

ក មកពីរាជកិច្ច លេខ ៨៦



ព្រះរាជក្រម

យើង

នស/រកម/២០១០/០១៦

ព្រះករុណាព្រះបាទសម្តេចព្រះបរមនាថ នរោត្តម សីហមុនី  
សមានភូមិជាតិសាសនា រក្ខតខត្តិយា ទេវរាជរាស្ត្រ ពុទ្ធិន្ទ្រាធរាមហាក្សត្រ  
ទេវរាជនា សមូហោភាស កម្ពុជឯករាជរដ្ឋបូរណសន្តិ សុភមង្គលា សិរីវិបុលា  
ទេវរាស្ត្រិករាស្ត្រ ព្រះចៅក្រុងកម្ពុជាធិបតី

- បានទ្រង់យល់ រដ្ឋធម្មនុញ្ញនៃព្រះរាជាណាចក្រកម្ពុជា
- បានទ្រង់យល់ ព្រះរាជក្រឹត្យលេខ នស/រកត/០៩០៨/១០៥៥ ចុះថ្ងៃទី២៥ ខែកញ្ញា ឆ្នាំ២០០៨ ស្តីពីការតែងតាំងរាជរដ្ឋាភិបាលនៃព្រះរាជាណាចក្រកម្ពុជា
- បានទ្រង់យល់ ព្រះរាជក្រមលេខ ០២/នស/៩៤ ចុះថ្ងៃទី២០ ខែកក្កដា ឆ្នាំ១៩៩៤ ដែលប្រកាសឱ្យប្រើច្បាប់ស្តីពីការរៀបចំនិងការប្រព្រឹត្តទៅនៃគណៈរដ្ឋមន្ត្រី
- បានទ្រង់យល់ ព្រះរាជក្រមលេខ នស/រកម/០១៩៦/១៦ ចុះថ្ងៃទី២៤ ខែមករា ឆ្នាំ១៩៩៦ ដែលប្រកាសឱ្យប្រើច្បាប់ស្តីពីការបង្កើតក្រសួងពាណិជ្ជកម្ម
- បានទ្រង់យល់ សេចក្តីក្រាបបង្គំទូលថ្វាយ របស់សម្តេចអគ្គមហាសេនាបតីតេជោ ហ៊ុន សែន នាយករដ្ឋមន្ត្រី នៃព្រះរាជាណាចក្រកម្ពុជា និងរដ្ឋមន្ត្រីក្រសួងពាណិជ្ជកម្ម

ប្រកាសឱ្យប្រើ

ច្បាប់ ស្តីពីការអនុម័តយល់ព្រមលើកិច្ចព្រមព្រៀងបង្កើតតំបន់ពាណិជ្ជកម្មសេរីអាស៊ាន-អូស្ត្រាលី-ណូវែលហ្សេឡង់ ដែលរដ្ឋសភាបានអនុម័ត កាលពីថ្ងៃទី០១ ខែតុលា ឆ្នាំ២០១០ នាសម័យប្រជុំរដ្ឋសភាលើកទី៥ នីតិកាលទី៤ និងដែលព្រឹទ្ធសភាបានយល់ស្របតាមទម្រង់ និងគតិនៃច្បាប់នេះ ទាំងស្រុង ដោយគ្មានការកែប្រែអ្វីឡើយ កាលពីថ្ងៃទី២១ ខែតុលា ឆ្នាំ២០១០ នាសម័យប្រជុំវិសាមញ្ញ ហើយដែលមានសេចក្តីទាំងស្រុងដូចតទៅនេះ ៖



ច្បាប់  
ស្តីពី

ការអនុម័តយល់ព្រមលើកិច្ចព្រមព្រៀង  
បង្កើតតំបន់ពាណិជ្ជកម្មសេរីអាស៊ាន-អូស្ត្រាលី-ណូវែលហ្សេឡង់

មាត្រា ១.-

អនុម័តយល់ព្រមលើកិច្ចព្រមព្រៀងបង្កើតតំបន់ពាណិជ្ជកម្មសេរីអាស៊ាន-អូស្ត្រាលី-ណូវែល  
ហ្សេឡង់ ដែលបានចុះហត្ថលេខានៅទីក្រុងឆាអាំ ព្រះរាជាណាចក្រកម្ពុជា នាថ្ងៃទី២៧ ខែកុម្ភៈ  
ឆ្នាំ២០០៩ ដូចមានអត្ថបទទាំងស្រុងភ្ជាប់មកជាមួយនេះ។

មាត្រា ២.-

រាជរដ្ឋាភិបាលនៃព្រះរាជាណាចក្រកម្ពុជា ត្រូវបន្តរាល់នីតិវិធី ដើម្បីអនុវត្តកិច្ចព្រមព្រៀងនេះ។

មាត្រា ៣.-

ច្បាប់នេះ ត្រូវប្រកាសជាការប្រញាប់ ។

ធ្វើនៅព្រះបរមរាជវាំងរាជធានីភ្នំពេញ ថ្ងៃទី ២៩ ខែ កុម្ភៈ ឆ្នាំ ២០១០

ព្រះហស្តលេខា និងព្រះរាជលញ្ឆករ

ព/រ. ១០១០.៤៥២

នរោត្តម សីហមុនី

បានយកសេចក្តីក្រាបបង្គំទូលថ្វាយ  
សូមឡាយព្រះហស្តលេខាព្រះមហាក្សត្រ  
នាយករដ្ឋមន្ត្រី  
ហត្ថលេខា

សម្តេចអគ្គមហាសេនាបតីតេជោ ហ៊ុន សែន

បានជម្រាបជូនសម្តេចអគ្គមហាសេនាបតីតេជោ ហ៊ុន សែន

នាយករដ្ឋមន្ត្រី នៃព្រះរាជាណាចក្រកម្ពុជា

រដ្ឋមន្ត្រីក្រសួងពាណិជ្ជកម្ម

រដ្ឋមន្ត្រីស្តីទី

ហត្ថលេខា

គឹម ស៊ីវន

លេខ: ៧៣៩ ច.ល

ដើម្បីចម្លងចែក

រាជធានីភ្នំពេញ ថ្ងៃទី ២៧ ខែ វិច្ឆិកា ឆ្នាំ ២០១០

អគ្គលេខាធិការទេសចរណ៍កម្ពុជា



ឌុន ជិនកេន

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## ANNEX ON TELECOMMUNICATIONS

### Article 1 Scope and Coverage

1. This Annex applies to measures by a Party affecting trade in public telecommunications transport networks and services.
2. Notwithstanding Paragraph 1, this Annex shall not apply to measures by a Party affecting the distribution of broadcasting and audio-visual services, as defined in each Party's domestic legal framework.
3. Nothing in this Annex shall be construed to require a Party to allow the supply of public telecommunications transport networks or services in relation to which it has not made specific commitments under this Chapter.

### Article 2 Definitions

For the purposes of this Annex:

- (a) **co-location (physical)** means access to space in order to install, maintain or repair equipment at premises owned or controlled and used by a major supplier to supply public telecommunications transport services;
- (b) **cost-oriented** means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;
- (c) **essential facilities** means facilities of a public telecommunications transport network or service that:





- (i) are exclusively or predominantly provided by a single or limited number of suppliers; and
  - (ii) cannot feasibly be economically or technically substituted in order to provide a service;
- (d) **facilities-based suppliers** means suppliers of public telecommunications transport networks or services that:
- (i) are licensed carriers in Australia;
  - (ii) are classified as Access Seekers in accordance with the Telecommunications Act 2001 as amended from time to time in New Zealand;
  - (iii) are the Infrastructure Provider for the Telecommunication Industry (InTi) licensees in Brunei Darussalam;
  - (iv) are licensed as network facility provider and licensed network services provider under domestic law in Cambodia;
  - (v) are licensed as telecommunication network provider in Indonesia;
  - (vi) are authorised to establish an enterprise to provide telecommunications service under the Telecommunications Act of 2001 in Lao PDR;
  - (vii) are licensed as Network Facilities Provider and Network Services Provider in Malaysia;



- (viii) are telecommunications operators licensed as network facility provider and/or network service provider; and operators authorised by the Ministry of Communications, Posts and Telegraphs to provide facility based services in Myanmar;
- (ix) are licensed public telecommunications entities as defined in the Public Telecommunications Policy Act of the Philippines;
- (x) are facilities-based operators in Singapore;
- (xi) are duly licensed under domestic law as facilities-based supplier in Thailand; and
- (xii) are facilities-based operators duly licensed in Viet Nam;
- (e) **interconnection** means linking with suppliers providing public telecommunications transport networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier;
- (f) **leased circuits**<sup>1</sup> means telecommunications facilities between two or more designated points that are set aside for the dedicated use of, or availability to, a particular user;
- (g) **major supplier** means a supplier which has the ability to materially affect the terms of participation, having regard to price and supply, in the relevant market for the supply of public

<sup>1</sup> In the case of Thailand, "leased circuits" means telecommunications facilities between two designated points that are set aside for the dedicated use of, or availability to, a particular user.



telecommunications transport networks or services, or parts thereof, as a result of:

- (i) control over essential facilities; or
- (ii) use of its position in the market;
- (h) **non-discriminatory** means treatment no less favourable than that accorded to any other user of like public telecommunications transport networks or services in like circumstances;
- (i) **public telecommunications transport network** means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points;
- (j) **public telecommunications transport service** means any telecommunications transport service required, explicitly or in effect, by a Party to be offered to the public generally. Such services may include, *inter alia*, telegraph, telephone and data transmission typically involving the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information;
- (k) **telecommunications** means the transmission and reception of signals by any electromagnetic means;
- (l) **telecommunications regulatory body** means any body or bodies in the territory of a Party which is or are responsible, under the Party's domestic legal framework, for the regulation of telecommunications; and





- (m) user means service consumers and service suppliers.

### Article 3 Transitional Arrangements

Noting each Party's different stage of development, and noting each Party's commitments under GATS, a Party may delay the application of Article 4 (Competitive Safeguards), Article 6 (Interconnection), Article 7 (Co-location), Article 8 (Leased Circuits Services) and Article 9.2 (Resolution of Disputes) in accordance with the timetable set out in this Annex's Appendix on Transitional Arrangements.

### Article 4 Competitive Safeguards

1. Subject to Article 3 (Transitional Arrangements), each Party shall prevent suppliers of public telecommunications transport networks or services who, alone or together, are major suppliers in its territory, from engaging in or continuing anti-competitive practices.
2. The anti-competitive practices referred to in this Article shall include:
  - (a) engaging in anti-competitive cross-subsidisation;
  - (b) using information obtained from competitors with anti-competitive results; and
  - (c) not making available to other suppliers of telecommunications transport networks or services, in a timely fashion, technical information about essential facilities or commercially relevant information, which is necessary for such suppliers to provide public telecommunications transport networks or services.



## Article 5 Licensing

1. Each Party shall ensure that, where a licence is required, all measures relating to the licensing of suppliers of public telecommunications transport networks or services in its territory are published or, where publication is not practicable, otherwise made publicly available, including:

- (a) circumstances in which a licence is required;
- (b) licence application procedures;
- (c) criteria used to assess licence applications;
- (d) standard terms and conditions applicable to licences;
- (e) the period of time normally required to reach a decision concerning a licence application;
- (f) the cost of and/or fees for applying for and/or obtaining a licence; and
- (g) the period of validity of a licence.

2. Each Party shall ensure that the reasons for the denial of a licence are made known to an applicant upon request.

## Article 6 Interconnection<sup>2</sup>

1. Subject to Article 3 (Transitional Arrangements), each Party shall ensure that major suppliers in its territory provide

<sup>2</sup> For the sake of clarity, nothing in this Article shall be construed to require Thailand or Viet Nam to allow cross-border supply of public telecommunications transport networks or services in relation to which it has not made specific commitments under this Chapter.





interconnection to suppliers of public telecommunications transport networks or services of other Parties at any technically feasible point in the major supplier's network. Such interconnection shall be:

- (a) provided in a timely fashion, on terms and conditions (including technical standards and specifications), and at cost-oriented rates, that are reasonable (having regard to economic feasibility), non-discriminatory and transparent;
- (b) sufficiently unbundled, such that the supplier of public telecommunications transport networks or services seeking interconnection need not pay for network components or facilities that it does not require for the service to be provided;
- (c) of a quality no less favourable than that provided for the major supplier's own like services, or for like services of non-affiliated service suppliers, or for its subsidiaries or other affiliates; and
- (d) provided upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

2. Each Party shall ensure that the terms, conditions and rates (including technical standards and specifications) for interconnection between major suppliers in its territory and suppliers of public telecommunications transport networks or services of other Parties are able to be established (at least):

- (a) through commercial negotiation; or
- (b) by reference to a set of standard terms, conditions and rates that the major supplier offers generally to other suppliers of public telecommunications transport networks or



services, and that are approved or set out by a telecommunications regulatory body.

3. Each Party shall ensure that the procedures for interconnection with major suppliers in its territory are published or otherwise made publicly available.

#### Article 7 Co-location

1. Subject to Article 3 (Transitional Arrangements), each Party shall ensure that major suppliers in its territory:

- (a) provide to suppliers of public telecommunications transport networks or services of other Parties that are facilities-based suppliers in the territory of that Party, physical co-location of equipment necessary for interconnection; and
- (b) in situations where physical co-location referred to in Subparagraph (a) is not practical for technical reasons or because of space limitations, co-operate with suppliers of public telecommunications transport networks or services of other Parties that are facilities-based suppliers in the territory of that Party, to find and implement a practical and commercially viable alternative solution.<sup>3</sup>

2. Each Party shall ensure that major suppliers in its territory provide the physical co-location or practical and commercially viable alternative solution referred to in Paragraph 1 in a timely fashion and on terms and conditions (including technical standards and specifications), and at

<sup>3</sup> Such solutions may include:

- (a) permitting facilities-based suppliers to locate equipment in a nearby building and to connect such equipment to the major supplier's network;
- (b) conditioning additional equipment space or virtual co-location;
- (c) optimising the use of existing space; and
- (d) finding adjacent space.





rates, that are reasonable (having regard to economic feasibility), non-discriminatory and transparent.

3. Each Party may determine, in accordance with its domestic laws and regulations, the locations at which it requires major suppliers in its territory to provide the physical co-location or the practical and commercially viable alternative solutions referred to in Paragraph 1.

#### **Article 8 Leased Circuits Services**

Subject to Article 3 (Transitional Arrangements), each Party shall, unless it is not technically feasible, ensure that major suppliers in its territory make leased circuits services (that are public telecommunications transport services) available to suppliers of public telecommunications transport networks or services of other Parties in a timely fashion and on terms and conditions (including technical standards and specifications), and at rates, that are reasonable (having regard to economic feasibility), non-discriminatory and transparent.

#### **Article 9 Resolution of Disputes**

1. Each Party shall ensure that a supplier of public telecommunications transport networks or services of another Party who requests interconnection with a major supplier that is authorised to supply public telecommunications transport networks or services in the Party's territory has recourse to a telecommunications regulatory body to resolve disputes in relation to such interconnection, including in relation to terms, conditions or rates:

- (a) within a reasonable period of time, according to a procedure that has been published or otherwise made publicly available; and





- (b) at the request of the affected supplier of public telecommunications transport networks or services of the other Party.

2. Subject to Article 3 (Transitional Arrangements), each Party shall ensure that a supplier of public telecommunications transport networks or services of another Party who requests co-location with or leased circuits services from a major supplier that is authorised to supply public telecommunications transport networks or services in the Party's territory has recourse to a telecommunications regulatory body or a competition regulatory body to address issues in relation to such co-location or leased circuits services, including in relation to terms, conditions or rates:

- (a) within a reasonable period of time, according to a procedure that has been published or otherwise made publicly available; and
- (b) at the request of the affected supplier of public telecommunications transport networks or services of the other Party.

3. Each Party shall ensure that its telecommunications regulatory body or bodies provide, upon request by a supplier of public telecommunications transport networks or services of another Party, a written explanation of any decision by a telecommunications regulatory body that affects the supplier of public telecommunications transport networks or services of the other Party, unless such explanation is otherwise publicly available.

#### **Article 10 Transparency**

Each Party shall endeavour to make information that the Party is required to publish or make publicly available



pursuant to this Annex available on the internet.

# Article 11 Telecommunications Regulatory Body

1. Each Party shall establish or maintain, as part of its domestic legal framework, a telecommunications regulatory body.
2. Each Party shall ensure that every telecommunications regulatory body that it establishes or maintains is separate from, and not accountable to, any supplier of public telecommunications transport networks or services.
3. Each Party shall ensure that the functions and responsibilities of the telecommunications regulatory body or bodies, which shall include enforcement of the commitments set out in Article 6 (Interconnection), and all of its decision-making powers, shall be set out in the Party's domestic laws or regulations.
4. Each Party shall ensure that the decisions of, and the procedures used by, its telecommunications regulatory body or bodies are impartial with respect to all interested persons.
5. Each Party shall ensure that any supplier of public telecommunications transport networks or services of another Party that is aggrieved, or whose interests are adversely affected by a determination or decision of a telecommunications regulatory body of that Party, may obtain review of the determination or decision by an administrative, arbitral or judicial tribunal or authority or according to administrative, arbitral or judicial procedures. Where such procedures are not independent of the telecommunications regulatory body, the Party shall ensure that the procedures in fact provide for an objective and impartial review.



## Article 12 Universal Service

Each Party has the right to define the kind of universal service obligation it wishes to maintain. Such obligations, including any cross subsidisation policy set out under each Party's domestic laws, shall not be regarded as anti-competitive *per se*, provided they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Party.

## Article 13 Allocation and Use of Scarce Resources<sup>4</sup>

1. Each Party shall administer its procedures for the allocation and use of scarce resources, including frequencies and numbers, in an objective, timely, transparent and non-discriminatory manner.
2. Each Party shall publish or otherwise make publicly available the current state of allocated frequency bands.<sup>5</sup>
3. Parties are not required to publish identification of frequencies allocated for specific government uses, or to otherwise make them publicly available.

<sup>4</sup> Decisions on the allocation and assignment of spectrum and frequency management are not measures that are *per se* inconsistent with Article 4 (Market Access) of Chapter 8 (Trade in Services). Accordingly, each Party retains the ability to exercise its spectrum and frequency management policies, which may affect the number of service suppliers, provided that this is done in a manner that is consistent with this Chapter. Each Party also retains the right to allocate frequency bands taking into account existing and future needs.

<sup>5</sup> Parties are not required to publish information about the allocation of individual frequencies to specific licencees.





APPENDIX ON TRANSITIONAL ARRANGEMENTS

Party	Article 4	Article 6	Article 7	Article 8	Article 9.2
Brunei	Obligation to apply from 1 January 2009.	Obligation to apply from 1 January 2009.	Obligation to apply from 1 January 2009.	Obligation to apply from 1 January 2009.	Obligation to apply from 1 January 2009.
Cambodia			Obligation to apply from no later than 3 years after the date of entry into force of this Agreement.	Obligation to apply from no later than 1 year from the date of entry into force of the law on Telecommunication. Cambodia shall endeavour to ensure that the Law on Telecommunication enters into force within 3 years of entry into force of this Agreement.	Obligation to apply from the date of application of Article 7 (for co-location) and 8 (for leased circuit services) respectively.
Laos	Obligation to apply from: (i) Three years after the date of Laos' accession to the WTO; or	Obligation to apply from: (i) Three years after the date of Laos' accession to the WTO; or	Obligation to apply from three years after the date of: (i) Laos' accession to the WTO; or (ii) entry into force of	Obligation to apply from three years after the date of: (i) Laos' accession to the WTO; or (ii) entry into force of	Obligation to apply from three years after the date of: (i) Laos' accession to the WTO; or (ii) entry into force of



Party	Article 4	Article 6	Article 7	Article 8	Article 9.2
	(ii) three years after the date of entry into force of domestic legislation implementing this obligation; whichever is the earlier.	(ii) three years after the date of entry into force of domestic legislation implementing this obligation; whichever is the earlier.	domestic legislation implementing this obligation; whichever is the earlier.	domestic legislation implementing this obligation; whichever is the earlier.	domestic legislation implementing this obligation; whichever is the earlier.
Myanmar	Obligation to apply from the date of completion of the review of current sector policy and regulatory arrangement allowing multi-telco participation in telecommunications services	Obligation to apply from the date of completion of the review of current sector policy and regulatory arrangement allowing multi-telco participation in telecommunications services	Obligation to apply from the date of completion of the review of current sector policy and regulatory arrangement allowing multi-telco participation in telecommunications services	Obligation to apply from the date of completion of the review of current sector policy and regulatory arrangement allowing multi-telco participation in telecommunications services	Obligation to apply from the date the new Telecommunications Law comes into force.



- (b) instaliers and servicers;
- (c) executives of a business headquartered in a Party establishing a branch or subsidiary, or other commercial presence of that business in another Party;
- (d) intra-corporate transferees; or
- (e) contractual service suppliers.

2. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of another Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

### Article 3 Definitions

For the purposes of this Chapter:

- (a) **granting Party** means a Party who receives an application for temporary entry from a natural person of another Party who is covered by Article 2.1 (Scope);
- (b) **immigration formality** means a visa, permit, pass or other document or electronic authority granting a natural person of one Party the right to enter, reside or work or establish commercial presence in the territory of the granting Party;
- (c) **natural person of a Party** means a natural person of a Party as defined in Article 2(j) (Definitions) of Chapter 8 (Trade in Services); and





Party	Article 4	Article 6	Article 7	Article 8	Article 9.2
Singapore	Commits to apply this Article upon the entry into force of this Agreement.	Commits to apply this Article on a reciprocal basis, i.e. Singapore will only give commitments relating to this Article to another Party, if and when the same commitments have been made by that Party.	Commits to apply this Article on a reciprocal basis, i.e. Singapore will only give commitments relating to this Article to another Party, if and when the same commitments have been made by that Party.	Commits to apply this Article on a reciprocal basis, i.e. Singapore will only give commitments relating to this Article to another Party, if and when the same commitments have been made by that Party.	Commits to apply this Article on a reciprocal basis, i.e. Singapore will only give commitments relating to this Article to another Party, if and when the same commitments have been made by that Party.
Thailand <sup>1</sup>	Obligation to apply after the expiration of the last concession contract.	Obligation to apply after the expiration of the last concession contract.	Obligation to apply after the expiration of the last concession contract.	Obligation to apply after the expiration of the last concession contract.	Obligation to apply from the date of entry into force of this Agreement.
Viet Nam			To apply three years after these obligations are duly reflected in Viet Nam's domestic laws and regulations.	To apply three years after these obligations are duly reflected in Viet Nam's domestic laws and regulations.	To apply three years after these obligations are duly reflected in Viet Nam's domestic laws and regulations.

<sup>1</sup> The last concession contract will be expired in the year 2018.



## CHAPTER 9

### MOVEMENT OF NATURAL PERSONS

#### Article 1 Objectives

The objectives of this Chapter are to:

- (a) provide for rights and obligations additional to those set out in Chapter 8 (Trade in Services) and Chapter 11 (Investment) in relation to the movement of natural persons between the Parties for business purposes;
- (b) facilitate the movement of natural persons engaged in the conduct of trade and investment between the Parties;
- (c) establish streamlined and transparent procedures for applications for immigration formalities for the temporary entry of natural persons to whom this Chapter applies; and
- (d) protect the integrity of the Parties' borders and protect the domestic labour force and permanent employment in the territories of the Parties.

#### Article 2 Scope

1. This Chapter shall apply, as set out in each Party's schedule of specific commitments in Annex 4 (Schedules of Movement of Natural Persons Commitments), to measures affecting the temporary entry of natural persons of a Party into the territory of another Party. Such persons may include:

- (a) business visitors;



- (d) temporary entry means entry by a natural person covered by this Chapter, without the intent to establish permanent residence.

#### Article 4 Grant of Temporary Entry

1. Each Party shall, in accordance with that Party's schedule of specific commitments in Annex 4 (Schedules of Movement of Natural Persons Commitments), grant temporary entry or extension of temporary stay in accordance with this Chapter to natural persons of another Party provided those natural persons:

- (a) follow prescribed application procedures for the immigration formality sought; and
- (b) meet all relevant eligibility requirements for entry to the granting Party.

2. Any fees imposed in respect of the processing of an immigration formality shall be reasonable and in accordance with domestic law.

3. A Party may deny temporary entry or extension of temporary stay to natural persons of another Party that do not comply with Paragraph 1(a) and (b).

#### Article 5 Schedules of Commitments for the Entry and Temporary Stay of Natural Persons

Each Party shall set out in Annex 4 (Schedules of Movement of Natural Persons Commitments) a schedule containing its commitments for the temporary entry and stay in its territory of natural persons of another Party covered by Article 2.1 (Scope). These schedules shall specify the conditions and limitations governing those commitments, including the





length of stay, for each category of natural persons included in each Party's schedule of commitments.

#### Article 6 Processing of Applications

1. Where an application for an immigration formality is required by a Party, that Party shall process promptly complete applications for immigration formalities or extensions thereof received from natural persons of another Party covered by Article 2.1 (Scope).

2. Each Party shall, upon request and within a reasonable period after receiving a complete application for an immigration formality from a natural person of another Party covered by Article 2.1 (Scope), notify the applicant of:

- (a) the receipt of the application;
- (b) the status of the application; and
- (c) the decision concerning the application including, if approved, the period of stay and other conditions.

#### Article 7 Immigration Measures

1. Nothing in this Chapter, Chapter 8 (Trade in Services) or Chapter 11 (Investment) shall prevent a Party from applying measures to regulate the entry of natural persons of another Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to another Party under this Chapter or to unduly impair or delay trade in goods or services or the conduct of investment activities under this Agreement.



2. The sole fact of requiring persons to meet eligibility requirements prior to entry to a Party shall not be regarded as nullifying or impairing benefits accruing to another Party under this Chapter, or of unduly impairing or delaying trade in goods or services or the conduct of investment activities under this Agreement.

### Article 8 Transparency

Each Party shall:

- (a) publish or otherwise make publicly available explanatory material on all relevant immigration formalities which pertain to or affect the operation of this Chapter;
- (b) no later than six months after the date of entry into force of this Agreement publish, such as on its immigration website, or otherwise make publicly available in its own territory and to persons in the territory of the other Parties, the requirements for temporary entry under this Chapter, including explanatory material and relevant forms and documents that will enable natural persons of other Parties to become acquainted with those requirements; and
- (c) upon modifying or amending any immigration measure that affects the temporary entry of natural persons, ensure that the information published or otherwise made available pursuant to Subparagraph (b) is updated as soon as possible within 90 days.



Article 9  
Application of Chapter 17 (Consultations and Dispute  
Settlement)

1. The Parties shall endeavour to settle any differences arising out of the implementation of this Chapter through consultations.
2. A Party shall not have recourse to Chapter 17 (Consultations and Dispute Settlement) regarding a refusal to grant temporary entry under this Chapter unless:
  - (a) the matter involves a pattern of practice on the part of the granting Party; and
  - (b) the natural persons affected have exhausted all available domestic remedies regarding the particular matters.





## CHAPTER 10

### ELECTRONIC COMMERCE

#### Article 1 Objectives

The objectives of this Chapter are to:

- (a) promote electronic commerce among the Parties;
- (b) enhance co-operation among the Parties regarding development of electronic commerce; and
- (c) promote the wider use of electronic commerce globally.

#### Article 2 Definitions

For the purposes of this Chapter:

- (a) **digital certificates** are electronic documents or files that are issued or otherwise linked to a participant in an electronic communication or transaction for the purpose of establishing the participant's identity;
- (b) **electronic authentication** means the process of testing an electronic statement or claim, in order to establish a level of confidence in the statement's or claim's reliability;
- (c) **electronic signature** has for each Party the meaning set out in its domestic laws and regulations;



- (d) **electronic version** of a document means a document in electronic format prescribed by a Party, including a document sent by facsimile transmission;
- (e) **trade administration documents** means forms issued or controlled by a Party which must be completed by or for an importer or exporter in relation to the import or export of goods; and
- (f) **UNCITRAL** refers to the United Nations Commission on International Trade Law.

### Article 3 Transparency

1. Each Party shall publish as promptly as possible or, where that is not practicable, otherwise make publicly available all relevant measures of general application pertaining to or affecting the operation of this Chapter.

2. Each Party shall respond as promptly as possible to relevant requests by another Party for specific information on any of its measures of general application pertaining to or affecting the operation of this Chapter.

### Article 4 Domestic Regulatory Frameworks

Each Party shall maintain, or adopt as soon as practicable, domestic laws and regulations governing electronic transactions taking into account the UNCITRAL Model Law on Electronic Commerce 1996.



#### Article 5

#### Electronic Authentication and Digital Certificates

1. Each Party shall maintain, or adopt as soon as practicable, measures based on international norms for electronic authentication that:
  - (a) permit participants in electronic transactions to determine the appropriate authentication technologies and implementation models for their electronic transactions;
  - (b) do not limit the recognition of authentication technologies and implementation models; and
  - (c) permit participants in electronic transactions to have the opportunity to prove that their electronic transactions comply with the Party's domestic laws and regulations.
2. The Parties shall, where possible, endeavour to work towards the mutual recognition of digital certificates and electronic signatures that are issued or recognised by governments based on internationally accepted standards.
3. The Parties shall encourage the interoperability of digital certificates used by business.

#### Article 6

#### Online Consumer Protection

1. Subject to Paragraph 2, each Party shall, where possible, provide protection for consumers using electronic commerce that is at least equivalent to that provided for consumers of other forms of commerce under its relevant laws, regulations and policies.





2. A Party shall not be obliged to apply Paragraph 1 before the date on which that Party enacts domestic laws or regulations or adopts policies on protection for consumers using electronic commerce.

#### **Article 7 Online Data Protection**

1. Subject to Paragraph 2, each Party shall, in a manner it considers appropriate, protect the personal data of the users of electronic commerce.
2. A Party shall not be obliged to apply Paragraph 1 before the date on which that Party enacts domestic laws or regulations to protect the personal data of electronic commerce users.
3. In the development of data protection standards, each Party shall consider the international standards and criteria of relevant international organisations.

#### **Article 8 Paperless Trading**

1. Each Party shall, where possible, work towards the implementation of initiatives which provide for the use of paperless trading.
2. The Parties shall co-operate in international fora to enhance acceptance of electronic versions of trade administration documents.
3. In working towards the implementation of initiatives which provide for the use of paperless trading, each Party shall take into account the methods agreed by international organisations including the World Customs Organization.



4. Each Party shall endeavour to make electronic versions of its trade administration documents publicly available.

#### **Article 9 Co-operation on Electronic Commerce**

1. Recognising the global nature of electronic commerce, the Parties shall encourage co-operation in research and training activities that would enhance the development of electronic commerce. These co-operative research and training activities may include, but are not limited to:

- (a) promotion of the use of electronic versions of trade administration documents used by any other Party or Parties;
- (b) assisting small and medium enterprises to overcome obstacles encountered in the use of electronic commerce;
- (c) sharing information and experiences and identifying best practices in relation to domestic legal and policy frameworks in the sphere of electronic commerce, including those related to data protection, privacy, consumer confidence, cyber-security, unsolicited electronic mail, electronic signatures, intellectual property rights, and electronic government;
- (d) encouraging co-operative activities to promote electronic commerce including those that would improve the effectiveness and efficiency of electronic commerce;
- (e) exploring ways in which a developed Party or Parties could provide assistance to the developing Parties in implementing an electronic commerce legal framework;



- (f) encouraging co-operation between the relevant authorities to facilitate prompt investigation and resolution of fraudulent incidents relating to electronic commerce transactions;
  - (g) encouraging development by the private sector of methods of self-regulation, including codes of conduct, model contracts, guidelines, and enforcement mechanisms, that foster electronic commerce; and
  - (h) actively participating in regional and multilateral fora to promote development of electronic commerce.
2. The Parties shall endeavour to undertake forms of co-operation that build on and do not duplicate existing co-operation initiatives pursued in international fora.

**Article 10**  
**Non-Application of Chapter 17 (Consultations and**  
**Dispute Settlement)**

Chapter 17 (Consultations and Dispute Settlement) shall not apply to any matter arising under this Chapter.





- (iv) claims to money or to any contractual performance related to a business and having financial value<sup>3</sup>;
- (v) rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts; and
- (vi) business concessions required to conduct economic activity and having financial value conferred by law or under a contract, including any concession to search for, cultivate, extract or exploit natural resources.

For the purpose of the definition of investment in this Article, returns that are invested shall be treated as investments and any alteration of the form in which assets are invested or reinvested shall not affect their character as investments;

- (d) **investor of a Party** means a natural person of a Party or a juridical person of a Party that seeks to make<sup>4</sup>, is making, or has made an investment in the territory of another Party;
- (e) **juridical person** means any entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise,

<sup>3</sup> For greater certainty, investment does not mean claims to money that arise solely from:

- (a) commercial contracts for sale of goods or services; or
- (b) the extension of credit in connection with such commercial contracts

<sup>4</sup> For greater certainty, the Parties understand that an investor that "seeks to make" an investment refers to an investor of another Party that has taken active steps to make an investment. Where a notification or approval process is required for making an investment, an investor that "seeks to make" an investment refers to an investor of another Party that has initiated such notification or approval process.



## CHAPTER 11

### INVESTMENT

#### SECTION A

##### Article 1 Scope

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:
  - (a) investors of any other Party; and
  - (b) covered investments.
2. This Chapter shall not apply to:
  - (a) government procurement;
  - (b) subsidies or grants provided by a Party; and
  - (c) services supplied in the exercise of governmental authority by the relevant body or authority of a Party. For the purposes of this Chapter, 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.

##### Article 2 Definitions

For the purposes of this Chapter:

- (a) **covered investment** means with respect to a Party, an investment in its territory of an investor of another Party, in existence as of the date of



entry into force of this Agreement or established, acquired or expanded thereafter, and which, where applicable, has been admitted<sup>1</sup> by the host Party, subject to its relevant laws, regulations and policies;

- (b) **freely usable currency** means a freely usable currency as determined by the International Monetary Fund in accordance with the IMF Articles of Agreement and any amendments thereto;
- (c) **investment**<sup>2</sup> means every kind of asset owned or controlled by an investor, including but not limited to the following:
  - (i) movable and immovable property and other property rights such as mortgages, liens or pledges;
  - (ii) shares, stocks, bonds and debentures and any other forms of participation in a juridical person and rights derived therefrom;
  - (iii) intellectual property rights which are recognised pursuant to the laws and regulations of each Party and goodwill;

<sup>1</sup> For greater certainty:

- (a) in the case of Thailand, protection under this Chapter shall be accorded to covered investments which have been specifically approved in writing for protection by the competent authorities;
- (b) in the case of Viet Nam, "has been admitted" means "has been specifically registered or approved in writing, as the case may be".

<sup>2</sup> The term "investment" does not include an order or judgment entered in a judicial or administrative action.





and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship, association or similar organisation;

- (f) **juridical person of a Party** means a juridical person constituted or organised under the law of that Party;
- (g) **measure** means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;
- (h) **measures by a Party** includes measures taken by:
  - (i) central, regional, or local governments and authorities; and
  - (ii) non-governmental bodies in the exercise of powers delegated by central, regional, or local governments or authorities;
- (i) **natural person of a Party** means any natural person possessing the nationality or citizenship of, or right of permanent residence in that Party in accordance with its laws and regulations; and
- (j) **return** means an amount yielded by or derived from an investment, including profits, dividends, interest, capital gains, royalties and all other lawful income.

### Article 3 Relation to other Chapters

1. This Chapter does not apply to measures adopted or maintained by a Party to the extent that they are covered by



Chapter 8 (Trade in Services) or Chapter 9 (Movement of Natural Persons).

2. Notwithstanding Paragraph 1, Article 6 (Treatment of Investment), Article 7 (Compensation for Losses), Article 8 (Transfers), Article 9 (Expropriation and Compensation), Article 10 (Subrogation) and Section B (Investment Disputes between a Party and an Investor) shall apply, *mutatis mutandis*, to any measure affecting the supply of service by a service supplier of a Party through commercial presence in the territory of any one of the other Parties pursuant to Chapter 8 (Trade in Services), but only to the extent that any such measures relate to a covered investment and an obligation under this Chapter, regardless of whether such a service sector is scheduled in a Party's schedule of specific services commitments in Annex 3 (Schedules of Specific Services Commitments).

#### Article 4 National Treatment<sup>5</sup>

Each Party shall accord to investors of another Party, and to covered investments, in relation to the establishment, acquisition, expansion, management, conduct, operation, liquidation, sale, transfer or other disposition of investments, treatment no less favourable than that it accords, in like circumstances, to its own investors and their investments.

#### Article 5 Prohibition of Performance Requirements

No Party shall apply in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party in its territory any measure which is inconsistent with the *Agreement on Trade-Related Investment Measures* in Annex 1A to the WTO Agreement.

<sup>5</sup> The application of this Article is subject to Article 16 (Work Programme).



## Article 6 Treatment of Investment

1. Each Party shall accord to covered investments fair and equitable treatment and full protection and security.
2. For greater certainty<sup>6</sup>:
  - (a) fair and equitable treatment requires each Party not to deny justice in any legal or administrative proceedings;
  - (b) full protection and security requires each Party to take such measures as may be reasonably necessary to ensure the protection and security of the covered investment; and
  - (c) the concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required under customary international law, and do not create additional substantive rights.
3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

## Article 7 Compensation for Losses

Each Party shall accord to investors of another Party, and to covered investments, with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict, civil strife or state of

<sup>6</sup> In the case of Indonesia, only Paragraph 2(a) and (b) shall apply where Indonesia is the Party according treatment under this Article.





emergency, treatment no less favourable than that it accords, in like circumstances, to:

- (a) its own investors and their investments; and
- (b) investors of any other Party or non-Party and their investments.

### **Article 8 Transfers**

1. Each Party shall allow all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers include:

- (a) contributions to capital, including the initial contribution;
- (b) profits, capital gains, dividends, royalties, licence fees, technical assistance and technical and management fees, interest and other current income accruing from any covered investment;
- (c) proceeds from the total or partial sale or liquidation of any covered investment;
- (d) payments made under a contract, including a loan agreement;
- (e) payments made pursuant to Article 7 (Compensation for Losses) and Article 9 (Expropriation and Compensation);
- (f) payments arising out of the settlement of a dispute by any means including adjudication, arbitration or the agreement of the parties to the dispute; and



- (g) earnings and other remuneration of personnel engaged from abroad in connection with that investment.

2. Each Party shall allow such transfers relating to a covered investment to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.

3. Notwithstanding Paragraphs 1 and 2, a Party may prevent or delay a transfer through the equitable, non-discriminatory, and good faith application of its laws and regulations relating to:

- (a) bankruptcy, insolvency, or the protection of the rights of creditors;
- (b) issuing, trading, or dealing in securities, futures, options, or derivatives;
- (c) criminal or penal offences and the recovery of the proceeds of crime;
- (d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
- (e) ensuring compliance with orders or judgments in judicial or administrative proceedings;
- (f) taxation;
- (g) social security, public retirement, or compulsory savings schemes; and
- (h) severance entitlements of employees.

4. Nothing in this Chapter shall affect the rights and obligations of each Party as a member of the International Monetary Fund under the IMF Articles of Agreement,



including the use of exchange actions which are in conformity with the IMF Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments under this Chapter regarding such transactions, except under Article 4 (Measures to Safeguard the Balance of Payments) of Chapter 15 (General Provisions and Exceptions) or at the request of the International Monetary Fund.

#### Article 9 Expropriation and Compensation<sup>7</sup>

1. A Party shall not expropriate or nationalise a covered investment either directly or through measures equivalent to expropriation or nationalisation (expropriation), except:

- (a) for a public purpose<sup>8</sup>;
- (b) in a non-discriminatory manner;
- (c) on payment of prompt, adequate, and effective compensation; and
- (d) in accordance with due process of law.

2. The compensation referred to in Paragraph 1(c) shall:

- (a) be paid without delay<sup>9</sup>;

<sup>7</sup> This Article shall be interpreted in accordance with this Chapter's Annex on Expropriation and Compensation.

<sup>8</sup> For the avoidance of doubt, where Malaysia is the expropriating Party, any measure of expropriation relating to land shall be for the purposes as set out in the domestic laws and regulations relating to land acquisition.

<sup>9</sup> The Parties understand that there may be legal and administrative processes that need to be observed before payment can be made.





- (b) be equivalent to the fair market value of the expropriated investment at the time when or immediately before the expropriation was publicly announced<sup>10</sup>, or when the expropriation occurred, whichever is applicable;
- (c) not reflect any change in value because the intended expropriation had become known earlier; and
- (d) be effectively realisable and freely transferable between the territories of the Parties.

3. The compensation referred to in Paragraph 1(c) shall include appropriate interest. The compensation, including any accrued interest, shall be payable either in the currency of the expropriating Party, or if requested by the investor, in a freely usable currency.

4. If an investor requests payment in a freely useable currency, the compensation referred to in Paragraph 1(c), including any accrued interest, shall be converted into the currency of payment at the market rate of exchange prevailing on the date of payment.

5. This Article does not apply to the issuance of compulsory licences granted in relation to intellectual property rights in accordance with the TRIPS Agreement.

6. Notwithstanding Paragraphs 1 to 4, in the case where Singapore or Viet Nam is the expropriating Party, any measure of expropriation relating to land, which shall be as defined in the existing domestic legislation of the expropriating Party on the date of entry into force of this Agreement, shall be for a purpose and upon payment of compensation made in accordance with the aforesaid

<sup>10</sup> In the case of the Philippines, the time when or immediately before the expropriation was publicly announced refers to the date of filing of the Petition for Expropriation.



legislation. Such compensation shall be subject to any subsequent amendments to the aforesaid legislation relating to the amount of compensation where such amendments follow the general trends in the market value of the land.

#### **Article 10 Subrogation**

1. If a Party or an agency of a Party makes a payment to an investor of that Party under a guarantee, a contract of insurance or other form of indemnity it has granted on non-commercial risk in respect of an investment, the other Party shall recognise the subrogation or transfer of any right or claim in respect of such investment. The subrogated or transferred right or claim shall not be greater than the original right or claim of the investor.

2. Where a Party or an agency of a Party has made a payment to an investor of that Party and has taken over rights and claims of the investor, that investor shall not, unless authorised to act on behalf of the Party or the agency making the payment, pursue those rights and claims against the other Party.

3. In any proceeding involving an investment dispute, a Party shall not assert, as a defence, counter-claim, right of set-off or otherwise, that the investor or the covered investment has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of any alleged loss.

#### **Article 11 Denial of Benefits**

1. Following notification, a Party may deny the benefits of this Chapter:

- (a) to an investor of another Party that is a juridical person of such other Party and to investments of



that investor if an investor of a non-Party owns or controls the juridical person and the juridical person has no substantive business operations in the territory of the other Party;

- (b) to an investor of another Party that is a juridical person of such other Party and to investments of that investor if an investor of the denying Party owns or controls the juridical person and the juridical person has no substantive business operations in the territory of any Party, other than the denying Party.

2. Notwithstanding Paragraph 1 and subject to prior notification to and consultation with the relevant Party, Thailand may, under its applicable laws and regulations, deny the benefits of this Chapter relating to the admission, establishment, acquisition and expansion of investments to an investor of another Party that is a juridical person of such Party and to investments of such an investor where Thailand establishes that the juridical person is owned or controlled by natural persons or juridical persons of a non-Party or the denying Party.

3. In the case of Thailand, a juridical person is:

- (a) **owned** by natural persons or juridical persons of a Party or a non-Party if more than 50 per cent of the equity interest in it is beneficially owned by such persons;
- (b) **controlled** by natural persons or juridical persons of a Party or non-Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions.

4. Following notification, and without prejudice to Paragraph 1, the Philippines may deny the benefits of this Chapter to an investor of another Party and to investments of





that investor, where it establishes that such investor has made an investment in breach of the provisions of Commonwealth Act No. 108, entitled "An Act to Punish Acts of Evasion of Laws on the Nationalization of Certain Rights, Franchises or Privileges", as amended by Presidential Decree No. 715, otherwise known as "The Anti-Dummy Law", as may be amended.

## Article 12 Reservations<sup>11</sup>

1. Article 4 (National Treatment), and in the case of Lao PDR Article 5 (Prohibition of Performance Requirements), do not apply to:

- (a) any existing measure that does not conform to those Articles maintained by a Party at:
  - (i) the central level of government, as set out by that Party in its Schedule to List I;
  - (ii) a regional level of government, as set out by that Party in its Schedule to List I; or
  - (iii) a local level of government;
- (b) the continuation or prompt renewal of any measure referred to in Subparagraph (a); or
- (c) an amendment to any measure referred to in Subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure as it existed at the date of entry into force of the Party's Schedule to List I, with Article 4 (National Treatment), and, in the case of Lao PDR Article 5 (Prohibition of Performance Requirements).

<sup>11</sup> The application of this Article is subject to Article 16 (Work Programme).



2. Article 4 (National Treatment), and in the case of Lao PDR Article 5 (Prohibition of Performance Requirements), do not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities, as set out in its Schedule to List II.

3. Other than pursuant to any procedures for the modification of schedules of reservations, a Party may not, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to List II, require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.

### Article 13 Transparency

1. Each Party shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application covered by this Chapter. International agreements pertaining to or affecting investors or investment activities to which a Party is a signatory shall also be published.

2. To the extent possible, each Party shall make the measures and international agreements of the kind referred to in Paragraph 1 available on the internet.

3. Where publication referred to in Paragraphs 1 and 2 is not practicable, such information<sup>12</sup> shall be made otherwise publicly available.

4. To the extent provided for under its domestic legal framework, each Party shall endeavour to provide a

<sup>12</sup> For greater certainty, the Parties agree that such information may be published in each Party's chosen language.



reasonable opportunity for comments by interested persons on measures referred to in Paragraph 1 before adoption.

5. Each Party shall designate a contact point to facilitate communications among the Parties on any matter covered by this Chapter. Upon the request of another Party, the contact point shall:

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

6. Each Party shall respond within a reasonable period of time to all requests by any other Party for specific information on:

- (a) any measures or international agreements referred to in Paragraph 1;
- (b) any new, or any changes to existing, measures or administrative guidelines which significantly affect investors or covered investments, whether or not the other Party has been previously notified of the new or changed measure or administrative guideline.

7. Any notification or communication under this Article shall be provided to the other Party through the relevant contact points in the English language.

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





9. Each Party shall ensure that in its administrative proceedings relating to the application of measures referred to in Paragraph 1 to particular investors or investments of the other Party in specific cases that:

- (a) to the extent provided under its domestic legal framework and where possible, persons of another Party that are directly affected by a proceeding are provided reasonable notice, when a proceeding is initiated;
- (b) to the extent provided under its domestic legal framework, that it endeavours to afford such persons with reasonable opportunity to present their positions prior to any final administrative action, when time, the nature of the proceeding, and the public interest permit; and
- (c) its procedures are in accordance with its laws.

10. Each Party shall maintain judicial or administrative tribunals or procedures for the purpose of the prompt review<sup>13</sup> and, where warranted, correction of final administrative actions regarding matters covered by this Chapter. Where such procedures or tribunals are not independent of the agency entrusted with the administrative action concerned, each Party shall ensure that the tribunals or procedures provide for an objective and impartial review.

11. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceedings are provided with the right to:

- (a) a reasonable opportunity to support or defend their respective positions; and

<sup>13</sup> For avoidance of doubt, the form of "review" shall be as provided for under the Party's law.



(b) a decision in accordance with the Party's laws.

12. Each Party shall ensure, subject to appeal or further review as provided in its law, that any decision referred to in Paragraph 11(b) shall be implemented in accordance with its laws.

#### Article 14

##### Special Formalities and Disclosure of Information

1. Nothing in Article 4 (National Treatment) shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, including a requirement that covered investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not substantially impair the protections afforded by a Party to investors of another Party and covered investments pursuant to this Chapter.

2. Notwithstanding Article 4 (National Treatment), a Party may require an investor of another Party, or a covered investment, to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect to the extent possible any confidential information which has been provided from any disclosure that would prejudice legitimate commercial interests of the investor or the covered investment. Nothing in this Paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

#### Article 15

##### Special and Differential Treatment for the Newer ASEAN Member States

In order to increase the benefits of this Chapter for the newer ASEAN Member States, and in accordance with the objectives of and the Preamble to this Agreement and



objectives of Chapter 12 (Economic Co-operation), the Parties recognise the importance of according special and differential treatment to the newer ASEAN Member States under this Chapter, through:

- (a) technical assistance to strengthen their capacity in relation to investment policies and promotion, including in areas such as human resource development;
- (b) access to information on the investment policies of other Parties, business information, relevant databases and contact points for investment promotion agencies;
- (c) commitments in areas of interest to the newer ASEAN Member States; and
- (d) recognising that commitments by each newer ASEAN Member State may be made in accordance with its individual stage of development.

#### Article 16 Work Programme

1. The Parties shall enter into discussions on:
  - (a) schedules of reservations to this Chapter; and
  - (b) treatment of investment in services which does not qualify as commercial presence in Chapter 8 (Trade in Services).
2. The Parties shall also enter into discussions with a view to agreeing on:





- (a) the application of most-favoured-nation treatment to this Chapter, including to those schedules of reservations; and
- (b) procedures for the modification of schedules of reservations.

3. The Parties shall conclude the discussions referred to in Paragraphs 1 and 2 within five years from the date of entry into force of this Agreement unless the Parties otherwise agree. These discussions shall be overseen by the Investment Committee established pursuant to Article 17 (Committee on Investment).

4. Schedules of reservations to this Chapter referred to in Paragraph 1 shall enter into force on a date agreed to by the Parties.

5. Notwithstanding anything to the contrary in this Chapter, Article 4 (National Treatment) and Article 12 (Reservations) shall not apply until the Parties' schedules of reservations to this Chapter have entered into force in accordance with Paragraph 4.

#### Article 17 Committee on Investment

1. The Parties hereby establish a Committee on Investment (Investment Committee) consisting of representatives of the Parties.

2. The Investment Committee shall meet within one year from the date of entry into force of this Agreement and thereafter as mutually determined by the Parties. Meetings may be conducted in person, or by any other means as mutually determined by the Parties.



3. The Investment Committee's functions shall be:
  - (a) to oversee the discussions referred to in Article 16.1 and 16.2 (Work Programme);
  - (b) to review the implementation of this Chapter;
  - (c) to consider any other matters related to this Chapter identified by the Parties; and
  - (d) to report to the FTA Joint Committee as required.

## SECTION B

### Investment Disputes between a Party and an Investor

#### Article 18 Scope and Definitions

1. This Section shall apply to disputes between a Party and an investor of another Party concerning an alleged breach of an obligation of the former under Section A which causes loss or damage to the covered investment of the investor.
2. This Section shall not apply to investment disputes which have occurred prior to the entry into force of this Agreement.
3. A natural person possessing the nationality or citizenship of a Party may not pursue a claim against that Party under this Section.
4. For the purpose of this Section:
  - (a) **Appointing Authority** means:



- (i) in the case of arbitration under Article 21.1(b) or (c) (Submission of a Claim), the Secretary-General of ICSID;
  - (ii) in the case of arbitration under Article 21.1(d) or (e) (Submission of a Claim), the Secretary-General of the Permanent Court of Arbitration; or
  - (iii) any person as agreed between the disputing parties;
- (b) **disputing Party** means a Party against which a claim is made under this Section;
  - (c) **disputing party** means a disputing investor or a disputing Party;
  - (d) **disputing parties** means a disputing investor and a disputing Party;
  - (e) **disputing investor** means an investor of a Party that makes a claim against another Party on its own behalf under this Section, and where relevant includes an investor of a Party that makes a claim on behalf of a juridical person of the disputing Party that the investor owns or controls;
  - (f) **ICSID** means the International Centre for Settlement of Investment Disputes;
  - (g) **ICSID Convention** means the *Convention on the Settlement of Investment Disputes between States and National of other States*, done at Washington on 18 March 1965;
  - (h) **ICSID Additional Facility Rules** means the *Rules Governing the Additional Facility for the*





*Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes;*

- (i) **non-disputing Party** means the Party of the disputing investor;
- (j) **New York Convention** means the *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, done at New York on 10 June 1958; and
- (k) **UNCITRAL Arbitration Rules** means the arbitration rules of the United Nations Commission on International Trade Law, approved by the United Nations General Assembly on 15 December 1976.

#### Article 19 Consultations

1. In the event of an investment dispute referred to in Article 18.1 (Scope and Definitions), the disputing parties shall as far as possible resolve the dispute through consultation, with a view towards reaching an amicable settlement. Such consultations, which may include the use of non-binding, third party procedures, shall be initiated by a written request for consultations delivered by the disputing investor to the disputing Party.
2. With the objective of resolving an investment dispute through consultations, a disputing investor shall provide the disputing Party, prior to the commencement of consultations, with information regarding the legal and factual basis for the investment dispute.



**Article 20**

**Claim by an Investor of a Party**

If an investment dispute has not been resolved within 180 days of the receipt by a disputing Party of a request for consultations, the disputing investor may, subject to this Article, submit to conciliation or arbitration a claim:

- (a) that the disputing Party has breached an obligation arising under Article 4 (National Treatment), Article 6 (Treatment of Investment), Article 7 (Compensation for Losses), Article 8 (Transfers), and Article 9 (Expropriation and Compensation) relating to the management, conduct, operation or sale or other disposition of a covered investment; and
- (b) that the disputing investor or the covered investment has incurred loss or damage by reason of, or arising out of, that breach.

**Article 21**

**Submission of a Claim**

1. A disputing investor may submit a claim referred to in Article 20 (Claim by an investor of a Party) at the choice of the disputing investor:

- (a) where the Philippines or Viet Nam is the disputing Party, to the courts or tribunals of that Party, provided that such courts or tribunals have jurisdiction over such claim; or



- (b) under the ICSID Convention and the *ICSID Rules of Procedure for Arbitration Proceedings*<sup>14</sup> provided that both the disputing Party and the non-disputing Party are parties to the ICSID Convention; or
- (c) under the ICSID Additional Facility Rules, provided that either of the disputing Party or non-disputing Party are a party to the ICSID Convention; or
- (d) under the UNCITRAL Arbitration Rules; or
- (e) if the disputing parties agree, to any other arbitration institution or under any other arbitration rules,

provided that resort to one of the fora under Subparagraphs (a) to (e) shall exclude resort to any other.

2. A claim shall be deemed submitted to arbitration under this Article when the disputing investor's notice of or request for arbitration made in accordance with this Section (notice of arbitration) is received under the applicable arbitration rules.

3. The arbitration rules applicable under Paragraph 1(b) to (e) as in effect on the date the claim or claims were submitted to arbitration under this Article, shall govern the arbitration except to the extent modified by this Section.

4. In relation to a specific investment dispute or class of disputes, the applicable arbitration rules may be waived, varied or modified by written agreement between the disputing parties. Such rules shall be binding on the relevant

<sup>14</sup> In the case of the Philippines, the submission of a claim under the ICSID Convention and the *ICSID Rules of Procedure for Arbitration Proceedings* shall be subject to a written agreement between the disputing parties in the event that an investment dispute arises.





tribunal or tribunals established pursuant to this Section, and on individual arbitrators serving on such tribunals.

5. The disputing investor shall provide with the notice of arbitration:

- (a) the name of the arbitrator that the disputing investor appoints; or
- (b) the disputing investor's written consent for the Appointing Authority to appoint that arbitrator.

#### Article 22

##### Conditions and Limitations on Submission of a Claim

1. The submission of a dispute as provided for in Article 20 (Claim by an Investor of a Party) to conciliation or arbitration under Article 21.1(b) to (e) (Submission of a Claim) in accordance with this Section, shall be conditional upon:

- (a) the submission of the investment dispute to such conciliation or arbitration taking place within three years of the time at which the disputing investor became aware, or should reasonably have become aware, of a breach of an obligation referred to in Article 20(a) (Claim by an Investor of a Party) causing loss or damage to the disputing investor or a covered investment;
- (b) the disputing investor providing written notice, which shall be submitted at least 90 days before the claim is submitted, to the disputing Party of its intent to submit the investment dispute to such conciliation or arbitration and which briefly summarises the alleged breach of the disputing Party (including the articles or provisions alleged to have been breached) and the loss or damage



allegedly caused to the disputing investor or a covered investment; and

- (c) the notice of arbitration being accompanied by the disputing investor's written waiver of its right to initiate or continue any proceedings before the courts or administrative tribunals of either Party, or other dispute settlement procedures, of any proceeding with respect to any measure alleged to constitute a breach referred to in Article 20 (Claim by an Investor of a Party).

2. Notwithstanding Paragraph 1(c), no Party shall prevent the disputing investor from initiating or continuing an action that seeks interim measures of protection for the sole purpose of preserving its rights and interests and does not involve the payment of damages or resolution of the substance of the matter in dispute, before the courts or administrative tribunals of the disputing Party.

3. No Party shall give diplomatic protection, or bring an international claim, in respect of a dispute which has been submitted to conciliation or arbitration under this Article, unless such other Party has failed to abide by and comply with the award rendered in such dispute. Diplomatic protection, for the purposes of this Paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

4. A disputing Party shall not assert, as a defence, counter-claim, right of set-off or otherwise, that the disputing investor or the covered investment has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of any alleged loss.



**Article 23**  
**Selection of Arbitrators**

1. Unless the disputing parties otherwise agree, the tribunal shall comprise three arbitrators:
  - (a) one arbitrator appointed by each of the disputing parties; and
  - (b) the third arbitrator, who shall be the presiding arbitrator, appointed by agreement of the disputing parties, shall be a national of a non-Party which has diplomatic relations with the disputing Party and non-disputing Party, and shall not have permanent residence in either the disputing Party or non-disputing Party.
2. Arbitrators shall have expertise or experience in public international law, international trade or international investment rules, and be independent of, and not be affiliated with or take instructions from the disputing Party, the non-disputing Party, or disputing investor.
3. The Appointing Authority shall serve as appointing authority for arbitration under this Article.
4. If a tribunal has not been constituted within 75 days from the date that a claim is submitted to arbitration under this Section, the Appointing Authority, on the request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed.
5. The disputing parties may establish rules relating to expenses incurred by the tribunal, including arbitrators' remuneration.
6. Where any arbitrator appointed as provided for in this Article resigns or becomes unable to act, a successor shall





be appointed in the same manner as prescribed for the appointment of the original arbitrator and the successor shall have all the powers and duties of the original arbitrator.

#### Article 24 Consolidation

Where two or more claims have been submitted separately to arbitration under Article 20 (Claim by an Investor of a Party) and the claims have a question of law or fact in common and arise out of the same or similar events or circumstances, all concerned disputing parties may agree to consolidate those claims in any manner they deem appropriate.

#### Article 25 Conduct of the Arbitration

1. Where issues relating to jurisdiction or admissibility are raised as preliminary objections, a tribunal shall decide the matter before proceeding to the merits.
2. A disputing Party may, no later than 30 days after the constitution of the tribunal, file an objection that a claim is manifestly without merit. A disputing Party may also file an objection that a claim is otherwise outside the jurisdiction or competence of the tribunal. The disputing Party shall specify as precisely as possible the basis for the objection.
3. The tribunal shall address any such objection as a preliminary question apart from the merits of the claim. The disputing parties shall be given a reasonable opportunity to present their views and observations to the tribunal. If the tribunal decides that the claim is manifestly without merit, or is otherwise not within the jurisdiction or competence of the tribunal, it shall render an award to that effect.
4. The tribunal may, if warranted, award the prevailing party reasonable costs and fees incurred in submitting or



opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claim or the objection was frivolous or manifestly without merit, and shall provide the disputing parties a reasonable opportunity to comment.

5. Unless the disputing parties otherwise agree, the tribunal shall determine the place of arbitration in accordance with the applicable arbitration rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.

6. Where an investor claims that the disputing Party has breached Article 9 (Expropriation and Compensation) by the adoption or enforcement of a taxation measure, the disputing Party and the non-disputing Party shall, upon request from the disputing Party, hold consultations with a view to determining whether the taxation measure in question has an effect equivalent to expropriation or nationalisation. Any tribunal that may be established pursuant to this Section shall accord serious consideration to the decision of both Parties under this Paragraph.

7. If both Parties fail either to initiate consultations referred to in Paragraph 6, or to determine whether such taxation measure has an effect equivalent to expropriation or nationalisation within the period of 180 days from the date of the receipt of request for consultation referred to in Article 19 (Consultations), the disputing investor shall not be prevented from submitting its claim to arbitration in accordance with this Section.

#### Article 26

#### Transparency of Arbitral Proceedings

1. Subject to Paragraphs 2 and 3, the disputing Party may make publicly available all awards and decisions produced by the tribunal.





2. Any of the disputing parties that intend to use information designated as confidential information in a hearing shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect the information from disclosure.
3. Any information specifically designated as confidential that is submitted to the tribunal or the disputing parties shall be protected from disclosure to the public.
4. A disputing party may disclose to persons directly connected with the arbitral proceedings such confidential information as it considers necessary for the preparation of its case, but it shall require that such confidential information is protected.
5. The tribunal shall not require a Party to furnish or allow access to information the disclosure of which would impede law enforcement or would be contrary to the Party's law protecting Cabinet confidences, personal privacy or the financial affairs and accounts of individual customers of financial institutions, or which it determines to be contrary to its essential security.
6. The non-disputing Party shall be entitled, at its cost, to receive from the disputing Party a copy of the notice of arbitration, no later than 30 days after the date that such document has been delivered to the disputing Party. The disputing Party shall notify all other Parties of the receipt of the notice of arbitration within 30 days thereof.

#### **Article 27 Governing Law**

1. Subject to Paragraphs 2 and 3, when a claim is submitted under Article 20 (Claim by an Investor of a Party), the tribunal shall decide the issues in dispute in accordance with this Agreement, any other applicable agreements between the Parties, any relevant rules of international law





applicable in the relations between the Parties, and, where applicable, any relevant domestic law of the disputing Party.

2. The tribunal shall, on its own account or at the request of a disputing party, request a joint interpretation of any provision of this Agreement that is in issue in a dispute. The Parties shall submit in writing any joint decision declaring their interpretation to the tribunal within 60 days of the delivery of the request. Without prejudice to Paragraph 3, if the Parties fail to issue such a decision within 60 days, any interpretation submitted by a Party shall be forwarded to the disputing parties and the tribunal, which shall decide the issue on its own account.

3. A joint decision of the Parties, declaring their interpretation of a provision of this Agreement shall be binding on a tribunal, and any decision or award issued by a tribunal must be consistent with that joint decision.

#### Article 28 Awards

1. Where a tribunal makes a final award against either of the disputing parties, the tribunal may award, separately or in combination, only:

- (a) monetary damages and any applicable interest; and
- (b) restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages and any applicable interest in lieu of restitution.

2. A tribunal may also award costs and attorney's fees in accordance with this Section and the applicable arbitration rules.

3. A tribunal may not award punitive damages.



4. An award made by a tribunal shall be final and binding upon the disputing parties. An award shall have no binding force except between the disputing parties and in respect of the particular case.

5. Subject to Paragraph 6 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.<sup>15</sup>

6. A disputing party may not seek enforcement of a final award until:

(a) in the case of a final award under the ICSID Convention:

(i) 120 days has elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or

(ii) revision or annulment proceedings have been completed;

(b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected pursuant to Article 21.1(e) (Submission of a Claim):

(i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside, or annul the award; or

(ii) a court has dismissed or allowed an application to revise, set aside, or annul the award and there is no further appeal.

7. Each Party shall provide for the enforcement of an award in its territory.

<sup>15</sup> The Parties understand that there may be domestic legal and administrative processes that need to be observed before an award can be complied with.

