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Addressing Energy Trilemma: Energy Security, Environmental Sustainability and Energy Equity

| by Dato' Nitin Nadkarni and Crystal Wong Wai Chin^[1] |

01 | Singapore International Energy Week 2018 (SIEW)

On 30 October 2018, at SIEW, the Minister of Energy, Science, Technology, Environment and Climate Change, Madam Yeo Bee Yin, announced that the government of Malaysia is planning structural changes to the energy market to increase competitiveness, specifically in the transmission and distribution of electricity in Malaysia. Minister Yeo emphasised that a new **Energy Efficiency Conservation Act** will be tabled in 2019, to achieve energy savings and ensure compliance with building energy codes in the industrial, commercial and residential sectors.^[2]

02 | Malaysia Ramping Up Renewable Energy Investments

The government aspires to supply half of Malaysia's electricity needs with renewable energy by 2050, with an interim target of 20% by 2030. Active consideration is being given to minor hydro power, solar energy, biomass and biogas projects.^[3]

To this end, Malaysia is implementing various renewable energy-related initiatives, for example, the Large Scale Solar (**LSS**) initiatives with a total capacity of 1,228MW for open bidding.^[4] Tenaga Nasional Berhad, Malaysia's national utility, has recently announced the completion of the country's largest LSS project, which is targeted to reach full solar photovoltaic (PV) capacity of 50MW by year-end.

Faced with an evolving energy landscape, the government is also considering various funding schemes for new and existing renewable energy players to invest in energy-efficient equipment and technologies.^[5]

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03 | Paris Agreement — International Commitments

“Climate change threatens global security and territorial sovereignty”^[6]

Malaysia has pledged to uphold its commitment in the Paris Agreement to reduce its carbon emissions level by 35% between 2005 and 2030, and up to 45% with international support from developed countries, such as climate finance funding, technology transfer and capacity building.^[7] The main emission contributors in Malaysia are the energy industries, transport, manufacturing industries and industrial processes, waste and the agriculture sectors.

04 | New regulations

The government is also implementing other renewable energy-related regulations:

- (a) new feed-in tariff projects^[8] including 74,568.2MW for small hydro projects, 30MW for biogas projects and 10MW for biomass projects;
- (b) net metering system; and
- (c) solar leasing through supply agreement of renewable energy.

05 | Dispute resolution

Power contracts are capital-intensive, long-term agreements. However, governments may change their policies over time, with significant impact on the profitability and viability of renewable energy projects. Notably, Spain, Italy and the Czech Republic —which, in the past, provided strong incentives for renewable energy, including, among others, premium tariffs — have reduced the incentives offered to renewable energy investors, sometimes with retrospective effect.

In response, investment treaty arbitrations have been initiated by several energy investors under the Energy Charter Treaty against Spain, Italy and the Czech Republic, challenging the reversal of their renewable energy subsidies. Malaysia is not a party to the Energy Charter Treaty, but participated in the negotiations on the International Energy Charter signed in May 2015.

With the rise in energy-related investments, building of more power projects and governmental efforts to achieve their renewable energy goals, emissions targets and other initiatives to scale back or eliminate non-renewable production, renewable energy-related arbitrations are inevitable.

06 | Adapting to new opportunities and challenges

It is therefore critical that when entering into renewable energy contracts, investors should pay particular attention to the language and import of stabilisation, *force majeure* and price

review clauses to ensure proper management of the risk of changes in laws, regulations or government policies which may adversely affect the commercial viability of the contract.

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- [1] Nitin is a Partner and Crystal is a Case Counsel in the firm's Energy, Infrastructure & Projects, and International Arbitration Practice
- [2] <https://www.siew.sg/newsroom/articles/detail/2018/10/30/investment-innovation-and-integration-are-key-pillars-to-realise-the-energy-transformation-in-asean>
- [3] Malaysia's Intended Nationally Determined Contribution submitted on 18 January 2016, see <http://www4.unfccc.int/Submissions/INDC/Published%20Documents/Malaysia/1/INDC%20Malaysia%20Final%2027%20November%202015%20Revised%20Final%20UNFCCC.pdf>
- [4] Sustainable Energy Development Authority Malaysia (SEDA) Announcement on Revocation of Non-performing feed-in tariff projects and new quota release by SEDA in Q4 2018 on 18 October 2018.
- [5] <https://www.nst.com.my/business/2018/09/414912/yeo-cheaper-loans-renewable-energy-initiatives>
- [6] Achieving Justice and Human Rights in an Era of Climate Disruption, International Bar Association, Climate Change Justice and Human Rights Task Force Report, July 2014, p 88
- [7] SEDA Announcements on Quota Release for Small Hydro, Biomass and Biogas on 25 October 2018
- [8] Malaysia's Intended Nationally Determined Contribution submitted on 18 January 2016