

# MEA 12MP Kick-Off Conference

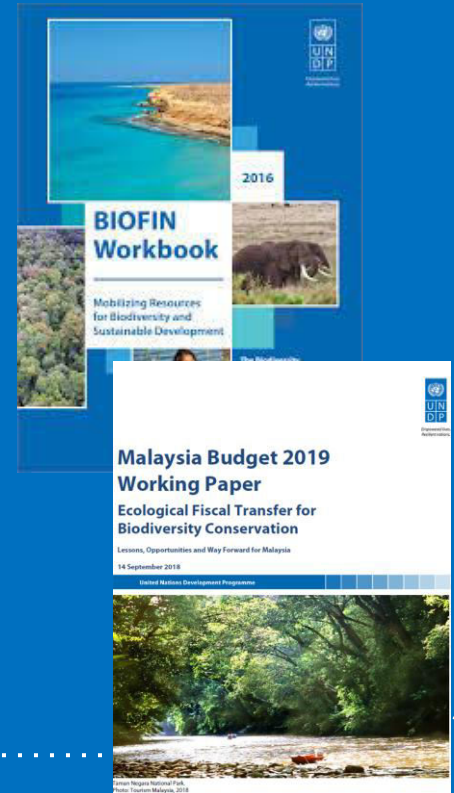


*Empowered lives.  
Resilient nations.*

Ecological Fiscal Transfers (EFT); Opportunities for Environmental Grant making in Malaysia  
Presented by Preetha Sankar  
Advocate & Solicitor  
Environmental Legal Specialist ( UNDP Malaysia)  
2.7.2019

## Ecological Fiscal Transfer (EFT) Outline

- UNDP Malaysia – Ecological Fiscal Transfer (EFT) Context - from the Biodiversity Financing (BIOFIN) perspective
- Seeking solutions to problems related to BIOFIN
- There are funding gaps for conservation – long standing issue
- Mobilize multiple BIOFIN mechanisms; of which EFT is a fore runner; within the 12<sup>th</sup> MP ( UNDP Malaysia Working paper submitted 2018)
- Opportunities to build a EFT Scheme in Malaysia – present ✓
- Concerted Policy Discussions Needed
- Legally Entrench and Institutionalize – enablers present ✓



## EFT -What is it? Potential?

EFT is essentially an intergovernmental fiscal transfer to distribute public revenue from the Federal to State Governments according to agreed principles and priorities towards environmental conservation

In other words a formalized environmental grant making system corresponding to a number of ecological criteria – adding a new sub set dimension to fiscal transfers from Federal to State



Has the potential to overcome funding gaps for conservation, incentivize the States, meet national objectives, targeted conservation financing etc.



## Seize Opportunities to formalize EFT

Political Momentum/Interest 

i) “The Government is committed to take all necessary measures to protect our environment, both as a responsibility and an endowment to our future generations. Seeing that the forest and marine reserves are under the purview of State Governments, the Federal Government will allocate RM60 million to State Governments making efforts to protect and expand existing natural forest reserves and protected areas” Budget Speech Nov 2<sup>nd</sup> 2018

ii) The PM announces (May 2019) that the National Finance Council (NFC) has agreed to increase another RM60 million to States this year for environmental purposes



## Necessary Dialogues/Processes



*Policy Interest* → *to Policy Response/Basis/Rationale*

*EFT as a Scheme – Policy aspects determine design – may include*

- *Sustained mobilization of financial resources to improve conservation effectiveness in decentralized jurisdictions*
- *Serve to incentivize the state on conservation aspects (priorities)*
- *Serve to compensate the State for opportunity costs*
- *Earmarked – not for general environmental purposes ( use of revenue maximized), targeted*

## Towards Institutionalizing EFT

*From policy basis to a legal one*

*Possible Legal Structure* 

- ✓ *Carefully designed objectives (purpose)*
- ✓ *Ecological criteria (PA's & Ors)*
- ✓ *Fiscal-formula based ( quantitative & qualitative ), indexes, variables*
- ✓ *Qualitative and quantitative measures of effectiveness*
- ✓ *Decision making bodies*
- ✓ *Monitoring & reporting*

## Legal Provisions & Precedents on Fiscal Transfers Structure Options

- ✓ Use the Federal Constitution to Develop Federal Law (Section 109 (3) –Grants to States
- ✓ Federal Environmental Grants 

### Grants to States

109. (1) The Federation shall make to each State in respect of each financial year—

- (a) a grant, to be known as a capitation grant, which shall be calculated in accordance with the provisions of Part I of the Tenth Schedule;
- (b) a grant for the maintenance of State roads, to be known as the State road grant, which shall be calculated in accordance with the provisions of Part II of that Schedule.

(2) Parliament may from time to time by law vary the rates of the capitation grant; but if the effect of any such law is to reduce the grant, provision shall be made in that law for securing that the amount of grant received by any State in respect of any financial year is not less than ninety per cent of the amount received by that State in the preceding financial year.

(3) Parliament may by law make grants for specific purposes to any of the States on such terms and conditions as may be provided by any such law.

## Legal Precedents on Grants for Specific Purpose

- ✓ Revenue Growth Grants Act 1977 (formula based)
- ✓ High chance of success – ready fiscal transfer structures and institutional arrangements (some alignment or repositioning required)
- ✓ Fiscal Formula (slightly complex for ecological criteria but doable)

✓ Good Feasibility!

### Apportionment amongst States equally and on population basis

4. The sum of money allocated under paragraph 2(a) shall be apportioned as grants amongst the States as follows—

- (a) one half of the sum shall be apportioned equally amongst the thirteen States; and
- (b) the remaining half shall be apportioned proportionately amongst the States, on the basis of the population of each State as determined at the last census taken before the preceding financial year, at two shares per head for the first five hundred thousand, one share per head for the next five hundred thousand and a half share per head for the remainder of each State's population.

### Purpose of grants

6. The grants made to a State under section 4 shall be utilized to generally supplement its revenue and the grant made to a State under section 4A shall be utilized for any or all of the following specific development purposes—

- (a) water supply;
- (b) public housing;
- (c) industrial estate development;
- (d) minor works; and
- (e) such other development projects as may be determined from time to time by the National Finance Council established under Article 108 of the Federal Constitution.





*Empowered lives.  
Resilient nations.*

**THANK YOU**