national economy."

- Unless Petronas otherwise specifically agrees to, the contractors must give give priority to locally-manufactured goods in the purchase of equipment, facilities, goods, materials, supplies, and services required for the operations under a work program, and purchase these from Malaysian suppliers or manufacturers and make use of services and research facilities (PSC, Art.12.2).

Procuring goods and services (2)

- Together with its submission of the yearly work program and budget, contractors must submit for approval of Petronas the lists of procurement contracts for goods and services as follows (PSC, Art 12.3):

"Together with its submission of the yearly Work Programme and Budget, Contractors shall submit for approval of PETRONAS :-

(i) a list of contracts for equipment, facilities, goods, materials, supplies and services required for Petroleum Operations which are available in Malaysia;
(ii) a list of contracts for equipment, facilities, goods, materials, supplies and services which Contractors believe are not available in Malaysia and PETRONAS shall not unreasonably withhold its consent to the purchase or acquisition of such equipment, facilities, goods, materials, supplies and services from outside Malaysia; and
(iii) a list of contracts for equipment, facilities, goods, materials, supplies and services which Contractors believe are not available in Malaysia but which local firms, companies or manufacturers are capable of producing or should be capable of producing with some assistance, if necessary.

In respect of equipment, facilities, goods, materials, supplies and services falling under item (iii) above, Contractors shall, as part of its development and production Work Programme and Budget, as well as the Abandonment Work Programme and Budget referred to in Article 29, submit a five (5) year plan of their requirements and particulars of Contractors' plans to achieve the objectives as laid down in Article 12.1 in their overall contracting strategy."

- Contracts should ensure that sub-contractors follow the same local content rules (PSC, Art. 12.10):

"Contractors shall use its best endeavours to ensure that its Sub-contractors comply with the provisions of Articles 12.1, 12.2 and 12.3 and shall see that similar provisions shall be inserted in all contracts with the Sub-contractors".

Procuring goods and services (3)

- Contractors must provide detailed information to Petronas before, during and after the bidding process (PSC, Art. 12.4):

"Contractors shall before inviting any tender for the supply of equipment, facilities, goods, materials, supplies and services submit for approval of PETRONAS the following:-

(i) a list of bidders which Contractors propose to invite for the tender;

(ii) the draft form of contract or agreement that would be adopted by Contractors and its Sub-contractor(s) in the execution of the contract;

(iii) the technical proposal form which includes the list of technical specification and the scope of work for the contract; and

(iv) the commercial proposal form which shall include the schedule of rates or schedule compensation.

In addition to the above, Contractors shall also submit a statement to PETRONAS regarding the need for the tender and/or contract, the relationship of the tender and/or contract with the approved Work Programme and Budget, the estimated value of the tender and/or contract and the contracting schedule. Contractors shall issue bidding documents only after approval has been obtained from PETRONAS and shall invite bids from Firms or companies which have been licensed by PETRONAS or otherwise have already applied for a licence from PETRONAS.

Contractors shall, before evaluating any bid received from bidders, submit for the written approval of PETRONAS the basis upon which the bids are to be evaluated.

Contractor shall, before awarding any contract, obtain the written approval of PETRONAS. For this purpose, Contractors shall submit to PETRONAS copies of bidding documents received by Contractors from bidders and a complete report giving the basis on which the awards are being recommended. PETRONAS shall from time to time specify to Contractors the category and value of contracts which shall be exempted from the provisions of Article 4.1 and this Article 12.4.

All approvals within the sole discretion of PETRONAS shall be given by PETRONAS within sixty (60) days of Contractors' application.

In the event of extraordinary circumstances requiring immediate action, Contractors may purchase equipment, facilities, goods, materials, supplies and services notwithstanding the fact that no prior approval for such a purchase has been secured from PETRONAS; any cost so incurred shall be included as Cost Oil or Cost Gas as the case may be, if PETRONAS considers that such purchase is reasonably warranted by the circumstances."

Procuring goods and services (4)

- For the carriage of oil, contractors will give first preference to chartering tankers owned by Petronas or any Malaysian national shipping line provided that such tankers are suitable and competitive in rates. (PSC, Art. 5.9).

- In times of general shortage of supplies of petroleum in countries which are members of ASEAN Council on Petroleum (ASCOPE) or its successor, contractors will give preference to prospective buyers in such countries and to Malaysian refineries provided that the prices and other terms of purchase offered are competitive (PSC, Art. 5.10).

Technology transfer and research and development

- Contractors shall pay an annual research contribution, the "Research Cess," to Petronas (PSC, Arts 9.1 and 9.2).

"9.1Contractors shall pay to PETRONAS a Research Cess amounting to one half of one per cent (0.5%) of the price as determined in accordance with Article 7 for ever Kilolitre taken and received by Contractors in the form of Cost Oil and Contractors' Portion of Profit Oil as referred to in Article 5.2. The amount days from the end of each month in which is payable within thirty (30) days from the end of each month in which Contractors received its aforesaid share.

9.2 Contractors shall, in relation to Natural Gas, pay to PETRONAS a Research Cess amounting to one half of one per cent (0.5%) of the value of Cost Gas and Contractors' Portion of Profit Gas sold by Contractors. Such amount shall be paid within thirty (30) days from the end of each month in which Contractors sell its aforesaid share."

- When procuring goods and services to comply with the national objective of maximizing Malaysian participation in the Petroleum Operations, contracts should ensure the acceleration of transfer of technology from contractors or its sub-contractors to local, especially Bumiputra firms, to develop local technical and managerial capabilities (PSC, Art. 12.1).

Implementation (1)

- Chapter 6 of the Economic Transformation Program stipulates the creation of a government body to supervise the industrial linkages out of the the oil sector (page 184):

"A Government body called Oil Field Services Unit (OFSU) will be set up, tasked with the responsibility to oversee industry growth and development. OFSU would be a permanent Government body comprising 20 people, at least 10 of whom will have oil and gas industry experience. It will be fully operational within six months and will have four fundamental responsibilities:

• To make recommendations on how to restructure the domestic industry to create a more competitive environment and position the industry and its companies for growth;

• To have oversight of the domestic industry and ensure coordination between all existing, planned and potential clusters of OFSE [Oil Field Services and Equipment] activity;

• To create an attractive business environment for multinational companies by ensuring administrative ease and working with other Government departments to develop an attractive fiscal regime; and

• To promote the Malaysian OFSE industry and companies to overseas companies and investors.

OFSU will be supported in this role by an industry consultative council (ICC) comprising approximately 10 members from key industry associations. The ICC will meet with OFSU on a monthly basis and advise on industry requirements, specifically domestic regulation, talent development and availability, research and development and incentives".

- This injunction of the ETP has led to the creation of the Malaysian Petroleum Resources Corporation (MPRC), charged with the role to provide recommendations on policies, regulations and tax regime for the O&G services and equipment sector in consultation with industry stakeholders, develop and share an industrial blueprint for the sector, build a database of pertinent information on the sector, promote the sector abroad, leverage on local and international financial institutions to support local companies when applying for foreign contracts, interact with industry stakeholders to ensure industry requirements are met in terms of research and development, talent and financial assistance (MPRC mandate webpage).

- The MPRC, in particular, aims at "attracting multinational companies [in the OFSE industry] to bring a sizeable share of their global operations to Malaysia, consolidating domestic fabricators, developing capabilities and capacity [of domestic companies] through strategic partnerships and joint ventures" (MPRC, Oil & Gas Services and Equipment webpage).

Implementation (2)

- Performance indicators have been devised to measure the achievement under the ETP. The Performance Management Delivery Unit, PEMANDU, established in 2011, measures the results.

- Under the Promotion of Investments Act, 1986, government incentives are available for petroleum investors participating in "promoted activities" or "producing promoted products" and generating extensive industrial linkages. The list of the promoted activities and promoted products is published by statutory order in the Gazette from time to time (PIA, Art. 4).

- These incentives are:

- Pioneer Status (PS): income tax exemption of up to 100% of statutory income for a period of 5 to 10 years. Accumulated losses incurred during this period can be carried forward; or
- Investment Tax Allowance (ITA) of up to 100% of qualifying capital expenditure incurred within a period of 5 years from the date the first capital expenditure – to be offset against 100% of statutory income for each assessment year. Unutilised allowances can be carried forward (PIA, Arts.5, 26).

Monitoring and enforcement

- After the completion of each procurement contract, the contractor will submit to Petronas an appraisal report covering details on the actual expenditures and the manpower, equipment and materials, facilities, and resources utilized by its sub-contractors in the execution of the contract (PSC, 12.5).

- 60 days from the end of each quarter, contractors will submit to Petronas details of equipment, facilities, goods, and services procured both from inside and outside Malaysia (PSC 12.5).

- Contractors, during each operations committee meeting between Petronas and contractors, shall report on its performance in terms of local content (PSC, Art. 12.3).

Contractors shall during each operations committee meeting between PETRONAS and Contractors highlight its performance and achievement for the purpose of determining the extent of compliance with the objectives outlined in Article 12.1.

International law – WTO agreements

Agreement on Trade-Related Investment Measures (TRIMs)[1]

- Malaysia has been a WTO member since January 1, 1995.

- All World Trade Organization (WTO) Members must adopt and abide by the obligations of TRIMs. This can impact a country's ability to impose certain local content requirements (referred to as "investment measures"), to the extent they affect trade in *goods.*

- The following types of local content requirements are covered by TRIMS[2]:
  - requiring a company to purchase or use products of domestic origin – TRIMs prohibits discrimination between goods of domestic and imported origin;
  - limiting the amount of imported products that an enterprise may purchase or use depending on the volume or value of local products that the enterprise exports;
  - restricting foreign exchange necessary to import (e.g., restricting the importation by an enterprise of products used in local production by restricting its access to foreign exchange); and
  - restricting exports.

[1] The TRIMs Agreement clarifies existing rules contained in Articles III (National Treatment Obligation (NTO)) and XI (Prohibition on Quantitative Restrictions) of the General Agreement on Tariffs and Trade (GATT), 1994.

[2] It is important to be aware of the types of measures prohibited under the TRIMs Agreement, in order to avoid the potential for dispute settlement under the WTO - a state can bring an action against another state for an alleged violation of the TRIMs Agreement (i.e. "state-to-state action").

International law – WTO agreements

General Agreement on Trade in Services (GATS)

- A separate WTO agreement, the General Agreement on Trade in Services (“GATS”), covers investment measures related to services (in Article XVI), including the following which are relevant to local content:
  - Requirements to use domestic service suppliers
  - Limits on the number of service suppliers
  - Limits on the total value of service transactions or assets
  - Limits on the total number of service operations or quantity of service output
  - Limits on the total number of natural persons permitted
  - Restrictions on or requirements for certain types of legal entities (e.g., joint venture requirements)
  - Imposition of domestic equity

- GATS only applies to those service sectors that the country chooses to include in its Schedule of Commitments. Malaysia’s commitments do not seem to affect the implementation of local content requirements.

International law – investment treaties

- As of August 25, 2016, Malaysia had entered into 71 bilateral investment treaties (BITs), of which 49 were in force, and into 24 international investment agreements (IIAs), of which 19 were in force.[1]

- Investment treaties are international agreements between two or more countries which establish the terms and conditions of foreign investment within each country and provide rights directly to the investors of each country which is party to the treaty. The treaties can contain restrictions on local content requirements.[2]

- Investment treaties can contain the following types of provisions, each of which affects a country's ability to impose local content requirements:
  - non-discrimination provisions ("national treatment" and "most-favored nation" obligations), which are relevant in the context of local content when:
    1. host countries require some foreign investors to source from certain goods and service providers but don't impose similar requirements on other investors; and
    2. host countries give an advantage to some domestic or foreign goods and services providers, but not to a foreign provider whose state has a relevant treaty with the host country. (Note that this is relevant only where the foreign provider of goods or services has or, intends to have[3], a presence in the host country);
  - restrictions on capital transfers;
  - "pre-establishment" protections, which prevent a state from imposing conditions on foreign investors that are not imposed on domestic investors, such as requirements to transfer technology to local firms, to establish the firm through a joint venture, or to reinvest a certain amount of capital in the host country;
  - incorporation of the TRIMs agreement; and
  - explicit prohibition of performance requirements that go beyond what is restricted by the TRIMs Agreement.

[1] According to UNCTAD's country specific list of bilateral investment treaties

[2] It is important to be aware of the BITs a country has signed and the types of requirements prohibited under it, in order to avoid the potential for arbitration against the country - the majority of investment treaties allow investors to bring arbitration claims directly against the country in which they have invested ("investor-state arbitration").

[3] i.e., the conditions under which an investor may enter into the territory of a party, not only the conditions once the investment is made.

International law – investment treaties

- Of the 71 BITS signed by Malaysia, 31 were reviewed, while of the 24 IIAs 13 were reviewed (and are available on UNCTAD's database).

- Aside from the inclusion of National Treatment Obligations and Most Favored Nation clauses, which are included in most BITs, no BIT contained specific restrictions on performance requirements. However among the IIAs, the TPP is particularly illustrative of the international law constraints that can be imposed on domestic local content policy.

- *Trans-Pacific Partnership (TPP), 2016,* signed, not yet in force:

"9.10. 1. No Party shall, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, impose or enforce any requirement, or enforce any commitment or undertaking:

(a) to export a given level or percentage of goods or services;

(b) to achieve a given level or percentage of domestic content;

(c) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;

(d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with the investment;

(e) to restrict sales of goods or services in its territory that the investment produces or supplies by relating those sales in any way to the volume or value of its exports or foreign exchange earnings;

(f) to transfer a particular technology, a production process or other proprietary knowledge to a person in its territory;

(g) to supply exclusively from the territory of the Party the goods that the investment produces or the services that it supplies to a specific regional market or to the world market;

(h) (i) to purchase, use or accord a preference to, in its territory, technology of the Party or of a person of the Party; or

> (ii) that prevents the purchase or use of, or the according of a preference to, in its territory, a particular technology; or
>
> (…)"

International law – investment treaties

- *Trans-Pacific Partnership (TPP), 2016,* signed, not in force:

"2. No Party shall condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, on compliance with any requirement:

(a) to achieve a given level or percentage of domestic content;

(b) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;

(c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with the investment; or

(d) to restrict sales of goods or services in its territory that the investment produces or supplies by relating those sales in any way to the volume or value of its exports or foreign exchange earnings.

3. (a) Nothing in paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment of an investor of a Party or of a non-Party in its territory, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory."