



## **ASEAN TRADE IN SERVICES AGREEMENT**

The Governments of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, Lao People's Democratic Republic, Malaysia, the Republic of the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand, and the Socialist Republic of Viet Nam, Member States of the Association of Southeast Asian Nations (ASEAN), hereinafter collectively referred to as "Member States" or singularly as "Member State";

**NOTING** the ASEAN Framework Agreement on Services signed by the ASEAN Economic Ministers (AEM) on 15 December 1995 in Bangkok, Thailand (hereinafter referred to as "AFAS") and its subsequent Implementing Protocols, the objectives of which are to enhance cooperation in services amongst Member States, to eliminate substantially all restrictions to trade in services amongst Member States, and to liberalise trade in services by expanding the depth and scope of liberalisation beyond those undertaken by Member States under the General Agreement on Trade in Services (GATS);

**TAKING INTO ACCOUNT** the mandate of the 7<sup>th</sup> ASEAN Economic Community Council held on 2 April 2012 in Phnom Penh, Cambodia to review and enhance the existing AFAS, to enhance ASEAN's economic and sectoral integration in the same vein that ASEAN has transformed the Framework Agreement on the ASEAN Investment Area and the ASEAN Agreement for the Promotion and Protection of Investments, and the Agreement on the Common Effective Preferential Tariff Scheme for the ASEAN Free Trade Area into the ASEAN Comprehensive Investment Agreement (ACIA) and the ASEAN Trade In Goods Agreement, respectively;



**ALSO TAKING INTO ACCOUNT** the guiding principles and the objectives of an enhanced ASEAN Trade in Services Agreement (ATISA) adopted at the 44<sup>th</sup> AEM Meeting held on 28 August 2012 in Siem Reap, Cambodia;

**NOTING** the decision of the 48<sup>th</sup> AEM Meeting held on 3 August 2016 in Vientiane, Lao PDR instructing officials to explore possible approaches of negative list under the ATISA, taking into account the mandate of the ASEAN Economic Community Blueprint 2025 and the on-going developments of the negotiations under other fora;

**RECOGNISING** that intra-ASEAN economic cooperation will secure a liberal trading framework for trade in services which would strengthen and enhance trade in services amongst Member States; and

**REITERATING** our commitments to the rules and principles of the GATS and noting that Article V of GATS permits the liberalisation of trade in services between or amongst the parties to an economic integration agreement,

**HAVE AGREED AS FOLLOWS:**

## **SECTION I GENERAL PROVISIONS**

### **Article 1 Objectives**

The objectives of this Agreement are to:

- (a) strengthen economic linkages and provide greater opportunities for economic development;



- (b) increase trade and investment in the area of services and create larger markets and greater economies of scale;
- (c) reduce barriers to trade and investment in services and create a predictable business environment;
- (d) strengthen economic relations between Member States through: *inter alia* promoting and facilitating utilisation of the greater opportunities provided by the Agreement; promoting regulatory cooperation; developing co-operation in the field of human resource development; and increasing the participation of small and medium enterprises in trade and investment activities; and
- (e) narrow development gaps between Member States to achieve a more equitable, balanced and sustainable socio-economic development.

## **Article 2**

### **Scope**

1. This Agreement applies to measures by Member States affecting trade in services.
2. This Agreement shall not apply to:
  - (a) services supplied in the exercise of governmental authority within the territory of each Member State;
  - (b) laws, regulations or requirements governing the procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale;
  - (c) cabotage;



- (d) subsidies and grants; and
- (e) air traffic rights, however granted, or services directly related to the exercise of traffic rights; and
- (f) air transport services except air transport ancillary services as set out in Annex on Air Transport Ancillary Services.

**Article 3**  
**Relation to the ASEAN Comprehensive Investment Agreement**

1. The ACIA signed on 26 February 2009 in Cha-am, Thailand, and its subsequent amendments, does not apply to measures adopted or maintained by a Member State covered by this Agreement.
2. Notwithstanding paragraph 1, for the purpose of protection of investment with respect to the commercial presence mode of service supply Article 11 (Treatment of Investment), Article 12 (Compensation in Cases of Strife), Article 13 (Transfers), Article 14 (Expropriation and Compensation), Article 15 (Subrogation) and Section B (Investment Dispute between an Investor and a Member State) of the ACIA shall apply, *mutatis mutandis*, to measures affecting the supply of a service by a service supplier of a Member State through commercial presence in the territory of another member State but only to the extent that they relate to an investment and obligation under the ACIA.
3. For the avoidance of doubt, Article 11 (Treatment of Investment), Article 12 (Compensation in Cases of Strife), Article 13 (Transfers), Article 14 (Expropriation and Compensation), Article 15 (Subrogation) and Section B (Investment Dispute between an Investor and a Member State) of the ACIA, are not incorporated into this Agreement.



4. For greater certainty, any breach of any provision in this Agreement shall not be subject to any dispute settlement mechanism under ACIA, including but not limited to Investor State Dispute Settlement mechanism.

#### **Article 4**

### **Relation to the ASEAN Agreement on the Movement of Natural Persons**

1. The ASEAN Agreement on the Movement of Natural Persons signed on 19 November 2012 in Phnom Penh, Cambodia (hereinafter referred to as “ASEAN Agreement on MNP”), shall apply to measures by a Member State affecting the supply of a service through presence of natural persons of a Member State in the territory of any other Member States, and shall prevail in the event of any inconsistency with this Agreement.

2. With regard to the provisions under Sections II and III of this Agreement, the ASEAN Agreement on MNP shall prevail and apply exclusively to measures affecting the supply of a service through presence of natural persons of a Member State in the territory of any other Member States.

#### **Article 5**

### **Definitions**

For the purposes of this Agreement, the term:

- (a) **“a service supplied in the exercise of governmental authority”** means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers;
- (b) **“commercial presence”** means any type of business or professional establishment, including through:



- (i) the constitution, acquisition or maintenance of a juridical person; or
- (ii) the creation or maintenance of a branch or a representative office,

within the territory of a Member State for the purpose of supplying a service;

- (c) “**computing facilities**” means computer servers and storage devices for processing or storing information for commercial use;
- (d) “**direct taxes**” comprises all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation;
- (e) “**final AFAS Packages**” means the tenth package of commitments made by Member States under the AFAS as signed by the AEM, and the last package of commitments signed by ASEAN Finance Ministers (AFM) and ASEAN Transport Ministers (ATM) prior to entry into force of the Schedules of Non-Conforming-Measures pursuant to Article 11 (Non-Conforming Measures).
- (f) “**GATS**” means the General Agreement on Trade in Services;
- (g) “**investment**” means investment as defined under paragraph (c) of Article 4 (Definitions) of the ACIA, as may be amended;



- (h) **“investor”** means a natural person of a Member State or a juridical person of a Member State that is making, or has made an investment in the territory of any other Member State;
- (i) **“juridical person”** means any legal entity duly constituted or otherwise organised under applicable law of a Member State, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or, association;
- (j) **“juridical person of another Member State”** means a juridical person which is either:
  - (i) constituted or otherwise organised under the law of that other Member State, and is engaged in substantive business operations in the territory of that Member State or any other Member State; or
  - (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
    - (1) natural persons of that Member State; or
    - (2) juridical persons of that other Member State identified under subparagraph (i);
- (k) A juridical person is:
  - (i) **“owned”** by persons of a Member State if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Member State;
  - (ii) **“controlled”** by persons of a Member State if such persons have the power to name a majority



of its directors or otherwise to legally direct its actions; and

- (iii) **“affiliated”** with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person.
  
- (l) **“measure”** means any measure by a Member State, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form<sup>1</sup>;
  
- (m) **“measures by a Member State”** means measures taken by:
  - (i) central, regional or local governments and authorities of a Member State; and
  
  - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities of a Member State;
  
- (n) **“measures by a Member State affecting trade in services”** includes measures in respect of:
  - (i) the purchase, payment or use of a service;
  
  - (ii) the access to and use of, in connection with the supply of a service, services which are required by those Member States to be offered to the public generally; and
  
  - (iii) the presence, including commercial presence, of persons of a Member State for the supply of a service in the territory of another Member State;

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<sup>1</sup> **“measure”** shall include taxation measures to the extent covered by the GATS.





- (o) **“monopoly supplier of a service”** means any person, public or private, which in the relevant market of the territory of a Member State is authorised or established formally or in effect by that Member State as the sole supplier of that service;
- (p) **“natural person of another Member State”** means a natural person who under the law of that Member State:
  - (i) is a national or citizen of that Member State; or
  - (ii) has the right of permanent residence in that Member State, where both that Member State and the Member State in which the person supplies services recognise permanent residents and accord substantially the same treatment to their respective permanent residents as they accord to their respective nationals in respect of measures affecting trade in services.
- (q) **“person”** means either a natural person or a juridical person;
- (r) **“sector”** of a service means:
  - (i) with reference to a specific commitment, one or more, or all, subsectors of that service, as specified in a Member State’s Schedule;
  - (ii) otherwise, the whole of that service sector, including all of its subsectors;
- (s) **“services”** includes any service in any sector except services supplied in the exercise of governmental authority;



- (t) **“service consumer”** means any person that receives or uses a service;
- (u) **“service of another Member State”** means a service which is supplied:
  - (i) from or in the territory of that other Member State, or in the case of maritime transport, by a vessel registered under the laws of that other Member State, or by a person of that other Member State which supplies the service through the operation of a vessel and/or its use in whole or in part; or
  - (ii) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of that other Member State;
- (v) **“service supplier”** means any person that supplies a service<sup>2</sup>;
- (w) **“supply of a service”** includes the production, distribution, marketing, sale and delivery of a service;
- (x) **“trade in services”** means the supply of a service:
  - (i) from the territory of a Member State into the territory of any other Member State (“cross-border supply”);

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<sup>2</sup> Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under this Agreement. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory where the service is supplied.



- (ii) in the territory of a Member State to the service consumer of any other Member State (“consumption abroad”);
  - (iii) by a service supplier of a Member State, through commercial presence in the territory of any other Member State (“commercial presence”);
  - (iv) by a service supplier of a Member State, through presence of natural persons of a Member State in the territory of any other Member State (“presence of natural persons”); and
- (y) **“traffic rights”** means the rights for scheduled and non-scheduled services to operate and/or to carry passengers, cargo and mail for remuneration or hire from, to, within, or over the territory of a Member State, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged and their conditions, and criteria for designation of airlines, including such criteria as number, ownership and control.

## **SECTION II CORE OBLIGATIONS AND DISCIPLINES**

### **Article 6 National Treatment**

1. Each Member State shall accord to services and service suppliers of another Member State, in respect of all measures affecting the supply of services, treatment no less favourable



than that it accords in like circumstances<sup>3</sup>, to its own services and service suppliers.<sup>4</sup>

2. A Member State may meet the requirement of paragraph 1 by according to services and service suppliers of any other Member State, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Member State compared to like services or service suppliers of any other Member State.

## **Article 7**

### **Most-Favoured-Nation Treatment**

1. Each Member State shall accord to service suppliers of another Member State treatment no less favourable than that it accords, in like circumstances, to service suppliers of any other Member State or a non-Member State.

2. Each Member State shall accord to services supplied by another Member State treatment no less favourable than that it accords, in like circumstances, to services supplied in its territory by service suppliers of any other Member State or a non-Member State.

3. For greater certainty, in relation to services falling within the scope of this Agreement, any preferential treatment

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<sup>3</sup> For greater certainty, whether treatment is accorded in "*like circumstances*" under Article 6 (National Treatment) or Article 7 (Most-Favoured-Nation Treatment) depends on the totality of the circumstances, including whether the relevant treatment distinguishes between services or service suppliers on the basis of legitimate public welfare objectives.

<sup>4</sup> Nothing in this Article shall be construed to require any Member State to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.



granted by a Member State to service suppliers of any other Member State or a non-Member State and to their services, under future agreements or arrangements to which a Member State is a party shall be extended on a Most-Favoured-Nation basis to all Member States. Agreements and arrangements concluded or signed before the signing of ATISA, and their future amendments, shall not be subject to this Article.

4. The treatment referred to in paragraphs 1 to 3 shall not apply to financial services, and Article 11 (Most-Favoured-Nation Treatment) of the Annex on Financial Services shall apply to financial services.

5. The provisions of this Agreement shall not be construed to prevent any Member State from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.

6. Notwithstanding Paragraphs 1 to 5 above, two or more Member States may conduct negotiations and agree to liberalise trade in services for specific sectors or sub-sectors ("the participating Member States"). Any extension of such preferential treatment to the remaining Member States on a most-favoured-nation basis shall be voluntary on the part of the participating Member States.

7. The participating Member States shall keep the remaining Member States informed through the ASEAN Secretariat of the progress or result of the negotiations. Member States wishing to join any on-going negotiations among the participating Member States may do so in consultation with the participating Member States.

8. Any Member State which is not a party to any agreement reached pursuant to paragraph 6 may in due course become a party to such an agreement upon making offers at similar or acceptable levels to the participating Member States.



## **Article 8 Market Access**

A Member State shall not maintain or adopt, either on the basis of a regional subdivision or on the basis of its entire territory, measures that are defined as:

- (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
- (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;<sup>5</sup>
- (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;
- (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and
- (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign

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<sup>5</sup> Subparagraph (c) does not cover measures of a Member which limit inputs for the supply of services.



shareholding or the total value of individual or aggregate foreign investment.

### **Article 9 Local Presence**

A Member State shall not require a service supplier of another Member State to establish or maintain a representative office or any form of juridical person, or to be resident, in its territory as a condition for the cross-border supply of a service.<sup>6</sup>

### **Article 10 Senior Management and Board of Directors**

1. A Member State shall not require that a juridical person of that Member State appoint to senior management positions, natural persons of any particular nationality.
2. A Member State may require that a majority of the board of directors of a juridical person of that Member State be of a particular nationality or resident in the territory of the Member State, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

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<sup>6</sup> Nothing in this Article shall prevent a Member State from adopting and maintaining its own regulatory measures regarding the use and location of computing facilities.



## **SECTION III RESERVATIONS**

### **Article 11 Non-Conforming Measures**

1. Article 6 (National Treatment), Article 7 (Most-Favoured-Nation Treatment), Article 8 (Market Access), Article 9 (Local Presence), and Article 10 (Senior Management and Board of Directors) do not apply to:

- (a) any existing non-conforming measure that is maintained by a Member State at:
  - (i) the central level of Government, as set out in its Schedule of Non-Conforming Measures in Annex I;
  - (ii) a regional level of government, as set out in its Schedule of Non-Conforming Measures in Annex I; or
  - (iii) a local government;
- (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
- (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the date of entry into force of each Member State's Schedule of Non-Conforming Measures, with Article 6 National Treatment), Article 7 (Most-Favoured-Nation Treatment), Article 8 (Market Access), Article 9 (Local Presence), and Article 10 (Senior Management and Board of Directors).





2. Article 6(National Treatment), Article 7 (Most-Favoured-Nation Treatment), Article 8 (Market Access), Article 9 (Local Presence), and Article 10 (Senior Management and Board of Directors) do not apply to any measure that a Member State adopts or maintains with respect to sectors, subsectors or activities, as set out in its Schedule of Non-Conforming Measures in Annex II.

3. Schedules of Non-Conforming Measures, as set out in Annexes I and II, as annexed to this Agreement shall form an integral part thereof.

4. Member States shall commence discussions upon entry into force of this Agreement to apply the principle whereby an amendment to any non-conforming measure referred to in subparagraph 1(a), to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 6 (National Treatment), Article 7 (Most-Favoured-Nation Treatment), Article 8 (Market Access), Article 9 (Local Presence), and Article 10 (Senior Management and Board of Directors). The outcome of the discussions shall be implemented at the entry into force of Schedule of Non-Conforming Measures of each Member State.

## **Article 12**

### **Transition to Schedules of Non-Conforming Measures**

1. Member States shall submit to the ASEAN Secretariat their Schedules of Non-Conforming Measures in Annex I and Annex II in accordance with Article 11 (Non-Conforming Measures) within 5 years after entry into force of this Agreement. Viet Nam shall be given additional time until 7 years after entry into force of this Agreement. Cambodia, Lao PDR and Myanmar shall be given additional time until 13 years after entry into force of this Agreement. The non-conforming measures reflected in each Member State's



respective Schedule shall represent a level of trade liberalisation that is equal to, or greater than, the level of trade liberalisation offered under its final AFAS Packages.

2. Within 2 years after Member States set out their Schedules of Non-Conforming Measures in Annexes I and II pursuant to paragraph 1 of this Article, Member States reserve the right to make amendments to their Schedules of Non-Conforming Measures in Annexes I and II, to the extent that the amendments do not result in a decrease in the level of commitments made under their respective schedules of commitments under the final AFAS Packages.

3. Schedules of Non-Conforming Measures in Annexes I and II as set out by Member States shall co-exist with the Schedules of Commitments of Member States under the AFAS for 7 years after entry into force of this Agreement, 9 years after entry into force of this Agreement for Viet Nam, or 15 years after entry into force of this Agreement for Cambodia, Lao PDR, and Myanmar. Until such time, in the event of discrepancy of interpretation of the commitments of a Member State, its Schedule of Commitment under AFAS shall prevail.

### **Article 13**

#### **Safeguard Measures**

1. Member States note the multilateral negotiations pursuant to Article X of the GATS on the question of emergency safeguard measures based on the principle of non-discrimination. Upon the conclusion of such multilateral negotiations, Member States shall conduct a review for the purpose of discussing appropriate amendments to this Agreement so as to incorporate the results of such multilateral negotiations.

2. In the event that the implementation of the commitments made in this Agreement causes substantial adverse impact to a service sector of a Member State before the conclusion of



the multilateral negotiations referred to in paragraph 1, the affected Member State may request consultations with the Member State or Member States concerned. The requested Member State or Member States shall enter into consultations with the requesting Member State on the commitments that the requested Member State or Member States consider may have caused substantial adverse impact and on the possibility of the requesting Member State adopting any measure to alleviate such impact. The requesting Member State shall notify all the other Member States of its request for consultations under this paragraph.

3. Any measures taken pursuant to paragraph 2 shall be mutually agreed by the consulting Member States.

4. The consulting Member States shall notify the results of the consultations to all other Member States as soon as practicable and by no later than the next meeting of the AEM following the conclusion of consultations.

## **SECTION IV REGULATORY OBLIGATIONS AND DISCIPLINES**

### **Article 14 Transparency**

1. Member States recognise that transparent measures governing trade in services are important in facilitating the ability of service suppliers to gain access to, and operate in, each other's markets. Each Member State shall promote regulatory transparency in trade in services.

#### *Publication*

2. Each Member State shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force:



- (a) all relevant measures of general application which pertain to or affect the operation of this Agreement; and
- (b) all international agreements pertaining to, or affecting trade in services to which a Member State is a Party.

3. To the extent possible, each Member State shall make the measures and international agreements of the kind referred to in paragraph 2 available on the internet and, to the extent provided for under its domestic legal framework, in the English language.

4. Where publication referred to in paragraphs 2 and 3 is not practicable, such information<sup>7</sup> shall be made otherwise publicly available.

5. To the extent possible and provided for under its domestic legal framework, each Member State shall provide a reasonable opportunity for comments by interested persons of the Member States on any regulation of general application affecting trade in services that it proposes to adopt, amend or repeal, before its adoption and publication.

6. To the extent possible, each Member State shall allow reasonable time between publication of final regulations relating to the subject matter of this Agreement and their effective date.

#### *Contact Points*

7. Each Member State shall designate a contact point to facilitate communications among the Member States on any matter covered by this Agreement. Upon the request of another Member State, the contact point shall:

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<sup>7</sup> For greater certainty, Member States agree that such information may be published in each Member State's chosen language.



- (a) identify the office or official responsible for the relevant matter; and
- (b) assist as necessary in facilitating communications with the requesting Member State with respect to that matter.

8. Each Member State shall respond promptly to all requests by any other Member State for specific information on:

- (a) any measures referred to in subparagraph 2(a) or international agreements referred to in subparagraph 2(b); and
- (b) any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services covered by the Member State's commitments under this Agreement.

9. Each Member State shall, to the extent possible and required under its laws and regulations, respond to enquiries from interested persons of the Member States regarding any relevant measure of the Member State regarding the subject matter of this Agreement.

## **Article 15**

### **Disclosure of Confidential Information**

1. Nothing in this Agreement shall be construed as requiring a Member State to provide to the other Member States confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or which would prejudice the legitimate commercial interests of particular juridical persons, public or private.

2. Where a Member State provides information to another Member State in accordance with this Agreement and designates the information as confidential, the other Member



State shall maintain the confidentiality of the information. Such information shall be used only for the purposes specified, and shall not be otherwise disclosed without the specific written permission of the Member State providing the information.

## **Article 16 Domestic Regulation**

1. Each Member State shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.
2. (a) Each Member State shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Member State shall ensure that the procedures in fact provide for an objective and impartial review.
  - (b) The provisions of subparagraph (a) shall not be construed to require a Member State to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.
3. Where authorisation is required by the domestic laws and regulations for the supply of a service, the competent authorities of that Member State shall:
  - (a) in the case of an incomplete application, at the request of the applicant, identify all the additional information that is required to complete the



application and provide the opportunity to remedy deficiencies within a reasonable timeframe;

- (b) at the request of the applicant, provide, without undue delay, information concerning the status of the application;
- (c) within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application; and
- (d) if an application is terminated or denied, to the maximum extent possible, inform the applicant in writing and without delay the reasons for such action. The applicant will have the possibility of resubmitting, at its discretion, a new application.

4. Where a Member State adopts or maintains measures relating to licensing requirements and procedures, qualification requirements and procedures, or where a Member State adopts or maintains measures relating to technical standards as a condition for the supply of a service, the Member State shall ensure that:

- (a) such measures are based on objective and transparent criteria;
- (b) the procedures are impartial, and that the procedures are adequate for applicants to demonstrate whether they meet the requirements, where such requirements exist; and
- (c) the procedures are reasonable and do not in themselves unduly prevent fulfilment of requirements.



5. (a) A Member State shall not apply licensing and qualification requirements and technical standards that nullify or impair its obligation under this Agreement in a manner which:
- (i) does not comply with the criteria outlined in subparagraphs 4 (a), (b) or (c); and
  - (ii) could not reasonably have been expected of that Member State at the time the commitments in those sectors were made.
- (b) In determining whether a Member State is in conformity with the obligation under subparagraph 5 (a), account shall be taken of international standards of relevant international organisations applied by that Member State.
6. With respect to professional services<sup>8</sup>, each Member State shall provide for adequate procedures to verify the competence of professionals of any other Member State.
7. Each Member State shall ensure its competent authorities accept copies of documents authenticated in accordance with its domestic laws and regulations, in place of original documents, to the extent domestic laws and regulations permit.
8. If licensing or qualification requirements include the completion of an examination, each Member State shall, to the extent practicable, ensure that:
- (a) the examination is scheduled at reasonably frequent intervals; and
  - (b) a reasonable period of time is provided to enable interested persons to submit an application.

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<sup>8</sup> As classified under Business Services Sector of the document MTN.GNS/W/120 of the World Trade Organization.





9. Member States shall, in accordance with their domestic laws and regulations, endeavour to accept applications in electronic format under the equivalent conditions of authenticity as paper submissions.

10. Each Member State shall ensure that the authorisation fees<sup>9</sup> charged by the competent authority are reasonable, transparent and do not in themselves restrict the supply of the relevant service.

11. If the results of the negotiations related to paragraph 4 of Article VI of the GATS enter into effect, this Article shall be amended, as appropriate, after consultations between the Member States, to bring those results into effect under this Agreement.

## **Article 17 Recognition**

1. A Member State may recognise the education or experience obtained, requirements met, or licenses or certifications granted in another Member State, for the purpose of licensing or certification of service suppliers. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the Member State concerned or may be accorded autonomously.

2. Nothing in this Article shall be construed as to prevent a Member State from according recognition autonomously. Where a Member State accords recognition autonomously to another Member State, it shall afford adequate opportunity for any other Member State to demonstrate that education,

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<sup>9</sup> Authorisation fees include licensing fees and fees relating to qualification procedures; they do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.



experience, licenses, or certifications obtained or requirements met in that other Member State's territory should be recognised.

3. In order to further facilitate the mobility of professionals and skilled labour, Member States shall encourage competent authorities to negotiate mutual recognition agreements or arrangements in sectors they deem appropriate.

4. A Member State shall not accord recognition in a manner which would constitute a means of discrimination between Member States in the application of its standards or criteria for the authorisation, licensing or certification of service suppliers or in a disguised restriction on trade in services.

### **Article 18** **Payments and Transfers**

1. Except under the circumstances envisaged in Article 19 (Restriction to Safeguard the Balance of Payments), a Member State shall not apply restrictions on international transfers and payments for current transactions that relate to the supply of services in which it has committed to allow under this Agreement.

2. Nothing in this Agreement shall affect the rights and obligations of Member States as members of the International Monetary Fund (IMF) under the Articles of Agreement of the International Monetary Fund, including the use of exchange actions which are in conformity with the Articles of Agreement of the International Monetary Fund, provided that a Member State shall not impose restrictions on any capital transactions, except under Article 19 (Restriction to Safeguard the Balance of Payments) or at the request of the IMF.



**Article 19**  
**Restrictions to Safeguard the Balance of Payments**

1. In the event of serious balance of payments and external financial difficulties or threat thereof, or if, exceptional circumstances, movements of capital cause, or threaten to cause, serious economic or financial disturbance in a Member State, that Member State may adopt or maintain restrictions on trade in services including on payments or transfers. It is recognised that particular pressures on the balance of payments of a Member State in the process of economic development or economic transition may necessitate the use of restrictions to ensure, inter alia, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development or economic transition.

2. The restrictions referred to in paragraph 1:

- (a) shall not discriminate among Member States;
- (b) shall be consistent with the Articles of Agreement of the International Monetary Fund;
- (c) shall avoid unnecessary damage to the commercial, economic and financial interests of any other Member State;
- (d) shall not exceed those necessary to deal with the circumstances described in paragraph 1; and
- (e) shall be temporary and be phased out progressively as the situation specified in paragraph 1 improves.

3. In determining the incidence of such restrictions, Member States may give priority to the supply of services which are more essential to their economic or development programmes. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular service sector.



**Article 20**  
**Monopolies and Exclusive Service Suppliers**

1. Each Member State shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Member State's obligations under Article 7 (Most-Favoured-Nation Treatment) and Article 11 (Non-Conforming Measures).
2. Where a Member State's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that Member State's commitments under this Agreement, the Member State shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.
3. The AEM may, at the request of a Member State which has a reason to believe that a monopoly supplier of a service of any other Member State is acting in a manner inconsistent with paragraph 1 or 2, request the Member State establishing, maintaining or authorising such supplier to provide specific information concerning the relevant operations.
4. If, after the date of entry into force of this Agreement, a Member State grants monopoly rights regarding the supply of a service covered by its commitments under this Agreement, that Member State shall notify the AEM no later than three months before the intended implementation of the grant of monopoly rights, and Article 33 (Amendments) shall apply.
5. The provisions of this Article shall also apply to cases of exclusive service suppliers, where a Member State, formally or in effect, (a) authorises or establishes a small number of service suppliers and (b) substantially prevents competition among those service suppliers in its territory.



## **Article 21 Business Practices**

1. Member States recognise that certain business practices of service suppliers, other than those falling under Article 20 (Monopolies and Exclusive Service Suppliers), may restrain competition and thereby restrict trade in services.

2. Each Member State shall, at the request of any other Member State, enter into consultations with a view to eliminating practices referred to in paragraph 1. The Member State addressed shall accord full and sympathetic consideration to such a request and shall cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The Member State addressed shall also provide other information available to the requesting Member State, subject to its domestic law and to the conclusion of satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Member State.

## **Article 22 General Exceptions**

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade in services, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Member State of measures:

- (a) necessary to protect public morals or to maintain public order<sup>10</sup>;

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<sup>10</sup> The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.



- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:
  - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;
  - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts; or
  - (iii) safety;
- (d) inconsistent with Article 6 (National Treatment), provided that the difference in treatment is aimed at ensuring the equitable or effective<sup>11</sup> imposition or

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<sup>11</sup> Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Member State under its taxation system which:

- (i) apply to non-resident service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Member State's territory; or
- (ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Member State's territory; or
- (iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or
- (iv) apply to consumers of services supplied in or from the territory of another Member State in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Member State's territory; or
- (v) distinguish service suppliers subject to tax on worldwide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or
- (vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Member State's tax base.



collection of direct taxes in respect of services or service suppliers of other Member States;

- (e) inconsistent with Article 7 (Most-Favoured-Nation Treatment), provided that the difference in treatment is the result of an agreement on the avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Member State is bound.

### **Article 23 Security Exceptions**

1. Nothing in this Agreement shall be construed:
  - (a) to require any Member State to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
  - (b) to prevent any Member State from taking any action which it considers necessary for the protection of its essential security interests:
    - (i) relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;
    - (ii) relating to fissionable and fusionable materials or the materials from which they are derived;
    - (iii) action taken so as to protect critical public infrastructures including communications, power and water infrastructures from deliberate

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Tax terms or concepts in paragraph (d) of Article 22 (General Exceptions) and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Member State taking the measure.



attempts intended to disable or degrade such infrastructures;

(iv) taken in time of war or other emergency in international relations; or

(c) to prevent any Member State from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

2. The AEM shall be informed to the fullest extent possible of measures taken under paragraphs 1(b) and (c) and of their termination.

#### **Articles 24 Subsidies**

1. Notwithstanding Article 2 (Scope), Member States shall review the issue of disciplines on subsidies related to trade in services in light of any disciplines agreed under Article XV of GATS with a view to their incorporation into this Agreement.

2. A Member State which considers that it is adversely affected by a subsidy related to trade in services of another Member State may request consultations with that Member State on such matters. The requested Member State shall accord sympathetic consideration to such request.

3. The provisions of Article 34 (Dispute Settlement) shall not apply to any requests made or consultations held under the provisions of this Article or to any disputes that may arise between the Member States out of, or under, the provisions of this Article.





**SECTION V**  
**FACILITATION AND COOPERATION**

**Article 25**

**Increasing the Participation of Micro, Small and Medium Enterprises in the ASEAN Economic Community**

1. Member States shall enhance the ability of Micro, Small and Medium Enterprises (MSMEs) to participate in and benefit from the opportunities provided by this Agreement.
  
2. Member States shall endeavour to cooperate in the following fields:
  - (a) developing and promoting capacity building which include, but not limited to, trainings, mentoring, workshops and seminars, to inform MSMEs of the benefits that may be available to MSMEs under this Agreement;
  
  - (b) facilitating the development of programmes to assist MSMEs to participate and integrate effectively into the global supply and value chain;
  
  - (c) identifying and addressing any possible barriers that hinder MSMEs' access to other Member States markets;
  
  - (d) identifying and reaching possible solutions that are mutually acceptable in order to improve the ability of MSMEs to engage in trade and investment activities;
  
  - (e) exchanging information to assist Member States in monitoring and implementing the Agreement as it relates to MSMEs; and
  
  - (f) other activities to be mutually agreed upon.



3. No Member State shall have recourse to dispute settlement under Article 34 (Dispute Settlement) for any matter arising under this Article.

### **Article 26 Technical Assistance**

Member States affirm the importance of technical assistance and sharing of knowledge and experience among Member States in facilitating their preparation of Schedules of Non-Conforming Measures in accordance with Article 11 (Non-Conforming Measures) subject to availability of resources.

### **Article 27<sup>12</sup> Increasing the Participation of Cambodia\*, Lao PDR\*, Myanmar\* and Viet Nam**

1. Taking into consideration the different levels of development of the ASEAN Member States, this Agreement will include appropriate forms of flexibility including provisions for special and differential treatment for Cambodia\*, Lao PDR\*, Myanmar\* and Viet Nam.

2. In this regard, the increasing participation of Cambodia\*, Lao PDR\*, Myanmar\* and Viet Nam in this Agreement shall be facilitated through:

- (a) strengthening domestic services capacity and its efficiency and competitiveness, inter alia, through access to technology on a commercial basis;
- (b) improving their access to distribution channels and information networks;

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<sup>12</sup> The asterisk (\*) denotes Least Developed Countries as determined by criteria issued by ECOSOC's Committee for Development Policy.



- (c) recognising that commitments of Cambodia\*, Lao PDR\*, Myanmar\* and Viet Nam shall be made in accordance with its individual stage of development; and
- (d) extending appropriate flexibility to Cambodia\*, Lao PDR\*, Myanmar\* and Viet Nam in the process of scheduling and amending their Annexes pursuant to Article 12.

**Article 28**  
**Private Sector Engagement**

1. Member States shall encourage dialogue, interaction and networking between their service suppliers.
2. Member States may invite representatives of service suppliers or associations to provide inputs and/or views on issues relating to trade in services.

**SECTION VI**  
**FINAL PROVISIONS**

**Article 29**  
**Relation to Other Agreements**

Nothing in this Agreement shall derogate from the existing rights and obligations of a Member State under any other international agreement<sup>13</sup> to which it is a party.

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<sup>13</sup> The term "other international agreement" includes international agreements related to taxation.



**Article 30**  
**Annexes and Future Legal Instruments**

1. This Agreement shall include the following Annexes and the contents therein which shall form an integral part of this Agreement:

- (a) Annex on Financial Services;
- (b) Annex on Telecommunication Services;
- (c) Annex on Air Transport Ancillary Services;
- (d) Annex I on Non-Conforming Measures; and
- (e) Annex II on Non-Conforming Measures.

2. All future legal instruments agreed pursuant to this Agreement shall also form an integral part of this Agreement.

**Article 31**  
**Institutional Mechanism**

1. The AEM shall be responsible for the implementation of this Agreement.

2. The AEM shall coordinate and oversee the implementation of this Agreement across Member State States and across related ASEAN bodies.

3. The ASEAN Coordinating Committee on Services (CCS) and, for the purposes of this Agreement, other relevant government officials shall assist the AEM in implementing this Agreement.

4. In the fulfilment of its functions, the AEM may establish subsidiary bodies and assign them to perform/undertake/



accomplish certain tasks or delegate its responsibilities to any subsidiary bodies.

### **Article 32 Review**

With a view to furthering the objectives of this Agreement, Member States shall undertake a general review of its provisions within five years from its entry into force. Every five years thereafter, Member States shall undertake a subsequent review of the provisions of this Agreement together with the Schedules of Non-Conforming Measures, unless otherwise agreed by the Member States.

### **Article 33 Amendments**

1. The provisions of this Agreement may be modified through amendments mutually agreed upon in writing by the Member States.

2. Notwithstanding paragraph 1, the Annexes referred to in paragraph 1 of Article 30 (Annexes and Future Legal Instruments) may be modified through amendments endorsed by AEM, ASEAN Finance Ministers and Central Bank Governors Meeting or ATM as appropriate. The said amendments shall be administratively annexed to this Agreement and serve as an integral part of this Agreement.

### **Article 34 Dispute Settlement**

Unless otherwise specified in this Agreement, the ASEAN Protocol on Enhanced Dispute Settlement Mechanism signed on 29 November 2004 in Vientiane, Lao PDR, or its



successor, shall apply to the settlement of disputes concerning the interpretation or application of this Agreement.

### **Article 35 Denial of Benefits**

A Member State may deny the benefits of this Agreement:

- (a) to the supply of any service, if it establishes that the service is supplied from or in the territory of a non-Member State;
- (b) in the case of the supply of a maritime transport service, if it establishes that the service is supplied:
  - (i) by a vessel registered under the laws of a non-Member State, and
  - (ii) by a person of a non-Member State which operates and/or uses the vessel in whole or in part;
- (c) to a service supplier that is a juridical person, if it establishes that it is not a service supplier of another Member State.

### **Article 36 Transitional Arrangement Relating to the AFAS**

1. In accordance with Article 12 (Transition to Schedules of Non-Conforming Measures), the AFAS and its schedules of commitments made by Member States under the AFAS as signed by the AEM, AFM and ATM, will remain in force, *mutatis mutandis*, until 7 years after entry into force of this Agreement, until 9 years after entry into force of this Agreement for Viet Nam, or until 15 years after entry into force of this Agreement for Cambodia, Lao PDR and Myanmar.



2. The AFAS and its Protocols shall be superseded by this Agreement and its Annexes, upon the completion of the respective periods mentioned in paragraph 1.

### **Article 37**

#### **Entry into Force**

1. This Agreement shall enter into force one hundred and eighty (180) days after the signing of this Agreement.

2. Member States shall complete their internal procedures for the entry into force of this Agreement. Each Member State shall, upon the completion of its internal procedures for the entry into force of this Agreement, notify the Secretary-General of ASEAN in writing.

3. Where a Member State is unable to notify the completion of its internal procedures within one hundred and eighty (180) days after the date of signing, the rights and obligations of that Member State under this Agreement shall commence on the date on which the Member State notifies the completion of its internal procedures.

4. The Secretary-General of ASEAN shall promptly notify all Member States of the notifications or deposit of each instrument of ratification referred to in paragraph 2 of this Article.

### **Article 38**

#### **Depositary**

This Agreement shall be deposited with the Secretary-General of ASEAN who shall promptly furnish a certified copy thereof to each Member State.

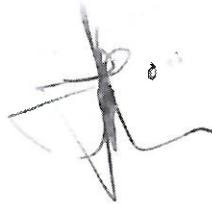


**IN WITNESS WHEREOF**, the undersigned, being duly authorised thereto by their respective Governments, have signed the ASEAN Trade in Services Agreement.

**DONE** at Manila, Philippines, this Seventh Day of  
October in the Year Two Thousand and Twenty

in a single original copy in the English Language.

For Brunei Darussalam:



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For the Kingdom of Cambodia:




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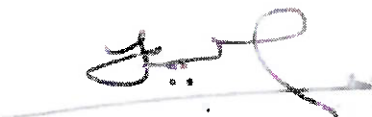


For the Republic of Indonesia:



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For the Lao People's Democratic Republic:



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For Malaysia:



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For the Republic of the Union of Myanmar:

*Thawng Tun*

.....

For the Republic of the Philippines:

*[Signature]*

.....

For the Republic of Singapore:

*[Signature]*

.....



For the Kingdom of Thailand:

*Chulima Bujyphar*  
.....

For the Socialist Republic of Viet Nam:

*[Signature]*  
.....

