# AGREEMENT ON INVESTMENT OF THE FRAMEWORK AGREEMENT ON COMPREHENSIVE ECONOMIC COOPERATION BETWEEN THE PEOPLE'S REPUBLIC OF CHINA AND THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS

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

**RECALLING** the Framework Agreement on Comprehensive Economic Co-operation ("the Framework Agreement") between China and ASEAN (collectively, "the Parties", or individually referring to China or to an ASEAN Member State as a "Party") signed by the Heads of Government/State of China and ASEAN Member States in Phnom Penh, Cambodia on the 4th day of November 2002;

**RECALLING** further Article 5 and Article 8 of the Framework Agreement, where in order to establish a China-ASEAN Free Trade Area and to promote investments and create a liberal, facilitative, transparent and competitive investment regime, the Parties agreed to negotiate and conclude as expeditiously as possible an investment agreement in order to progressively liberalise the investment regime, strengthen co-operation in investment, facilitate investment and improve transparency of investment rules and regulations, and provide for the protection of investments;

**NOTING** that the Framework Agreement recognised the different stages and pace of development among the Parties and the need for special and differential treatment and flexibility for the newer ASEAN Member States of Cambodia, Lao PDR, Myanmar and Viet Nam;

**REAFFIRMING** the Parties' commitment to establish the China-ASEAN Free Trade Area within the specified timeframes, while allowing flexibility to the Parties to address their sensitive areas as provided in the Framework Agreement, in the realisation of the sustainable economic growth and development goals on the basis of equality and mutual benefits so as to achieve a win-win outcome;

**REAFFIRMING** further the rights, obligations and undertakings of each Party under the World Trade Organization ("WTO"), and other multilateral, regional and bilateral agreements and arrangements,

**HAVE AGREED AS FOLLOWS:**

## Article 1. Definitions

1. For the purpose of this Agreement:

(a) "AEM" means ASEAN Economic Ministers;

(b) "freely usable currency" means any currency designated as such by the International Monetary Fund ("IMF") under its Articles of Agreement and any amendments thereto;

(c) "GATS" means the General Agreement on Trade in Services in Annex 1B to the WTO Agreement

(d) "investment" means every kind of asset invested by the investors of a Party in accordance with the relevant laws, regulations and policies (1) of another Party in the territory of the latter including, but not limited to, the following:

(i) movable and immovable property and any other property rights such as mortgages, liens or pledges;

(ii) shares, stocks and debentures of juridical persons or interests in the property of such juridical persons;

(iii) intellectual property rights, including rights with respect to copyrights, patents and utility models, industrial designs,

trademarks and service marks, geographical indications, layout designs of integrated circuits, trade names, trade secrets, technical processes, know-how and goodwill;

(iv) business concessions (2) conferred by law, or under contract, including concessions to search for, cultivate, extract, or exploit natural resources; and

(v) claims to money or to any performance having financial value. For the purpose of the definition of investment in

this Sub-paragraph, returns that are invested should be treated as investments and any alteration of the form in which assets are invested or reinvested shall not affect their character as investments;

(e) "investor of a Party" means a natural person of a Party or a juridical person of a Party that is making (3) or has made an investment in the territories of the other Parties;

(f) "juridical person of a Party" means any legal entity duly constituted or otherwise organised under the applicable law of a Party, whether for profit or otherwise, and whether privately-owned or governmentally-owned, and engaged in substantive business operations in the territory of that Party, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

(g) "measure" means any law, regulation, rule, procedure, or decision or administrative action of general application, affecting investors and/or investments, taken by a Party including its:

(i) central, regional or local governments and authorities; and

(ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments and authorities;

(h) "MOFCOM" means Ministry of Commerce of the People's Republic of China;

(i) "natural person of a Party" means any natural person possessing the nationality or citizenship of, or right of permanent residence in the Party in accordance with its laws and regulations;4

(j) "returns" mean amounts yielded by or derived from an investment particularly, though not exclusively, profits, interests, capital gains, dividends, royalties or fees;

(k) "SEOM" means ASEAN Senior Economic Officials Meetings;

(l) "WTO Agreement" means the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh, Morocco on the 15th of April 1994, as may be amended.

2. The definitions of each of the above terms shall apply unless the context otherwise requires, or where a Party has specifically defined any of the above terms for application to its commitments or reservations.

3. In this Agreement, all words used in the singular shall include the plural, and all words in the plural shall include the singular, unless the context otherwise requires.

(1) For greater certainty, policies shall refer to those affecting investment that are endorsed and announced by the Government of a Party, and made publicly available in a written form.

(2) Business concessions include contractual rights such as those under turnkey, construction or management contracts, production or revenue sharing contracts, concessions, or other similar contracts and can include investment funds for projects such as Build-Operate and Transfer (BOT) and Build-Operate and Own (BOO) schemes.

(3) For greater certainty, the phrase "is making" shall refer only to Article 5 (MostFavoured-Nation Treatment) and Article 10 (Transfers and Repatriation of Profits).

(4) In the case of Indonesia, Lao PDR, Myanmar, Thailand and Viet Nam, which do not grant rights of permanent residence to foreigners or do not accord its permanent residents the same benefits as its nationals or citizens, they shall not be legally obliged to accord the benefits of this Agreement to permanent residents of any of the other Parties, or claim the aforesaid benefits for its permanent residents, if applicable, from any of the other Parties.
In the case of China, until such time when China enacts its domestic law on the treatment of permanent residents of foreign countries, the

permanent residents of the other Parties shall, provided there is reciprocity from those other Parties, be treated no less favourably than those of third countries, in like circumstances, if such permanent residents waive their rights that may be derived from provisions of dispute resolution under any other investment agreements or arrangements concluded between China and any third country.

## Article 2. Objectives

The objectives of this Agreement are to promote investment flows and to create a liberal, facilitative, transparent and competitive investment regime in China and ASEAN through the following:

(a) progressively liberalising the investment regimes of China and ASEAN;

(b) creating favourable conditions for the investment by the investor of a Party in the territory of another Party;

(c) promoting the cooperation between a Party and the investor who has investment in the territory of that Party on a mutually beneficial basis;

(d) encouraging and promoting the flow of investment among the Parties and cooperation among the Parties on investment-related matters;

(e) improving the transparency of investment rules conducive to increased investment flows among the Parties; and

(f) providing for the protection of investments in China and ASEAN.

## Article 3. Scope of Application

1. This Agreement shall apply to measures adopted or maintained by a Party relating to:

(a) investors of another Party; and

(b) investments of investors of another Party in its territory, which shall be:

(i) in respect of China, the entire customs territory according to the WTO definition at the time of her accession to the WTO on the 11th day of December 2001. For this purpose, for China, “territory” in this Agreement refers to the customs territory of China; and

(ii) in respect of ASEAN Member States, their respective territories.

2. Unless otherwise provided in this Agreement, this Agreement shall apply to all investments made by investors of a Party in the territory of another Party, whether made before or after the entry into force of this Agreement. For greater certainty, the provisions of this Agreement do not bind any Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement.

3. In the case of Thailand, this Agreement shall apply only in cases where the investment by an investor of another Party in the territory of Thailand has been admitted, and specifically approved in writing for protection by its competent authorities, (5) in accordance with its domestic laws, regulations and policies.

4. This Agreement shall not apply to:

(a) any taxation measure. This Sub-paragraph shall not undermine the Parties’ rights and obligations with respect to taxation measures:

(i) where corresponding rights or obligations are also granted or imposed under the WTO Agreement;

(ii) under Article 8 (Expropriation) and Article 10 (Transfers and Repatriation of Profits);

(iii) under Article 14 (Investment Disputes between a Party and an Investor), only when the dispute arises from Article 8 (Expropriation); and

(iv) under any tax convention relating to the avoidance of double taxation;

(b) laws, regulations, policies or procedures of general application governing the procurement by government agencies of goods and services purchased for governmental purposes (government procurement) and not with a view to commercial resale or with a view to use in the production of goods or the supply of services for commercial sale;

(c) subsidies or grants provided by a Party or to any conditions attached to the receipt or the continued receipt of such

subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic investors and investments;

(d) services supplied in the exercise of governmental authority by the relevant body or authority of a Party. For the purposes of this Agreement, 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; and

(e) measures adopted or maintained by a Party affecting trade in services.

5. Notwithstanding Sub-paragraph 4(e), Article 7 (Treatment of Investment), Article 8 (Expropriation), Article 9 (Compensation for Losses), Article 10 (Transfers and Repatriation of Profits), Article 12 (Subrogation) and Article 14 (Investment Disputes between a Party and an Investor) shall apply, *mutatis mutandis*, to any measure affecting the supply of a service by a service supplier of a Party through commercial presence in the territory of another Party, but only to the extent that they relate to an investment and an obligation under this Agreement, regardless of whether or not such a service sector is scheduled in the Party's Schedule of Specific Commitments made under the Agreement on Trade in Services of the Framework Agreement on Comprehensive Economic Co-operation between the People's Republic of China and the Association of Southeast Asian Nations signed in Cebu, Philippines on the 14th day of January 2007.

(5) The name and contact details of the competent authorities responsible for granting such approval shall be informed to the other Parties through the ASEAN Secretariat.

## Article 4. National Treatment

Each Party shall, in its territory, accord to investors of another Party and their investments treatment no less favourable than it accords, in like circumstances, to its own investors and their investments with respect to management, conduct, operation, maintenance, use, sale, liquidation, or other forms of disposal of such investments.

## Article 5. Most-Favoured-Nation Treatment

1. Each Party shall accord to investors of another Party and their investments treatment no less favourable than that it accords, in like circumstances, to investors of any other Party or third country and/or their respective investments with respect to admission, establishment, acquisition, expansion, management, conduct, operation, maintenance, use, liquidation, sale, and other forms of disposal of investments.

2 Notwithstanding Paragraph 1, if a Party accords more favourable treatment to investors of another Party or third country and their investments by virtue of any future agreements or arrangements to which that Party is a party, it shall not be obliged to accord such treatment to investors of another Party and their investments. However, upon request from another Party, it shall accord adequate opportunity to negotiate the benefits granted therein.

3. The treatment, as set forth in Paragraph 1 and Paragraph 2, shall not include:

(a) any preferential treatment accorded to investors and their investments under any existing bilateral, regional or international agreements, or any forms of economic or regional cooperation with any non-Party; and

(b) any existing or future preferential treatment accorded to investors and their investments in any agreement or arrangement between or among ASEAN Member States or between any Party and its separate customs territories.

4. For greater certainty, the obligation in this Article does not encompass a requirement for a Party to extend to investors of another Party dispute resolution procedures other than those set out in this Agreement.

## Article 6. Non-Conforming Measures

1. Article 4 (National Treatment) and Article 5 (MostFavoured-Nation Treatment) shall not apply to:

(a) any existing or new non-conforming measures maintained or adopted within its territory;

(b) the continuation or amendment of any nonconforming measures referred to in Subparagraph (a).

2. The Parties will endeavour to progressively remove the non-conforming measures.

3. The Parties shall enter into discussions pursuant to Article 24 (Review) with a view to furthering the objectives in Article 2(a) and Article 2(e). The Parties will endeavour to achieve the objectives to be overseen by the institution under Article 22 (Institutional Arrangement).

## Article 7. Treatment of Investment

1. Each Party shall accord to investments of investors of another Party fair and equitable treatment and full protection and security.

2. For greater certainty:

(a) fair and equitable treatment refers to the obligation of each Party not to deny justice in any legal or administrative proceedings; and

(b) full protection and security requires each Party to take such measures as may be reasonably necessary to ensure the protection and security of the investment of investors of another Party.

3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, shall not establish that there has been a breach of this Article.

## Article 8. Expropriation

1. A Party shall not expropriate, nationalise or take other similar measures ("expropriation") against investments of investors of another Party, unless the following conditions are met:

(a) for a public purpose;

(b) in accordance with applicable domestic laws, including legal procedures;

(c) carried out in a non-discriminatory manner; and

(d) on payment of compensation in accordance with Paragraph 2.

2. Such compensation shall amount to the fair market value of the expropriated investment at the time when expropriation was publicly announced or when expropriation occurred, whichever is earlier, and it shall be freely transferable in freely usable currencies from the host country. The fair market value shall not reflect any change in market value occurring because the expropriation had become publicly known earlier.

3. The compensation shall be settled and paid without unreasonable delay. In the event of delay, the compensation shall include interest at the prevailing commercial interest rate from the date of expropriation until the date of payment. (6) The compensation, including any accrued interest, shall be payable either in the currency in which the investment was originally made or, if requested by the investor, in a freely usable currency.

4. Notwithstanding Paragraph 1, Paragraph 2 and Paragraph 3, any measure of expropriation relating to land shall be as defined in the expropriating Party's existing domestic laws and regulations and any amendments thereto, and shall be for the purposes of and upon payment of compensation in accordance with the aforesaid laws and regulations.

5. Where a Party expropriates the assets of a juridical person which is incorporated or constituted under its laws and regulations, and in which investors of another Party own shares, it shall apply the provisions of the preceding Paragraphs so as to ensure that compensation is paid to such investors to the extent of their interest in the assets expropriated.

6. This Article shall not apply to the issuance of compulsory licences granted to intellectual property rights in accordance with the Agreement on TradeRelated Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement.

(6) For Malaysia, Myanmar, Philippines, Thailand and Viet Nam, in the event of delay, the rate and payment of interest of compensation for expropriation of investments of investors of another Party shall be determined in accordance with their laws, regulations and policies provided that such laws, regulations and policies are applied on a non-discriminatory basis to investments of investors of another Party or a non-Party.

## Article 9. Compensation for Losses

Investors of a Party whose investments in the territory of another Party suffer losses owing to war or other armed conflict, revolution, a state of emergency, revolt, insurrection or riot in the territory of the latter Party shall be accorded by the latter Party treatment, as regard restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Party accords, in like circumstances, to investors of any third country or its own nationals, whichever is more favourable.

## Article 10. Transfers and Repatriation of Profits

1. Each Party shall allow all transfers in respect of investments in its territory of an investor of any other Party to be made in any freely usable currency at the prevailing market rate of exchange on the date of transfer, and allow such transfers to be freely transferred into and out of its territory without delay. Such transfers shall include:

(a) the initial capital, plus any additional capital used to maintain or expand the investments (7);

(b) net profits, capital gains, dividends, royalties, licence fees, technical assistance and technical and management fees, interest and other current income accruing from any investment of the investors of any other Party;

(c) proceeds from the total or partial sale or liquidation of any investment made by investors of any other Party;

(d) funds in repayment of borrowings or loans given by investors of a Party to the investors of any other Party which the respective Parties have recognised as investment;

(e) net earnings and other compensations of natural persons of any other Party, who are employed and allowed to work in connection with an investment in its territory;

(f) payments made under a contract entered into by the investors of any other Party, or their investments including payments made pursuant to a loan transaction; and

(g) payments made pursuant to Article 8 (Expropriation) and Article 9 (Compensation for Losses).

2. Each Party undertakes to accord to the transfer referred to in Paragraph 1, treatment as favourable as that accorded, in like circumstances, to the transfer originating from investments made by investors of any other Party or third country.

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

(a) bankruptcy, loss of ability or capacity to make payments, or protection of the right of creditors;

(b) non-fulfilment of the host Party's transfer requirements in respect of trading or dealing in securities, futures, options or derivatives;

(c) non-fulfilment of tax obligations;

(d) criminal or penal offences and the recovery of the proceeds of crime;

(e) social security, public retirement or compulsory saving schemes;

(f) compliance with judgements in judicial or administrative proceedings;

(g) workers' retrenchment benefits in relation to labour compensation relating to, amongst others, foreign investment projects that are closed down; and

(h) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities.

4. For greater certainty, the transfers referred to in the preceding Paragraphs shall comply with relevant formalities stipulated by the host Party's domestic laws and regulations relating to exchange administration, insofar as such laws and regulations are not to be used as a means of avoiding a Party's obligations under this Agreement.

5. Nothing in this Agreement shall affect the rights and obligations of the Parties as members of the IMF under the Articles of Agreement of the IMF, including the use of exchange actions which are in conformity with the Articles of Agreement of the IMF, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments under this Agreement regarding such transactions, except:

(a) under Article 11 (Measures to Safeguard the Balance of Payments); or

(b) at the request of the IMF; or

(c) where, in exceptional circumstances, movements of capital cause, or threaten to cause, serious economic or financial disturbance in the Party concerned, provided such restrictions do not affect the rights and obligations of the Parties as members of the WTO under Paragraph 1 of Article XI of GATS, and the measures are taken in accordance with paragraph 2 of Article 11 of this Agreement, *mutatis mutandis*.

(7) The Parties understand that the reference to "the initial capital, plus any additional capital used to maintain or expand the investments" only applies following the successful completion of the approval procedures for inward investment.

## Article 11. Measures to Safeguard the Balance of Payments

1. In the event of serious balance of payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on investments, including payments or transfers related to such investments. It is recognised that particular pressures on the balance of payments of a Party in the process of economic development 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.

2. The restrictions referred to in Paragraph 1 shall:

(a) be consistent with the Articles of Agreement of the IMF;

(b) not discriminate among the Parties;

(c) avoid unnecessary damage to the commercial, economic and financial interests of any other Party;

(d) not exceed those necessary to deal with the circumstances described in Paragraph 1;

(e) be temporary and be phased out progressively as the situation specified in Paragraph 1 improves; and

(f) be applied such that any other Party is treated no less favourably than any third country.

3. Any restrictions adopted or maintained by a Party under Paragraph 1 or any changes therein, shall be promptly notified to the other Parties.

## Article 12. Subrogation

1. In the event that any Party or any agency, institution, statutory body or corporation designated by it, as a result of an indemnity it has given in respect of an investment or any part thereof, makes payment to its own investors in respect of any of their claims under this Agreement, the other Parties concerned shall acknowledge that the former Party or any agency, institution, statutory body or corporation designated by it is entitled by virtue of subrogation to exercise the rights and assert the claims of its own investors. The subrogated rights or claims shall not be greater than the original rights or claims of the said investor.

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

## Article 13. Dispute between Parties

The provisions of the Agreement on Dispute Settlement Mechanism of the Framework Agreement on Comprehensive Economic Co-operation between the People's Republic of China and the Association of Southeast Asian Nations signed in Vientiane, Lao PDR on the 29th day of November 2004 shall apply to the settlement of disputes between or amongst the Parties under this Agreement.

## Article 14. Investment Disputes between a Party and an Investor

1. This Article shall apply to investment disputes between a Party and an investor of another Party concerning an alleged breach of an obligation of the former Party under Article 4 (National Treatment), Article 5 (MostFavoured-Nation Treatment), Article 7 (Treatment of Investment), Article 8 (Expropriation), Article 9 (Compensation for Losses) and Article 10 (Transfers and Repatriation of Profits), which causes loss or damage to the investor in relation to its investment with respect to the management, conduct, operation, or sale or other disposition of an investment.

2. This Article shall not apply:

(a) to investment disputes arising out of events which occurred, or to investment disputes which had been settled, or which were already under judicial or arbitral process, prior to the entry into force of this Agreement;

(b) in cases where the disputing investor holds the nationality or citizenship of the disputing Party.

3. The parties to the dispute shall, as far as possible, resolve the dispute through consultations.

4. Where the dispute cannot be resolved as provided for under Paragraph 3 within six (6) months from the date of written request for consultations and negotiations, unless the parties to the dispute agree otherwise, it may be submitted at the choice of the investor:

(a) to the courts or administrative tribunals of the disputing Party, provided such courts or administrative tribunals have jurisdiction; or

(b) under the International Centre for Settlement of Investment Disputes (ICSID) Convention and the ICSID Rules of Procedure for Arbitration Proceedings, (8) provided that both the disputing Party and the non-disputing Party are parties to the ICSID Convention; or

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

(c) under the ICSID Additional Facility Rules, provided that either of the disputing Party or nondisputing Party is a party to the ICSID Convention; or

(d) to arbitration under the rules of the United Nations Commission on International Trade Law; or

(e) if the disputing parties agree, to any other arbitration institution or under any other arbitration rules.

5. In case a dispute has been submitted to a competent domestic court, it may be submitted to international dispute settlement, provided that the investor concerned has withdrawn its case from the domestic court before a final judgement has been reached in the case. In the case of Indonesia, Philippines, Thailand, and Viet Nam, once the investor has submitted the dispute to their respective competent courts or administrative tribunals or to one of the arbitration procedures stipulated in Sub-paragraphs 4(b), 4(c), 4(d) or 4(e), the choice of the procedure is final.

6. The submission of a dispute to conciliation or arbitration under Sub-paragraphs 4(b), 4(c), 4(d) or 4(e) in accordance with the provisions of this Article, shall be conditional upon:

(a) the submission of the dispute to such conciliation or arbitration taking place within three (3) years of the time at which the disputing investor became aware, or should reasonably have become aware, of a breach of an obligation under this Agreement causing loss or damage to the investor or its investment; and

(b) the disputing investor providing written notice, which shall be submitted at least ninety (90) days before the claim is submitted, to the disputing Party of his or her intent to submit the dispute to such conciliation or arbitration. Upon the receipt of the notice, the disputing Party may require the disputing investor to go through any applicable domestic administrative review procedure specified by its domestic laws and regulations before the submission of the dispute under Subparagraphs 4(b), 4(c), 4(d) or 4(e). The notice shall:

(i) nominate either Sub-paragraphs 4(b), 4(c), 4(d) or 4(e) as the forum for dispute settlement and, in the case of Subparagraph 4(b), nominate whether conciliation or arbitration is being sought;

(ii) waive the right to initiate or continue any proceedings, excluding proceedings for interim measures of protection referred to in Paragraph 7, before any of the other dispute settlement fora referred to in Paragraph 4 in relation to the matter under dispute; and

(iii) briefly summarise the alleged breach of the disputing Party under this Agreement, including the Articles alleged to have been breached, and the loss or damage allegedly caused to the investor or its investment.

7. No Party shall prevent the disputing investor from seeking interim measures of protection, not involving the payment of damages or resolution of the substance of the matter in dispute before the courts or administrative tribunals of the disputing Party, prior to the institution of proceedings before any of the dispute settlement fora referred to in Paragraph 4, for the preservation of its rights and interests.

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

9. Where an investor claims that the disputing Party has breached Article 8 (Expropriation) by the adoption or enforcement of a taxation measure, the disputing Party and the non-disputing Party shall, upon request from the disputing Party, hold consultations with a view to determining whether the taxation measure in question has an effect equivalent to expropriation or nationalisation. Any tribunal that may be established under this Article shall accord serious consideration to the decision of both Parties under this Paragraph.

10. If both Parties fail either to initiate such consultations, or to determine whether such taxation measure has an effect equivalent to expropriation or nationalisation within the period of one hundred eighty (180) days from the date of receipt of the request for consultation referred to in Paragraph 4, the disputing investor shall not be prevented from submitting its claim to arbitration in accordance with this Article.

(8) In the case of Philippines, submission of a claim under the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings shall be subject to a written agreement between the disputing parties in the event that an investment dispute arises.

## Article 15. Denial of Benefits

1. Subject to prior notification and consultation, a Party may deny the benefits of this Agreement to:

(a) investors of another Party where the investment is being made by a juridical person that is owned or controlled by persons of a non-Party and the juridical person has no substantive business operations in the territory of another Party; or

(b) investors of another Party where the investment is being made by a juridical person that is owned or controlled by persons of the denying Party.

2. Notwithstanding Paragraph 1, in the case of Thailand, it may, under its applicable laws and/or regulations, deny the benefits of this Agreement relating to the admission, establishment, acquisition and expansion of investments to an investor of the other Party that is a juridical person of such Party and to investments of such an investor where Thailand establishes that the juridical person (9) is owned or controlled by natural persons or juridical persons of a non-Party or the denying Party.

3. Without prejudice to Paragraph 1, Philippines may deny the benefits of this Agreement to investors of another Party and to investments of that investor, where it establishes that such investor has made an investment in breach of the provisions of Commonwealth Act No. 108, entitled An Act to Punish Acts of Evasion of Laws on the Nationalisation of Certain Rights, Franchises or Privileges, as amended by Presidential Decree No. 715, otherwise known as "The Anti-Dummy Law", as may be amended.

(9) (a) In the case of Thailand, a juridical person referred to in this Article is:

(i) owned by natural persons or juridical persons of a Party or a non-Party if more than fifty (50) percent of the equity interests in it is beneficially owned by such persons;

(ii) controlled by natural persons or juridical persons of a Party or non-Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions.

(b) In the case of Indonesia, Myanmar, Philippines and Viet Nam, ownership and control shall be defined in its domestic laws and regulations.

(9) (a) In the case of Thailand, a juridical person referred to in this Article is:
(i) “owned” by natural persons or juridical persons of a Party or a non-Party if more than fifty (50) percent of the equity interests in it is beneficially owned by such persons;
(ii) “controlled” by natural persons or juridical persons of a Party or non-Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions.
(b) In the case of Indonesia, Myanmar, Philippines and Viet Nam, ownership and control shall be defined in its domestic laws and regulations.

## Article 16. General Exceptions

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties, their investors or their investments where like conditions prevail, or a disguised restriction on investors of any Party or their investments made by investors of any Party, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Party 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 to deal with the effects of a default on a contract;

(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; and

(iii) safety;

(d) aimed at ensuring the equitable or effective (11) imposition or collection of direct taxes in respect of investments or investors of any Party;

(e) imposed for the protection of national treasures of artistic, historic or archaeological value; or

(f) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.

2. Insofar as measures affecting the supply of financial services are concerned, paragraph 2 (Domestic Regulation) of the Annex on Financial Services of GATS shall be incorporated into and form an integral part of this Agreement, mutatis mutandis.

(10) For the purpose of this Sub-paragraph, footnote 5 of Article XIV of the GATS is incorporated into and forms part of this Agreement, mutatis mutandis.

(11) For the purpose of this Sub-paragraph, footnote 6 of Article XIV of the GATS is incorporated into and forms part of this Agreement, mutatis mutandis.

(10) For the purpose of this Sub-paragraph, footnote 5 of Article XIV of the GATS is incorporated into and forms part of this Agreement, mutatis mutandis.

(11) For the purpose of this Sub-paragraph, footnote 6 of Article XIV of the GATS is incorporated into and forms part of this Agreement, mutatis mutandis.

## Article 17. Security Exceptions

Nothing in this Agreement shall be construed:

(a) to require any Party to furnish any information, the disclosure of which it considers contrary to its essential security interests; or

(b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests, including but not limited to:

(i) action relating to fissionable and fusionable materials or the materials from which they derived;

(ii) action relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;

(iii) action taken so as to protect critical public infrastructure from deliberate attempts intended to disable or degrade such infrastructure;

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

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

## Article 18. Other Obligations

1. If the legislation of any Party or international obligations existing at the time of entry into force of this Agreement or established thereafter between or among the Parties result in a position entitling investments by investors of another Party to a treatment more favourable than is provided for by this Agreement, such position shall not be affected by this Agreement.

2. Each Party shall observe any commitments it may have entered into with the investors of another Party as regards to their investments.

## Article 19. Transparency

1. In order to achieve the objectives of this Agreement, each Party shall:

(a) make available through publication, all relevant laws, regulations, policies and administrative guidelines of general application that pertain to, or affect investments in its territory.

(b) promptly and at least annually notify the other Parties of the introduction of any new law or any changes to its existing laws, regulations, policies or administrative guidelines, which significantly affect investments in its territory, or its commitments under this Agreement.

(c) establish or designate an enquiry point where, upon request of any natural person, juridical person or any one of the other Parties, all information relating to the measures required to be published or made available under Subparagraphs (a) and (b) may be promptly obtained.

(d) notify the other Parties through the ASEAN Secretariat at least once annually of any future investment-related agreements or arrangements which grants any preferential treatment and to which it is a party.

2. Nothing in this Agreement shall require a Party to furnish or allow access to confidential information, the disclosure of which would impede law enforcement, or otherwise contrary to the public interest, or which would prejudice legitimate commercial interests of particular juridical persons, public or private.

3. All notifications and communications made pursuant to Paragraph 1 shall be in the English language.

## Article 20. Promotion of Investment

The Parties shall cooperate in promoting and increasing awareness of China-ASEAN as an investment area through, amongst others:

(a) increasing China-ASEAN investments;

(b) organising investment promotion activities;

(c) promoting business matching events;

(d) organising and supporting the organisation of various briefings and seminars on investment opportunities and on investment laws, regulations and policies; and

(e) conducting information exchanges on other issues of mutual concern relating to investment promotion and facilitation.

## Article 21. Facilitation of Investment

Subject to their laws and regulations, the Parties shall cooperate to facilitate investments amongst China and ASEAN through, amongst others:

(a) creating the necessary environment for all forms of investment;

(b) simplifying procedures for investment applications and approvals;

(c) promoting dissemination of investment information, including investment rules, regulations, policies and procedures; and

(d) establishing one-stop investment centres in the respective host Parties to provide assistance and advisory services to the business sectors including facilitation of operating licences and permits.

## Article 22. Institutional Arrangements

1. Pending the establishment of a permanent body, the AEM-MOFCOM, supported and assisted by the SEOM-MOFCOM, shall oversee, supervise, coordinate and review the implementation of this Agreement.

2. The ASEAN Secretariat shall monitor and report to the SEOM-MOFCOM on the implementation of this Agreement. All Parties shall cooperate with the ASEAN Secretariat in the performance of its duties.

3. Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Agreement. On the request of a Party, the contact point of the requested Party shall identify the office or official responsible for the matter and assist in facilitating communication with the requesting Party.

## Article 23. Relations with other Agreements

Nothing in this Agreement shall derogate from the existing rights and obligations of a Party under any other international agreements to which it is a party.

## Article 24. General Review

The AEM-MOFCOM or their designated representatives shall meet within a year from the date of entry into force of this Agreement and then biennially or otherwise as appropriate to review this Agreement with a view to furthering the objectives set out in Article 2 (Objectives).

## Article 25. Amendments

This Agreement may be amended by agreement in writing by the Parties and such amendments shall enter into force on such date or dates as may be agreed by the Parties.

## Article 26. Depositary

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

## Article 27. Entry Into Force

1. This Agreement shall enter into force six (6) months from the date of signing of this Agreement.

2. The Parties undertake to complete their internal procedures for the entry into force of this Agreement.

3. Where a Party is unable to complete its internal procedures for the entry into force of this Agreement within six (6) months from the date of signing of this Agreement, the rights and obligations of that Party under this Agreement shall commence thirty (30) days after the date of notification of completion of such internal procedures.

4. A Party shall upon the completion of its internal procedures for the entry into force of this Agreement notify the other Parties in writing.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Agreement on Investment of the Framework Agreement on Comprehensive Economic Co-operation between the Peoples Republic of China and the Association of Southeast Asian Nations.

DONE at Bangkok, Thailand this Fifteenth Day of August in the Year Two Thousand and Nine, in duplicate copies in the English Language.

For the Peoples Republic of China

CHEN DEMING

Minister of Commerce

For Brunei Darussalam:

MOHAMED BOLKIAH

Minister of Foreign Affairs and Trade

For the Kingdom of Cambodia:

CHAM PRASIDH

Senior Minister and Minister of Commerce

For the Republic of Indonesia:

MARI ELKA PANGESTU

Minister of Trade

For the Lao Peoples Democratic Republic:

NAM VIYAKETH

Minister of Industry and Commerce

For Malaysia:

TAN SRI MUHYIDDIN YASSIN

Minister of International Trade and Industry

For the Union of Myanmar:

U SOE THA

Minister for National Planning and Economic Development

For the Republic of the Philippines:

PETER B. FAVILA

Secretary of Trade and Industry

For the Republic of Singapore:

LIM HNG KIANG

Minister for Trade and Industry

For the Kingdom of Thailand:

PORNTIVA NAKASAI

Minister of Commerce

For the Socialist Republic of Viet Nam:

VU HUY HOANG

Minister of Industry and Trade