ASEAN TRADE IN SERVICES AGREEMENT (ATISA)

The Governments of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, Laos 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 South East Asia 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, and to liberalise trade in services by expending the depth and scope of liberalization beyond those undertaken by Member States under the General Agreement on Trade in Services (GATS);

TAKING INTO ACCOUNT the mandate of the 7th 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 44th AEM Meeting held on 28 August 2012 in Siam Reap, Cambodia;

NOTING the decision of the 48th 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 2025and 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 liberalization of trade in services between or amongst the parties to an economic integration agreement,

HAVE AGREED AS FOLLOWS:

SECTION I
GENERAL PROVISIONS

Article I
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[1];

(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;

*1 "**measure**" shall include taxation measures to the extent covered by the GATS.*

(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;

(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[2];

(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");

(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

2/ 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.

(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 *3*, to its own services and service suppliers.*4*

3/ 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.

4/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.

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 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;[5]

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

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

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.[6]

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.

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:

6/ 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.

(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 nonconforming 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 nonconforming 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[7] 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:
   (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

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

(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 fulfillment 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[8], 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.

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 authorization fees[9] charged by the competent authority are reasonable, transparent and do not in themselves restrict the supply of the relevant service.

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

9/ 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.

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, 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*10*;

(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;

10/ 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.

(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[11] imposition or collection of direct taxes in respect of services orservice suppliers of other Member States;

11/ 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.

(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 attempts intended to disable or degrade such infrastructures;
      (iv) taken in time of war or other emergency in international relations; or

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.

(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[12]

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;
   - (c) recognising that commitments of Cambodia*, Lao PDR*, Myanmar* and Viet Nam shall be made in accordance with its individual stage of development; and

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

(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[13] to which it is a party.

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;

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

(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 fulfillment 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 authorized thereto by their respective Governments, have signed the ASEAN Trade in Services Agreement.

DONE at *Manila, Philippines, this 7th day of October, in the year Two Thousand and Twenty* in a single original copy in the English Language.

ANNEX ON

FINANCIAL SERVICES

Article 1

Scope

1. This Annex applies to measures affecting the supply of financial services. Reference to the supply of a financial service in this Annex shall mean the supply of a service:
   - (a) from the territory of one Member State into the territory of any other Member States (Mode 1: cross–border supply);
   - (b) in the territory of one Member State to the service consumer of any other Member States (Mode 2: consumption abroad);
   - (c) by a service supplier of one Member State, through commercial presence in the territory of any other Member States (Mode 3: commercial presence);
   - (d) by a service supplier of one Member State, through presence of natural persons of a Member State in the territory of any other Member States (Mode 4: presence of natural persons).
2. This Annex does not apply to services supplied in the exercise of governmental authority, as follows:
   - (a) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;
   - (b) activities forming part of a statutory system of social security or public retirement plans; or
   - (c) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government.

3. For the purposes of this Annex, if a Member State allows any of the activities referred to in subparagraphs 2(b) or 2(c) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, "services" shall include such activities.
4. For greater certainty, this Annex shall prevail to the extent of any inconsistency with any other provision in this Agreement.

Article 2

Definitions

For the purposes of this Annex:

(a) **cross–border supply of financial services** refers to the supply of financial services in subparagraphs 1 (a) and (b) of Article 1 (Scope) of this Annex;

(b) **financial institution** means any financial intermediary or other enterprise that is authorised to do business and regulated or supervised by the central bank, monetary authority or financial services authority under the law of the Member States in whose territory it is located;

(c) **financial services** means any service of a financial nature offered by a financial service supplier of a Member State. Financial services include all insurance and insurance–related services, and all banking and other financial services (excluding insurance). Financial services include the following activities:

Insurance and insurance–related services

(i) direct insurance (including co–insurance):

a) life;

b) non–life;

(ii) reinsurance and retrocession;

(iii) insurance intermediation, such as brokerage and agency; and

(iv) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services;

Banking and other financial services (excluding insurance)

(v) acceptance of deposits and other repayable funds from the public;

(vi) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;

(vii) financial leasing;

(viii) all payment and money transmission services, including credit, charge and debit cards, traveler's cheques and bankers drafts;

(ix) guarantees and commitments;

(x) trading for own account or for account of customers, whether on an exchange, in an over–the–counter market or otherwise, the following:

a) money market instruments (including cheques, bills, certificates of deposits);

b) foreign exchange;

c) derivative products including, but not limited to, futures and options;

d) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;

e) transferable securities;

f) other negotiable instruments and financial assets, including bullion;

(xi) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;

(xii) money broking;

(xiii) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;

(xiv) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

(xv) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and

(xvi) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (v) through (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

(d) **financial service supplier** means any natural or juridical person of a Member State wishing to supply or supplying financial services but the term "financial service supplier" does not include a public entity;

(e) **new financial service** means a financial service that is not supplied by any financial service supplier in the territory of a Member State but which is supplied and regulated in the territory of any other Member State. This may include services related to existing and new products, or the manner in which the product is delivered;

(f) **public entity** means:

(i) a government, a central bank or a monetary authority, of a Member State, or an entity owned or controlled by a Member State, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or

(ii) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions; and

(g) **self–regulatory organisation** means any nongovernmental body, including any securities or futures exchange or market, clearing or payment settlement agency, other organisation or association that:

(i) is recognised as a self–regulatory organisation; and/or

(ii) exercises regulatory or supervisory authority over financial service suppliers or financial institutions in its territory, by legislation or delegation from central, regional or local governments or authorities.

Article 3

New Financial Services

Each Member State ("Host Member State") shall give due consideration to applications by financial institutions of another Member State established in the territory of the Host Member State to offer in the territory of the Host Member State a new financial service that the Host Member State would permit its own financial institutions, in like circumstances, to supply without adopting a law or modifying an existing law*1*. Where an application is approved, the provision of the new financial service is subject to relevant licensing, institutional or juridical form, or other requirements of the Host Member State.

1/ For greater certainty, a Member State may issue a new regulation or other subordinate measure in permitting the supply of the new financial service.

Article 4
Safeguard Measures

1. Notwithstanding any other provisions of this Agreement, a Member State shall not be prevented from taking measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system or to ensure the stability of the exchange rate subject to the following:
   (a) where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the Member State's commitments or obligations under this Agreement; and
   (b) for measures to ensure the stability of the exchange rate such measures shall be no more than necessary and phased out when conditions no longer justify their institution or maintenance and such measures shall be applied on a most–favoured–nation basis.
2. Nothing in this Agreement shall be construed to require a Member State to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

Article 5
Recognition

1. A Member State may recognise prudential measures of any other country or international standard setting bodies in determining how the Member State's measures relating to financial services shall be applied[2]. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the country concerned or international standard setting body or may be accorded autonomously.

2/ For greater certainty, nothing in Article 11 (Most–Favoured–Nation Treatment) of this Annex shall be construed to require the Member State to accord such recognition to prudential measures of any other Member State.

2. A Member State that is a party to such an agreement or arrangement referred to in paragraph 1, whether future or existing, shall afford adequate opportunity for other interested Member States to negotiate their accession to such agreement or arrangements, or to negotiate comparable ones with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation, and, if appropriate, procedures concerning the sharing of information between the parties to the agreement or arrangement. Where a Member State accords recognition autonomously, it shall afford adequate opportunity for any other Member State to demonstrate that such circumstances exist.

Article 6

Transparency

1. The Member States recognise that transparent regulations and policies governing the activities of financial service suppliers are important in facilitating access of foreign financial service suppliers to, and their operations in each other's markets. Each Member State commits to promote regulatory transparency in financial services.
2. Each Member State shall ensure that measures of general application adopted or maintained by it are promptly published or otherwise made publicly available. Such information may be published in each Member State's chosen language. Each Member State shall endeavour to publish in English the translation, or summary, or explanation note of such measures of general application. Such publication shall not be used as official translation unless otherwise stated.
3. Each Member State shall, to the extent practicable:

(a) publish or make available to interested persons in advance any law and regulation of general application relating to the supply of financial services that it proposes to adopt and the purpose of such law and regulation; and

(b) provide interested persons[3] and other Member States a reasonable opportunity to comment on such proposed laws and regulations.

4. Each Member State's regulatory authorities shall make available to interested persons their requirements, including any documentation required, for completing applications relating to the supply of financial services.

5. On the request of an applicant in writing, the regulatory authority shall inform the applicant of the status of the application. If such authority requires additional information from the applicant, it shall notify the applicant within reasonable time.

6. A regulatory authority shall make an administrative decision on a completed application of an applicant relating to the supply of a financial service within 180 days and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and the regulatory authority considers all necessary information is received. Where it is not practicable for a decision to be made within 180days, the regulatory authority shall notify the applicant within a reasonable time and shall endeavour to make the decision within a reasonable time thereafter.

7. On the request of an unsuccessful applicant in writing, a regulatory authority that has denied an application shall endeavour to inform the applicant of the reasons for denial of the application.

3/ The Member States confirm their shared understanding that interested persons in this Article are persons whose direct financial interest could be potentially affected by the adoption of the laws and regulations of general application.

8. Each Member State shall maintain or establish appropriate mechanisms that will respond to inquiries from interested persons regarding measures of general application covered by this Annex.
9. Each Member State shall take reasonable measures as may be available to it to ensure that the rules of general application adopted or maintained by self–regulatory organisations[4] of the Member State are promptly published or otherwise made publicly available[5].
10. To the extent practicable, each Member State should allow reasonable time between the publication of final regulations and their effective dates.

Article 7

Payment and Clearing Systems

Under terms and conditions that accord national treatment, in accordance with domestic laws and regulations, each Member State shall grant to financial institutions of any other Member State established in the territory of the Host Member State access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This paragraph is not intended to confer access to the Member State's lender of last resort facilities.

4/ This paragraph only applies to a Member State when that Member State has established self–regulatory organisations.

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

Article 8

Self–Regulatory Organisations

If a Member State requires a financial institution of another Member State to be a member of, participate in, or have access to, a self–regulatory organisation to provide a financial service in its territory, the Member State will endeavour to ensure that the self–regulatory organisation observes the obligations of Article 6 (National Treatment) of this Agreement and Article 11 (Most–Favoured–Nation Treatment) of this Annex.

Article 9

Transfer of Information and Processing of Information

1. A Member State shall not take measures that:
   - (a) prevent transfers of information, including transfers of data by electronic means, necessary for the conduct of the ordinary business of a financial service supplier;
   - (b) prevent the processing of information necessary for the conduct of the ordinary business of a financial service supplier; or
   - (c) prevent transfers of equipment necessary for the conduct of the ordinary business of a financial service supplier, subject to importation rules consistent with international agreements.
2. Nothing in Paragraph 1:
   - (a) restricts the right of a Member State to protect personal data, personal privacy and the confidentiality of individual records and accounts including in accordance with its domestic laws and regulations as long as such right

shall not be used as a means of avoiding the Member State's commitments or obligations under this Agreement;

(b) prevents a regulator of a Member State, for regulatory or prudential reasons, from requiring a financial service supplier in its territory to comply with domestic regulation in relation to data management[6] and storage and system maintenance, as well as to retain within its territory copies of records; or

(c) shall be construed to require a Member State to allow the cross-border supply or the consumption abroad of services in relation to which it has not made specific commitments, including to allow nonresident suppliers of financial services to supply, as a principal, through an intermediary or as an intermediary, the provision and transfer of financial information and financial data processing as referred to in paragraph (a)(xv) of Article 2 (Definitions) of this Annex.[7]

Article 10

Dispute Settlement

Members of panels established pursuant to Article 34 (Dispute Settlement) of this Agreement for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute.

6/ For greater certainty, data management includes the local processing obligation of domestic payment transactions.

7/ For greater certainty, where a Member State has not made specific commitments in relation to the cross-border supply or consumption abroad of a service, the Member State shall have the right to take measures that prevent the transfer of information, processing of information or transfer of equipment referred to in paragraph 1 relating to the cross-border supply or consumption abroad of that service by the financial service supplier referred to under paragraph 1. Nevertheless, a Member State shall not avoid its obligations to allow the transfers and processing not relating to any cross-border supply or consumption abroad of a service, which is for the purpose of group oversight and compliance with reporting requirement of another Member State.

Article 11

Most–Favoured–Nation Treatment

1. Each Member State shall accord to services and service suppliers of another Member State treatment no less favourable than that it accords, in like circumstances, to services and service suppliers of any other Member State.[8]
2. Notwithstanding paragraph 1, after the entry into force of this Agreement, if a Member State concludes or amends an agreement with any Member State or non–Member State, any other Member State may request negotiations with a view to incorporating, under this Agreement, treatment no less favourable than that provided under that agreement. The requested Member State shall enter into negotiations with the requesting Member State. Any extension of such preferential treatment to the remaining Member States on a Most–Favoured–Nation basis shall be voluntary on the part of that requested Member State.
3. Any Member State may maintain a measure inconsistent with paragraph 1 provided that such a measure is listed in, and meets the conditions of, its List of Most–Favoured–Nation Exemptions.
4. The provisions of this Agreement shall not be construed as 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.

8/ For greater certainty, the obligations in paragraphs 1 and 3 apply only to the financial services commitments under the Final AFAS Packages, excluding the commitments under the ASEAN Banking Integration Framework (ABIF).

Article 12

Arrangements to Expedite Financial Integration

1. 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.
2. The participating Member States shall keep the remaining Member States informed through the ASEAN Secretariat of the progress or result of the negotiations, including the scheduling of commitments for the specific sectors or sub–sectors concerned. Member States wishing to join any on–going negotiations among the participating Member States may do so in consultation with the participating Member States.
3. Any Member State which is not a party to any agreement made pursuant to paragraph 1 may accede to such an agreement subject to consent of the participating Member States.
4. The participating Member States can further refine the parameters for specific sectors or sub–sectors to be committed as may be mutually agreed by all participating Member States for the purpose of further liberalisation of trade in services.
5. All agreements made pursuant to paragraph 1 shall be deposited with the Secretary–General of ASEAN who shall promptly furnish a certified copy thereof to each participating Member State and notifying the same to the other Member States.

Article 13

Market Access for Financial Institutions[9]

With respect to market access of a financial institution of another Member State through Mode 3: commercial presence as identified in Article 1 (Scope) of this Annex, unless otherwise specified in its Schedules of Non-Conforming Measures, 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:

1. impose limitations on:
   - (a) the number of financial institutions whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
   - (b) the total value of financial service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
   - (c) the total number of financial service operations or the total quantity of financial service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test[10];
   - (d) the total number of natural persons that may be employed in a particular financial service sector or that a financial institution may employ and who are necessary for, and directly related to, the supply of a specific financial service in the form of numerical quotas or the requirement of an economic needs test;

9/ A member state commits to allow transfers of capital into its territory if such transfers of capital are related to its market-access commitments with respect to financial institutions under this Article

10/ Subparagraph (a)(iii) does not cover measures of a Member State which limit inputs for the supply of financial services.

(e) the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment

2. restrict or require specific types of legal entity or joint venture through which a financial institution may supply a service

Article 14

Cross–Border Supply of Financial Services*11*

1. Each Member State shall permit, under terms and conditions that accord national treatment, cross–border financial service suppliers of another Member State to supply the financial services specified in Annex on (Cross–Border Supply of Financial Services).*12*
2. Each Member State shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross–border financial service suppliers of another Member State located in the territory of a Member State other than the permitting Member State. This obligation does not require a Member State to permit those suppliers to do business or solicit in its territory. A Member State may define "doing business" and "solicitation" for the purposes of this obligation provided that those definitions are not inconsistent with paragraph 1.

11/ For greater certainty, this would apply upon transition to negative list. Schedules for Non–Conforming Measures for Financial Services only refer to Article 6 (National Treatment) and Article 10 (Senior Management and Board of Directors) of this Agreement and Article 13 (Market Access) and Article 14 (Cross–Border Supply of Financial Services) of this Annex.

12/ In relation to a cross–border financial service supplier supplying a financial service specified in a Member State's Annex [XX] (Cross–Border Supply in Financial Services) and if the cross–border movement of capital is an essential part of the service itself, that Member State commits to allow such movement of capital.

3. Without prejudice to other means of prudential regulation of cross–border supply of financial services, a Member State may require the registration or authorisation of cross–border financial service suppliers of another Member State and of financial instruments.

Article 15

Local Presence

Article 9 (Local Presence) in this Agreement shall not be applied to the supply of financial services.

ANNEX ON

TELECOMMUNICATION SERVICES

Article 1

Scope

1. This Annex shall apply to measures by a Member State affecting trade in public telecommunications transport networks and services.
2. This Annex shall not apply to measures affecting broadcasting services as defined in the domestic laws and regulations of each Member State.
3. Nothing in this Annex shall be construed to:
   (a) require a Member State to authorise a service supplier of another Member State to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services, unless otherwise in accordance with its Schedule of Non–Conforming Measures under this Agreement; or
   (b) require a Member State (or require a Member State to oblige service suppliers under its jurisdiction) to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services not offered to the public generally.

Article 2

Definitions

For the purposes of this Annex, the term:

(a) "**cost–oriented**" means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;

(b) "**end user**" means a subscriber to or a final consumer of public telecommunications transport networks or services, including a service supplier other than a supplier of public telecommunications transport networks 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) "**international mobile roaming service**" means a commercial mobile service provided pursuant to a commercial agreement between suppliers of public telecommunications transport networks or services that enables end users to use their home mobile handset or other device for voice, data or messaging services while outside the territory in which the end user's home public telecommunications transport network is located;

(e) "**international submarine cable landing station**" means the premises*1* where connection takes place with an international submarine cable system, as determined by the telecommunications regulatory body or other relevant competent authority or by a supplier of public telecommunications transport networks or services who owns or controls the premises, if required;

1/ For Thailand, this may include other designated points of access.

(f) "**leased circuits**" means telecommunications facilities between two or more designated points that are set aside for the dedicated use of, or availability to, particular users;

(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 public telecommunications transport networks or services 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) "**personal data**" means any information about an identified or identifiable natural person;

(j) "**public telecommunications transport network**" means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points;

(k) "**public telecommunications transport service**" means any telecommunications transport service required, explicitly or in effect, by a Member State to be offered to the public generally. Such services may include, *inter alia*, telegraph, telephone, telex and data transmission typically involving transmission of customer–supplied information between two or more defined points without any end–to–end change in the form or content of the customer's information;

(l) “**telecommunications**” means the transmission and reception of signals by any electromagnetic means;

(m) “**telecommunications regulatory body**” means any body or bodies in the territory of a Member State which is or are responsible, under the domestic laws and regulations of that Member State, for the regulation of telecommunications; and

(n) “**users**” means end users or suppliers of public telecommunications transport networks or services.

Article 3

Access and Use

1. Each Member State shall ensure that any service supplier of another Member State is accorded access to and use of public telecommunications transport networks and services in a timely fashion and on transparent, reasonable and nondiscriminatory terms and conditions unless otherwise in accordance with its Schedule of Non–Conforming Measures under this Agreement This obligation shall be applied, *inter alia*, through paragraphs 2 through 6.

2. Each Member State shall ensure that service suppliers of another Member State have access to and use of any public telecommunications transport network or service offered within or across the border of that Member State, including private leased circuits, and to this end shall ensure, subject to the provisions of paragraphs 5 and 6, that such suppliers are permitted to:

   (a) purchase or lease and attach terminal or other equipment which interfaces with the network and which is necessary to supply their services;

(b) interconnect private leased or owned circuits with public telecommunications transport networks and services or with circuits leased or owned by other service suppliers; and

(c) use operating protocols of their choice in the supply of any service, other than as necessary to ensure the availability of telecommunications transport networks and services to the public generally.

3. Each Member State shall ensure that service suppliers of another Member State may use public telecommunications transport networks and services for the movement of information within and across borders, including for intracorporate communications of such service suppliers, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of any Member State.

4. Notwithstanding paragraph 3, a Member State may take measures as are necessary to:

(a) ensure the security and confidentiality of messages; or

(b) protect the personal data of end users of public telecommunications transport networks or services provided that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

5. Each Member State shall ensure that no condition is imposed on access to and use of public telecommunications transport networks and services other than as necessary to:

(a) safeguard the public service responsibilities of suppliers of public telecommunications transport networks and services, in particular their

ability to make their networks or services available to the public generally; or

(b) protect the technical integrity of public telecommunications transport networks or services.

6. Provided that they satisfy the criteria set out in paragraph 5, conditions for access to and use of public telecommunications transport networks and services may include:

   (a) a requirement to use specified technical interfaces, including interface protocols, for interconnection with public telecommunications transport networks and services;

   (b) requirements, where necessary, for the interoperability of public telecommunications transport services and to encourage the achievement of the goals set out in Article 17 (Relation to International Organisations);

   (c) type approval of terminal or other equipment which interfaces with public telecommunications transport networks and technical requirements relating to the attachment of such equipment to such networks;

   (d) restrictions on interconnection of private leased or owned circuits with public telecommunications transport networks or services or with circuits leased or owned by other service suppliers; or

   (e) notification, permit, registration and licensing.

Article 4

Number Portability

Each Member State shall endeavour to ensure that suppliers of public telecommunications transport networks or services in its territory provide number

portability for mobile services in accordance with its domestic laws and regulations, to the extent technically and economically feasible, on a timely basis and on reasonable terms and conditions.

Article 5

Competitive Safeguard[2]

1. Each Member State shall adopt or maintain appropriate measures for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.
2. The anti-competitive practices referred to in paragraph 1 shall include, in particular:
   (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 public telecommunications transport networks or services, on a timely basis, technical information about essential facilities and commercially relevant information which are necessary for them to supply services.

2/ Cambodia and Thailand commit to apply this Article by the end of 2019.

Article 6

Treatment by Major Suppliers

Each Member State shall ensure that a major supplier in its territory accords to suppliers of public telecommunications transport networks and services of another Member State treatment no less favourable than that such major supplier accords in like circumstances to its subsidiaries and affiliates, or any non–affiliated service suppliers regarding:

(a) the availability, provisioning, rates or quality of like telecommunications services; [3] and

(b) the availability of technical interfaces necessary for interconnection.

Article 7

Resale[4]

Each Member State shall ensure that any major supplier in its territory does not impose unreasonable or discriminatory conditions or limitations on the resale of the public telecommunications transport services by suppliers of public telecommunications transport networks or services of another Member State.

3/ Indonesia commits to apply this subparagraph by the end of 2020.

4/ Brunei Darussalam may require that licensees who purchase public telecommunication services on a wholesale basis only resell their services to an end

user.

Cambodia commits to apply this Article by the end of 2019.

Indonesia commits to apply this Article once reflected in its domestic laws and regulations.

Viet Nam commits to apply this Article by the end of 2020.

Article 8

Interconnection[5]

1. Each Member State shall ensure that suppliers of public telecommunications transport networks in its territory provide interconnection with the suppliers of public telecommunications transport networks or services of another Member State to the extent provided for in its domestic laws and regulations.
2. Each Member State shall ensure that a major supplier which has control over essential facilities in its territory provides interconnection for the facilities and equipment of suppliers of public telecommunications transport networks and services of another Member State at any technically feasible point in the network. Such interconnection shall be provided:
   (a) under non–discriminatory terms, conditions (including technical standards and specifications) and rates and of a quality no less favourable than that provided for its own like services, or for like services of nonaffiliated service suppliers or for its subsidiaries or other affiliates;
   (b) in a timely fashion and on terms, conditions (including technical standards and specifications) and cost–oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier of public telecommunications transport networks or services of another Member State need not pay for network components or facilities that it does not require for the services to be provided; and

5/ Cambodia commits to apply this Article by the end of 2019.

c) upon request, at points in addition to the network termination points offered to the majority of suppliers of public telecommunications transport networks and services, subject to charges that reflect the cost of construction of necessary additional facilities.

3. Each Member State shall ensure that suppliers of public telecommunications transport networks or services of another Member State may interconnect their facilities and equipment with those of major suppliers which have control over essential facilities in its territory pursuant to at least one of the following options:

   (a) a reference interconnection offer, approved by the Member State's telecommunications regulatory body, containing the rates, terms and conditions that the major supplier which has control over essential facilities offers generally to suppliers of public telecommunications transport services;

   (b) the terms and conditions of an existing interconnection agreement; or

   (c) a new interconnection agreement through commercial negotiation.

4. Each Member State shall ensure that the procedures applicable for interconnection to a major supplier are made publicly available.

5. Each Member State shall ensure that a major supplier in its territory makes publicly available either its interconnection agreements or reference interconnection offer.

6. Each Member State shall ensure that a major supplier which has control over essential facilities does not use or provide commercially sensitive or confidential information on suppliers of public telecommunications transport networks or services or end users thereof, which was acquired through its interconnection

business with telecommunications facilities of the suppliers of the public telecommunications transport networks or services, for purposes other than such interconnection business.

Article 9

Provisioning and Pricing of Leased Circuit Services [6]

Each Member State shall ensure that a major supplier which has control over essential facilities in its territory provides suppliers of public telecommunications transport networks and services of another Member State with leased circuit services that are public telecommunications transport networks or services on terms and conditions, and at rates, that are reasonable, non–discriminatory and transparent.

Article 10

Co–location [7]

Each Member State shall ensure, in accordance with its domestic laws and regulations, that a major supplier which has control over essential facilities in its territory allows suppliers of public telecommunications transport networks or services of another Member State to locate their equipment within the major supplier's buildings on terms and conditions, including technical feasibility and space availability where applicable, and at rates, that are reasonable, nondiscriminatory (including with respect to timeliness) and transparent.

6/ Cambodia commits to apply this Article by the end of 2019. Indonesia commits to apply this Article once reflected in its domestic laws and regulations.

Viet Nam commits to apply this Article by the end of 2020.

7/ Cambodia commits to apply this Article by the end of 2019.

Indonesia commits to apply this Article once reflected in its domestic laws and regulations.

Thailand commits to apply this Article by the end of 2019.

Viet Nam commits to apply this Article by the end of 2020.

Article 11

Independent Telecommunications Regulatory Body

1. Each Member State shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of public telecommunications services.
2. Each Member State shall ensure that the decisions of, and the procedures used by, its telecommunications regulatory body are impartial with respect to all market participants.

Article 12

Universal Service

Each Member State has the right to define the kind of universal service obligations it wishes to maintain. Such obligations shall not be regarded as anti–competitive *per se*, provided that they are administered in a transparent, nondiscriminatory and competitively neutral manner, and are not more burdensome than necessary for the kind of universal service defined by the Member State.

Article 13

Licensing[8]

1. Where a license, concession, permit, registration or other type of authorisation is required for the supply of public telecommunications transport networks or services, each Member State shall make publicly available:

8/ Cambodia commits to apply this Article by the end of 2019.

(a) all the licensing or other authorisation criteria and procedures, and the period of time normally required to reach a decision concerning an application for a license, concession, permit, registration or other type of authorisation; and

(b) the terms and conditions of individual licenses, concessions, permits, registrations or other type of authorisations it has issued.[9]

2. The competent authority of a Member State shall notify an applicant of the outcome of its application, without undue delay, after a decision has been taken. In case a decision is taken to deny an application for a license, concession, permit, registration or other type of authorisation, the competent authority of the Member State shall make known to the applicant, upon request, the reason for the denial.

Article 14

Allocation and Use of Scarce Resources[10]

1. Each Member State shall carry out its procedures for the allocation and use of scarce resources related to telecommunications, including frequencies and numbers, in an objective, timely, transparent and non-discriminatory manner.
2. Each Member State shall make publicly available the current state of allocated frequency bands, but shall not be required to provide detailed identification of frequencies allocated for specific government uses.

9/ For greater certainty, the terms and conditions may not include licensee specific terms and conditions that contain confidential information.

10/ Cambodia commits to apply this Article by the end of 2019.

3. A Member State's measures allocating and assigning spectrum and managing frequency are not measures that are *per se* inconsistent with Article 8 (Market Access) of this Agreement. Accordingly, each Member State retains the right to establish and apply spectrum and frequency management policies that have the effect of limiting the number of suppliers of public telecommunications transport networks or services, provided that it does so in a manner consistent with other provisions of this Agreement. Such right includes the ability to allocate frequency bands, taking into account current and future needs and spectrum availability.

Article 15

Transparency

Each Member State shall ensure that relevant information on conditions affecting access to and use of public telecommunications transport networks and services is publicly available, including: tariffs and other terms and conditions of service; specifications of technical interfaces with such networks and services; information on bodies responsible for the preparation and adoption of standards affecting such access and use; conditions applying to attachment of terminal or other equipment; and notifications, permit, registration or licensing requirements, if any.

Article 16

Settlement of Telecommunication Disputes

1. Each Member State shall ensure that suppliers of public telecommunications transport networks or services of another Member State may have timely recourse to its telecommunications regulatory body or dispute settlement body

to settle disputes arising under this Annex in accordance with its domestic laws and regulations.

2. Each Member State shall ensure, in accordance with its domestic laws and regulations, that any supplier of public telecommunications transport networks or services aggrieved by a determination or decision of its relevant telecommunications regulatory body may petition that body for reconsideration of that determination or decision. No Member State shall permit such a petition to constitute grounds for noncompliance with such determination or decision of the said body, unless an appropriate authority suspends or withdraws such determination or decision.
3. Each Member State shall ensure that any supplier of public telecommunications transport networks or services aggrieved by a final determination or decision of its relevant telecommunications regulatory body may obtain review of such determination or decision in accordance with its domestic laws and regulations.

Article 17

Relation to International Organisations

Member States recognise the importance of international standards for global compatibility and inter–operability of telecommunications networks and services and undertake to promote such standards through the work of relevant international bodies, including the International Telecommunication Union and the International Organization for Standardization.

Article 18

International Mobile Roaming

1. Member States shall endeavour to cooperate on promoting transparent and reasonable rates for international mobile roaming services that can help promote the growth of trade among the Member States and enhance consumer welfare.
2. A Member State may choose to take steps to enhance transparency and competition with respect to international mobile roaming rates and technological alternatives to roaming services, such as:
   (a) ensuring that information regarding retail rates is easily accessible to consumers; and
   (b) minimising impediments to the use of technological alternatives to roaming, whereby consumers when visiting the territory of a Member State from the territory of another Member State can access telecommunications services using the device of their choice.
3. Member States recognise that a Member State may choose to promote competition with respect to international mobile roaming rates including through commercial arrangements, or to adopt or maintain measures affecting rates for wholesale and/or retail international roaming services with a view to ensuring the rates are reasonable. If a Member State considers it appropriate, it may cooperate on and implement mechanisms with other Member States to facilitate the implementation of those measures, including but not limited to, by entering into arrangements with those Member States.
4. If a Member State ("the first Member State") chooses to regulate rates or conditions for wholesale and/or retail international mobile roaming services, it

shall ensure that a supplier of public telecommunications services of another Member State ("the second Member State") has access to the regulated rates or conditions for wholesale and/or retail international mobile roaming services for its customers roaming in the territory of the first Member State if the second Member State has entered into an arrangement with the first Member State to reciprocally regulate rates or conditions for wholesale and/or retail international mobile roaming services for suppliers of the two Member States.*11* Notwithstanding, the first Member State may require suppliers of the second Member State to fully utilise commercial negotiations to reach agreement on the terms for accessing such rates or conditions.

5. A Member State that ensures access to regulated rates or conditions for wholesale and/or retail international mobile roaming services in accordance with paragraph 4, shall be deemed to be in compliance with Article 7 (Most–Favoured Nation Treatment) of this Agreement, and Article 3 (Access and Use) and Article 6 (Treatment by Major Supplier) of this Annex.

11/ For greater certainty:

(a) no Member State shall, solely on the basis of any obligations owed to it by the first Member State under a most–favoured–nation provision, or under a telecommunications specific non–discrimination provision, in any international trade agreement, seek or obtain for its suppliers the access to regulated rates or conditions for wholesale and/or retail international mobile roaming services that is provided under this Article.

(b) access to the rates or conditions regulated by the first Member State shall be available to a supplier of the second Member State only if the regulated rates or conditions are reasonably comparable to those reciprocally regulated under the arrangement. The telecommunications regulatory body of first Member State shall, in the case of a disagreement, determine whether the rates or conditions are reasonably comparable. For the purposes of this footnote, rates or conditions that are reasonably comparable means rates or conditions agreed to be such by the relevant suppliers or, in the case of disagreement, determined to be such by the telecommunications regulatory body of first Member State.

6. Nothing in this Article shall require a Member State to regulate rates or conditions for international mobile roaming services.

Article 19

International Submarine Cable Landing Station[12] [13]

1. Where under its domestic laws and regulations, a Member State has authorised a supplier of public telecommunications transport network in its territory to operate an international submarine cable landing station as a public telecommunications transport network, that Member State shall ensure that such supplier accords the suppliers of public telecommunications transport networks or services of the other Member State reasonable and non-discriminatory treatment in like circumstances.
2. Where submarine cable landing facilities and services cannot be economically or technically substituted, each Member State shall ensure that any major supplier who owns or controls an international submarine cable landing station in its territory allows suppliers of the public telecommunications transport networks or services of the other Member States to:
   (i) access international submarine cable landing stations; and
   (ii) co-locate their transmission and routing equipment at the international submarine cable landing station; based on terms and conditions, and at rates, that are reasonable, non-discriminatory and transparent.

12/ Indonesia will apply this Article to the extent provided for under its domestic laws and regulations.

13/ For Viet Nam:

(i) This Article shall only apply to major suppliers who own or control international submarine cable landing stations in the territory of Viet Nam;

(ii) Under Paragraph 2(i), access to international submarine cable landing stations shall comply with relevant domestic laws and regulations of Viet Nam; and

(iii) Under Paragraph 2(ii), co-location for international submarine cable landing stations owned or controlled by the major supplier in the territory of Viet Nam shall exclude physical co-location. It may include virtual co-location.

ANNEX ON

AIR TRANSPORT ANCILLARY SERVICES

1. **Aircraft Repair and Maintenance Services** means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so–called line maintenance.
2. **Selling and Marketing of Air Transport Services** means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions.
3. **Computer Reservation System (CRS) Services** means services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued.
4. **Aircraft Leasing without Crew** means the lease of an aircraft without crew is normally referred to as a "dry lease", Under most lease agreements the lessee who provides the crew is the responsible party who must exercise operational control over the aircraft with all the attendant responsibilities.
5. **Aircraft Leasing with Crew** means the lease of an aircraft with crew provided is normally referred to as a "wet lease". In wet lease the lessor normally exercises operational control of the aircraft. Usually the wet lease situation means the aircraft should be operated under an Air Operator Certificate (AOC) issued by the competent authority of the State of Registry of the aircraft.
6. **Airfreight Forwarding Services** means the activity and arrangement of air transport and related services provided to or performed on behalf of the

shipper/consignee for the transportation of goods by air from port of origin to final destination.

Scope of services includes the following services:

(i) securing cargo space with airline;

(ii) preparing necessary export/import document;

(iii) processing customs formalities;

(iv) pick–up and delivery;

(v) packing/warehousing;

(vi) freight consolidation & break–bulk;

(vii) door to door and logistics services; and

(viii) inland freight services.

7. **Cargo Handling** means services provided or arranged for warehouse, facilities, and services for storage and handling of any type of shipment that are transported by air. Cargo handling services cover physical handling of outbound/inbound, transit shipments, document handling of outbound inbound, transit shipments, irregularities handling, control of Unit Load Device (ULD), and services relate to customs control.

8. **Aircraft Catering Services** means the preparation/production of food and beverages for airlines, including loading/unloading of catering equipment and supplies, arrangement of bar cart, magazines, flowers, souvenirs and miscellaneous items to/from aircraft, washing, cleaning, storing of catering equipment and laundering of cabin linen ware.

9. **Refueling Services** means the management and operation of fuel tankers for aircraft and airport motor vehicles and distribution of fuelling products. (United Nations CPC 74220, 74610, 61300, 62113. 62271)

10. **Aircraft Line Maintenance** means routine and non–routine inspection and malfunction ratification performed *en route* and at base station with turnaround time up to 24 hours.
11. **Ramp Handling** means services provided by ground support equipment to an aircraft upon arrival, during parking until departure.

    The services include the following facilities:

    (i) Ground Support Equipment (GSE) i.e. aircraft towing tractor, air condition unit, air start unit, ground power unit, loading equipment, ULDs;

    (ii) ramp bus services to transfer passengers and crews to and from the aircraft to the passenger terminal;

    (iii) security services to the aircraft as well as passengers in the ramp area;

    (iv) toilet and aircraft interior cleaning servicing;

    (v) portable water servicing;

    (vi) post and mail servicing; and

    (vii) GSE and ULDs maintenance.
12. **Baggage Handling** means a process on departure and arrival system at terminals. On departure, baggage handling consists of three activities: (1) in–town check–in passenger checks outside the airport boundary; (2) check–in at the airport terminal; and (3) check–in passenger carries baggage at the aircraft gate and check–in at that point. On arrival, baggage handling consists of three activities: (1) off–loading of baggage from the aircraft; (2) transport of baggage between aircraft and reclaim area; and (3) loading of baggage onto the reclaim unit.
13. **Passenger Handling** means responsibility in providing services to passengers from check–in point to aircraft side as per the carrier's procedures and instructions.