

# ASEAN COMPREHENSIVE INVESTMENT AGREEMENT

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

RECALLING the decisions of the 39<sup>th</sup> ASEAN Economic Ministers (AEM) Meeting held in Makati City, Philippines on 23 August 2007 to revise the Framework Agreement on the ASEAN Investment Area signed in Makati City, Philippines on 7 October 1998 (AIA Agreement), as amended, into a comprehensive investment agreement which is forwardlooking, with improved features and provisions, comparable to international best practices in order to increase intra-ASEAN investments and to enhance ASEANs competitiveness in attracting inward investments into ASEAN;

RECOGNISING the different levels of development within ASEAN especially the least developed Member States which require some flexibility including special and differential treatment as ASEAN moves towards a more integrated and interdependent future;

REAFFIRMING the need to move forward from the AIA Agreement and the ASEAN Agreement for the Promotion and Protection of Investments signed in Manila, Philippines on 15 December 1987 (ASEAN IGA), as amended, in order to further enhance regional integration to realise the vision of the ASEAN Economic Community (AEC);

CONVINCED that sustained inflows of new investments and reinvestments will promote and ensure dynamic development of ASEAN economies;

RECOGNISING that a conducive investment environment will enhance freer flow of capital, goods and services, technology and human resource and overall economic and social development in ASEAN; and

DETERMINED to further intensify economic cooperation between and among Member States,

HAVE AGREED as follows:

## Article 1. Objective

The objective of this Agreement is to create a free and open investment regime in ASEAN in order to achieve the end goal of economic integration under the AEC in accordance with the AEC Blueprint, through the following:

- (a) progressive liberalisation of the investment regimes of Member States;
- (b) provision of enhanced protection to investors of all Member States and their investments;
- (c) improvement of transparency and predictability of investment rules, regulations and procedures conducive to increased investment among Member States;
- (d) joint promotion of the region as an integrated investment area; and
- (e) cooperation to create favourable conditions for investment by investors of a Member State in the territory of the other Member States.

## Article 2. Guiding Principles

This Agreement shall create a liberal, facilitative, transparent and competitive investment environment in ASEAN by adhering to the following principles:

- (a) provide for investment liberalisation, protection, investment promotion and facilitation;

- (b) progressive liberalisation of investment with a view towards achieving a free and open investment environment in the region;
- (c) benefit investors and their investments based in ASEAN;
- (d) maintain and accord preferential treatment among Member States;
- (e) no back-tracking of commitments made under the AIA Agreement and the ASEAN IGA;
- (f) grant special and differential treatment and other flexibilities to Member States depending on their level of development and sectoral sensitivities;
- (g) reciprocal treatment in the enjoyment of concessions among Member States, where appropriate; and
- (h) accommodate expansion of scope of this Agreement to cover other sectors in the future.

### **Article 3. Scope of Application**

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

- (a) investors of any other Member State; and
- (b) investments, in its territory, of investors of any other Member State.

2. This Agreement shall apply to existing investments as at the date of entry into force of this Agreement as well as to investments made after the entry into force of this Agreement.

3. For the purpose of liberalisation and subject to Article 9 (Reservations), this Agreement shall apply to the following sectors:

- (a) manufacturing;
- (b) agriculture;
- (c) fishery;
- (d) forestry;
- (e) mining and quarrying;
- (f) services incidental to manufacturing, agriculture, fishery, forestry, mining and quarrying; and
- (g) any other sectors, as may be agreed upon by all Member States.

4. This Agreement shall not apply to:

- (a) any taxation measures, except for Articles 13 (Transfers) and 14 (Expropriation and Compensation);
- (b) subsidies or grants provided by a Member State;
- (c) government procurement;
- (d) services supplied in the exercise of governmental authority by the relevant body or authority of a Member State. 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 Member State affecting trade in services under the ASEAN Framework Agreement on Services signed in Bangkok, Thailand on 15 December 1995 (AFAS).

5. Notwithstanding sub-paragraph 4 (e), for the purpose of protection of investment with respect to the commercial presence mode of service supply, Articles 11 (Treatment of Investment), 12 (Compensation in Cases of Strife), 13 (Transfers), 14 (Expropriation and Compensation) and 15 (Subrogation) and Section B (Investment Disputes Between an Investor and a Member State), shall apply, mutatis mutandis, to any measure affecting the supply of a service by a service supplier of a Member State through commercial presence in the territory of any other Member State but only to the extent that they relate to an investment and obligation under this Agreement regardless of whether or not such service sector is scheduled in the Member States schedule of commitments made under AFAS.

6. Nothing in this Agreement shall affect the rights and obligations of any Member State under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.

## **Article 4. Definitions**

For the purpose of this Agreement:

(a) covered investment means, with respect to a Member State, an investment in its territory of an investor of any other Member State in existence as of the date of entry into force of this Agreement or established, acquired or expanded thereafter, and has been admitted according to its laws, regulations, and national policies, and where applicable, specifically approved in writing (1) by the competent authority of a Member State;

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

(c) investment (2) means every kind of asset, owned or controlled, by an investor, including but not limited to the following:

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

(ii) shares, stocks, bonds and debentures and any other forms of participation in a juridical person and rights or interest derived therefrom;

(iii) intellectual property rights which are conferred pursuant to the laws and regulations of each Member State;

(iv) Claims to money or to any contractual performance related to a business and having financial value; (3)

(v) rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts;

(vi) Business concessions required to conduct economic activities and having financial value conferred by law or under a contract, including any concessions to search, cultivate, extract or exploit natural resources.

The term investment also includes amounts yielded by investments, in particular, profits, interest, capital gains, dividend, royalties and fees. Any alteration of the form in which assets are invested or reinvested shall not affect their classification as investment;

(d) 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;

(e) juridical person means any legal entity duly constituted or otherwise organised under the applicable law of a Member State, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any enterprise, corporation, trust, partnership, joint venture, sole proprietorship, association, or organisation;

(f) measures means any measure of a Member State, whether in the form of laws, regulations, rules, procedures, decisions, and administrative actions or practice, adopted or maintained by:

(i) central, regional or local government or authorities; or

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

(g) natural person means any natural person possessing the nationality or citizenship of, or right of permanent residence in the Member State in accordance with its laws, regulations and national policies;

(h) newer ASEAN Member States means the Kingdom of Cambodia, the Lao Peoples Democratic Republic, the Union of Myanmar and the Socialist Republic of Viet Nam;

(i) WTO means the World Trade Organization; and

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

(1) For the purpose of protection, the procedures relating to specific approval in writing shall be as specified in Annex 1 (Approval in Writing).

(2) Where an asset lacks the characteristics of an investment, that asset is not an investment regardless of the form it may take. The

characteristics of an investment include the commitment of capital, the expectation of gain or profit, or the assumption of risk.

(3) For greater certainty, investment does not mean claims to money that arise solely from: (a) commercial contracts for sale of goods or services; or (b) the extension of credit in connection with such commercial contracts.

## **Article 5. National Treatment**

1. Each Member State shall accord to investors of any other Member State treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the admission, establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory.

2. Each Member State shall accord to investments of investors of any other Member State treatment no less favourable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the admission, establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments.

## **Article 6. Most-favoured-nation Treatment (4)**

1. Each Member State shall accord to investors of another Member State treatment no less favourable than that it accords, in like circumstances, to investors of any other Member State or a non-Member State with respect to the admission, establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments.

2. Each Member State shall accord to investments of investors of another Member State treatment no less favourable than that it accords, in like circumstances, to investments in its territory of investors of any other Member State or a non-Member State with respect to the admission, establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments.

3. Paragraphs 1 and 2 shall not be construed so as to oblige a Member State to extend to investors or investments of other Member States the benefit of any treatment, preference or privilege resulting from:

(a) any sub-regional arrangements between and among Member States; (5) or

(b) any existing agreement notified by Member States to the AIA Council pursuant to Article 8(3) of the AIA Agreement. (6)

(4) For greater certainty: (a) this Article shall not apply to investor-State dispute settlement procedures that are available in other agreements to which Member States are party; and (b) in relation to investments falling within the scope of this Agreement, any preferential treatment granted by a Member State to investors of any other Member State or a non-Member State and to their investments, under any existing or 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.

(5) For greater certainty, sub-regional arrangements between and among Member States shall include but not be limited to Greater Mekong Sub-region (GMS), ASEAN Mekong Basin Development Cooperation (AMBDC), Indonesia-Malaysia-Thailand Growth Triangle (IMT-GT), Indonesia-Malaysia-Singapore Growth Triangle (IMS-GT), Brunei-Indonesia-Malaysia-Philippines East ASEAN Growth Area (BIMP-EAGA).

(6) This sub-paragraph refers to the Treaty of Amity and Economic Relations between the Kingdom of Thailand and the United States of America signed in Bangkok, Thailand on 29 May 1966.

## **Article 7. Prohibition of Performance Requirements**

1. The provisions of the Agreement on Trade-Related Investment Measures in Annex 1A to the WTO Agreement (TRIMs), which are not specifically mentioned in or modified by this Agreement, shall apply, mutatis mutandis, to this Agreement.

2. Member States shall undertake joint assessment on performance requirements no later than 2 years from the date of entry into force of this Agreement. The aim of such assessment shall include reviewing existing performance requirements and considering the need for additional commitments under this Article.

3. Non-WTO Members of ASEAN shall abide by the WTO provisions in accordance with their accession commitments to the

WTO.

## **Article 8. 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 this requirement does not materially impair the ability of the investor to exercise control over its investment.

## **Article 9. Reservations**

1. Articles 5 (National Treatment) and 8 (Senior Management and Board of Directors) shall not apply to:

(a) any existing measure that is maintained by a Member State at:

(i) the central level of government, as set out by that Member State in its reservation list in the Schedule referred to in paragraph 2;

(ii) the regional level of government, as set out by that Member State in its reservation list in the Schedule referred to in paragraph 2; and

(iii) a local level of government;

(b) the continuation or prompt renewal of any reservations referred to sub-paragraph (a).

2. Each Member State shall submit its reservation list to the ASEAN Secretariat for the endorsement of the AIA Council within 6 months after the date of signing of this Agreement. This list shall form a Schedule to this Agreement.

3. Any amendment or modification to any reservations contained in the Schedule referred to in paragraph 2 shall be in accordance with Article 10 (Modification of Commitments).

4. Each Member State shall reduce or eliminate the reservations specified in the Schedule in accordance with the three phases of the Strategic Schedule of the AEC Blueprint.

5. Articles 5 (National Treatment) and 6 (Most-Favoured-Nation Treatment) shall not apply to any measure covered by an exception to, or derogation from, the obligations under Articles 3 and 4 of the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement, as may be amended (TRIPS Agreement), as specifically provided in those Articles and in Article 5 of the TRIPS Agreement.

## **Article 10. Modification of Commitments**

1. For a period of 12 months from the date of entry into force of this Agreement, a Member State may adopt any measures or modify any of its reservations made in the Schedule under Article 9 (Reservations) for prospective applications to investors of any other Member States and their investments, provided that such measures or modification shall not adversely affect any existing investors and investments.

2. After the expiration of the period referred to in paragraph 1, a Member State may, by negotiation and agreement with any other Member States to which it made commitments under this Agreement, adopt any measure, or modify or withdraw such commitments and reservations, provided that such measure, modification or withdrawal shall not adversely affect any existing investors or investments. (7)

3. In any such negotiations and agreement referred to in paragraph 2, which may include provisions for compensatory adjustments with respect to other sectors, the Member States concerned shall maintain a general level of reciprocal and mutually advantageous commitments and reservations that is not less favourable to investors and investments than that provided for in this Agreement prior to such negotiations and agreements.

4. Notwithstanding paragraphs 1 and 2, a Member State shall not, under any measure adopted pursuant to this Article after the entry into force of this Agreement, require an investor of any other Member State, by reason of that investor's nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective, unless otherwise specified in the initial approval by the relevant authorities.

5. Any amendment or modification of the commitments and reservations in accordance with this Article shall be subject to the procedures prescribed in Annex 3 (Procedures for Amendment or Modification of Reservations).

(7) For the avoidance of doubt, Member States shall not adopt any measures or modify any of its reservation under the Schedule for a period of 6 months after the expiration of the period specified in paragraph 1.

## **Article 11. Treatment of Investment**

1. Each Member State shall accord to covered investments of investors of any other Member State, fair and equitable treatment and full protection and security.

2. For greater certainty:

(a) fair and equitable treatment requires each Member State not to deny justice in any legal or administrative proceedings in accordance with the principle of due process; and

(b) full protection and security requires each Member State to take such measures as may be reasonably necessary to ensure the protection and security of the covered investments.

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

## **Article 12. Compensation In Cases of Strife**

Each Member State shall accord to investors of any other Member State, in relation to their covered investments which suffered losses in its territory due to armed conflict or civil strife or state of emergency, non-discriminatory treatment with respect to restitution, compensation or other valuable consideration.

## **Article 13. Transfers**

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

(a) contributions to capital, including the initial contribution;

(b) profits, capital gains, dividends, royalties, license fees, technical assistance and technical and management fees, interest and other current income accruing from any covered investment;

(c) proceeds from the total or partial sale or liquidation of any covered investment;

(d) payments made under a contract, including a loan agreement;

(e) payments made pursuant to Articles 12 (Compensation in Cases of Strife) and 14 (Expropriation and Compensation);

(f) payments arising out of the settlement of a dispute by any means including adjudication, arbitration or the agreement of the Member States to the dispute; and

(g) earnings and other remuneration of personnel employed and allowed to work in connection with that covered investment in its territory.

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

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

(a) bankruptcy, insolvency, or the protection of the rights of creditors;

(b) issuing, trading, or dealing in securities, futures, options, or derivatives;

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

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

authorities;

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings;

(f) taxation;

(g) social security, public retirement, or compulsory savings schemes;

(h) severance entitlements of employees; and

(i) the requirement to register and satisfy other formalities imposed by the Central Bank and other relevant authorities of a Member State.

4. Nothing in this Agreement shall affect the rights and obligations of the Member States 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 Member State shall not impose restrictions on any capital transactions inconsistently with its specific commitments under this Agreement regarding such transactions, except:

(a) at the request of the IMF;

(b) under Article 16 (Measures to Safeguard the Balance-of-Payments); or

(c) where, in exceptional circumstances, movements of capital cause, or threaten to cause, serious economic or financial disturbance in the Member State concerned.

5. The measures taken in accordance with sub-paragraph 4(c) (8):

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

(b) shall not exceed those necessary to deal with the circumstances described in sub-paragraph 4(c);

(c) shall be temporary and shall be eliminated as soon as conditions no longer justify their institution or maintenance;

(d) shall promptly be notified to the other Member States;

(e) shall be applied such that any one of the other Member States is treated no less favourably than any other Member State or non-Member State;

(f) shall be applied on a national treatment basis; and

(g) shall avoid unnecessary damage to investors and covered investments, and the commercial, economic and financial interests of the other Member State(s).

(8) For greater certainty, any measures taken to ensure the stability of the exchange rate including to prevent speculative capital flows shall not be adopted or maintained for the purpose of protecting a particular sector.

## **Article 14. Expropriation and Compensation (9)**

1. A Member State shall not expropriate or nationalise a covered investment either directly or through measures equivalent to expropriation or nationalisation (expropriation), (10) except:

(a) for a public purpose;

(b) in a non-discriminatory manner;

(c) on payment of prompt, adequate, and effective compensation; and

(d) in accordance with due process of law.

2. The compensation referred to in sub-paragraph 1(c) shall:

(a) be paid without delay; (11)

(b) be equivalent to the fair market value of the expropriated investment immediately before or at the time when the expropriation was publicly announced, or when the expropriation occurred, whichever is applicable;

(c) not reflect any change in value because the intended expropriation had become known earlier; and

(d) be fully realisable and freely transferable in accordance with Article 13 (Transfers) between the territories of the Member States.

3. In the event of delay, the compensation shall include an appropriate interest in accordance with the laws and regulations of the Member State making the expropriation. 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. If an investor requests payment in a freely useable currency, the compensation referred to in sub-paragraph 1(c), including any accrued interest, shall be converted into the currency of payment at the market rate of exchange prevailing on the date of payment.

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

(9) This Article shall be read with Annex 2 (Expropriation and Compensation).

(10) For the avoidance of doubt, any measure of expropriation relating to land shall be as defined in the Member States respective 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.

(11) Member States understand that there may be legal and administrative processes that need to be observed before payment can be made.

## **Article 15. Subrogation**

1. If a Member State or an agency of a Member State makes a payment to an investor of that Member State under a guarantee, a contract of insurance or other form of indemnity it has granted on non-commercial risk in respect of an investment, the other Member State shall recognise the subrogation or transfer of any right or title in respect of such investment. The subrogated or transferred right or claim shall not be greater than the original right or claim of the Investor. This, however, does not necessarily imply recognition of the latter Member State of the merits of any case or the amount of any claims arising therefrom.

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

3. In the exercise of subrogated rights or claims, a Member State or the agency of the Member State exercising such rights or claims shall disclose the coverage of the claims arrangement with its investors to the relevant Member State.

## **Article 16. Measures to Safeguard the Balance-of-payments**

1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a Member State may adopt or maintain restrictions on payments or transfers related to investments. It is recognised that particular pressures on the balance-of-payments of a Member State 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) avoid unnecessary damage to the commercial, economic and financial interests of another Member State;

(c) not exceed those necessary to deal with the circumstances described in paragraph 1;

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

(e) be applied such that any one of the other Member States is treated no less favourably than any other Member State or non-Member State.

3. Any restrictions adopted or maintained under paragraph 1, or any changes therein, shall be promptly notified to the other



Member States.

4. To the extent that it does not duplicate the process under WTO, IMF, or any other similar processes, the Member State adopting any restrictions under paragraph 1 shall commence consultations with any other Member State that requests such consultations in order to review the restrictions adopted by it.

## **Article 17. 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 Member States or their investors where like conditions prevail, or a disguised restriction on investors of any other Member State and their investments, 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; (12)

(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 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;

(iii) safety;

(d) aimed at ensuring the equitable or effective (13) imposition or collection of direct taxes in respect of investments or investors of any Member State;

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

(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 the General Agreement on Trade in Services in Annex 1B to the WTO Agreement (GATS) shall be incorporated into and form an integral part of this Agreement, *mutatis mutandis*.

(12) The public order exception may be invoked by a Member State only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

(13) For the purpose of this sub-paragraph, footnote 6 of Article XIV of the General Agreement on Trade in Services in Annex 1B to the WTO Agreement (GATS) is incorporated into and forms an integral part of this Agreement, *mutatis mutandis*.

## **Article 18. Security Exceptions**

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, including but not limited to:

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

(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 in time of war or other emergency in domestic or international relations;

(iv) Action taken so as to protect critical public infrastructure, including communication, power and water infrastructures, from deliberate attempts intended to disable or degrade such infrastructure; or

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

## **Article 19. Denial of Benefits**

1. A Member State may deny the benefits of this Agreement to:

(a) an investor of another Member State that is a juridical person of such other Member State and to investments of such investor if an investor of a non-Member State owns or controls the juridical person and the juridical person has no substantive business operations in the territory of such other Member State;

(b) an investor of another Member State that is a juridical person of such other Member State and to investments of such investor if an investor of the denying Member State owns or controls the juridical person and the juridical person has no substantive business operations in the territory of such other Member State; and

(c) an investor of another Member State that is a juridical person of such other Member State and to an investment of such investor if investors of a non-Member State own or control the juridical person, and the denying Member State does not maintain diplomatic relations with the nonMember State.

2. Following notification to the Member State of the investor, and without prejudice to paragraph 1, a Member State may deny the benefits of this Agreement to investors of another Member State and to investments of that investor, where it establishes that such investor has made an investment in breach of the domestic laws of the denying Member State by misrepresenting its ownership in those areas of investment which are reserved for natural or juridical persons of the denying Member State.

3. A juridical person is:

(a) owned by an investor in accordance with the laws, regulations and national policies of each Member States;

(b) controlled by an investor if the investor has the power to name a majority of its directors or otherwise to legally direct its actions.

## **Article 20. Special Formalities and Disclosure of Information**

1. Nothing in Articles 5 (National Treatment) or 6 (Most Favoured-Nation Treatment) shall be construed to prevent a Member State from adopting or maintaining a measure that prescribes special formalities in connection with investments, including a requirement that investments be legally constituted or assume a certain legal form under the laws or regulations of the Member State and compliance with registration requirements, provided that such formalities do not materially impair the rights afforded by a Member State to investors of another Member State and investments pursuant to this Agreement.

2. Notwithstanding Articles 5 (National Treatment) or 6 (Most-Favoured-Nation Treatment), a Member State may require an investor of another Member State, or a covered investment, to provide information concerning that investment solely for informational or statistical purposes. The Member State shall protect any confidential information from any disclosure that would prejudice legitimate commercial interests or particular juridical persons, public or private or the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Member State from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

## **Article 21. Transparency**

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

(a) promptly and at least annually inform the AIA Council of any investment-related agreements or arrangements which it has entered into and where preferential treatment was granted;

(b) promptly and at least annually inform the AIA Council of the introduction of any new law or of any changes to existing laws, regulations or administrative guidelines, which significantly affect investments or commitments of a Member State under this Agreement;

(c) make publicly available, all relevant laws, regulations and administrative guidelines of general application that pertain to, or affect investments in the territory of the Member State; and

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

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

## **Article 22. Entry, Temporary Stay and Work of Investors and Key Personnel**

Subject to its immigration and labour laws, regulations and national policies relating to the entry, temporary stay and authorisation to work, and consistent with its commitments under AFAS, each Member State shall grant entry, temporary stay and authorisation to work to investors, executives, managers and members of the board of directors of a juridical person of any other Member State, for the purpose of establishing, developing, administering or advising on the operation in the territory of the former Member State of an investment to which they, or a juridical person of the other Member States that employs such executives, managers and members of the board of directors, have committed or are in the process of committing a substantial amount of capital or other resources.

## **Article 23. Special and Differential Treatment for the Newer Asean Member States**

In order to increase the benefits of this Agreement for the newer ASEAN Member States, and in accordance with the objectives and principles set out in the Preamble and Articles 1 (Objective) and 2 (Guiding Principles), Member States recognise the importance of according special and differential treatment to the newer ASEAN Member States, through:

- (a) technical assistance to strengthen their capacity in relation to investment policies and promotion, including in areas such as human resource development;
- (b) commitments in areas of interest to the newer ASEAN Member States; and
- (c) recognising that commitments by each newer ASEAN Member State may be made in accordance with its individual stage of development.

## **Article 24. Promotion of Investment**

Member States shall cooperate in increasing awareness of ASEAN as an integrated investment area in order to increase foreign investment into ASEAN and intra-ASEAN investments through, among others:

- (a) encouraging the growth and development of ASEAN small and medium enterprises and multinational enterprises;
- (b) enhancing industrial complementation and production networks among multi-national enterprises in ASEAN;
- (c) organising investment missions that focus on developing regional clusters and production networks;
- (d) organising and supporting the organisation of various briefings and seminars on investment opportunities and on investment laws, regulations and policies; and
- (e) conducting exchanges on other issues of mutual concern relating to investment promotion.

## **Article 25. Facilitation of Investment**

Member States shall endeavour to cooperate in the facilitation of investments into and within ASEAN through, among others:

- (a) creating the necessary environment for all forms of investments;
- (b) streamlining and simplifying procedures for investment applications and approvals;
- (c) promoting dissemination of investment information, including investment rules, regulations, policies and procedures;
- (d) establishing one-stop investment centres;
- (e) strengthening databases on all forms of investments for policy formulation to improve ASEANs investment environment;

- (f) undertaking consultation with the business community on investment matters; and
- (g) providing advisory services to the business community of the other Member States.

## **Article 26. Enhancing Asean Integration**

Member States recognise the importance of fostering ASEAN economic integration through various initiatives, including the Initiative for ASEAN Integration, Priority Integration Sectors, and AEC, all of which include cooperation on investment. In order to enhance ASEAN economic integration, Member States shall endeavour to, among others:

- (a) harmonise, where possible, investment policies and measures to achieve industrial complementation;
- (b) build and strengthen capacity of Member States, including human resource development, in the formulation and improvement of investment policies to attract investment;
- (c) share information on investment policies and best practices, including promoted activities and industries; and
- (d) support investment promotion efforts amongst Member States for mutual benefits.

## **Article 27. Disputes between or Among Member States**

The ASEAN Protocol on Enhanced Dispute Settlement Mechanism signed in Vientiane, Lao PDR on 29 November 2004, as amended, shall apply to the settlement of disputes concerning the interpretation or application of this Agreement.

## **Section B. Investment Dispute between an Investor and a Member State**

### **Article 28. Definitions**

For the purpose of this Section:

(a) Appointing Authority means:

- (i) in the case of arbitration under Article 33(1)(b) or (c), the Secretary-General of ICSID;
- (ii) in the case of arbitration under Article 33(1)(d), the Secretary-General of the Permanent Court of Arbitration; or
- (iii) in the case of arbitration under Article 33(1)(e) and (f), the Secretary-General, or a person holding equivalent position, of that arbitration centre or institution;

(b) disputing investor means an investor of a Member State that makes a claim on its own behalf under this Section, and where relevant, includes an investor of a Member State that makes a claim on behalf of a juridical person of the other Member State that the investor owns or controls;

(c) disputing Member State means a Member State against which a claim is made under this Section;

(d) disputing parties means a disputing investor and a disputing Member State;

(e) ICSID means the International Centre for Settlement of Investment Disputes;

(f) ICSID Additional Facility Rules means the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes;

(g) ICSID Convention means the Convention on the Settlement of Investment Disputes between States and National of other States, done at Washington, D.C., United States of America on 18 March 1965;

(h) New York Convention means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, United States of America on 10 June 1958;

(i) non-disputing Member State means the Member State of the disputing investor; and

(j) UNCITRAL Arbitration Rules means the arbitration rules of the United Nations Commission on International Trade Law, approved by the United Nations General Assembly on 15 December 1976.

## **Article 29. Scope of Coverage**

1. This Section shall apply to an investment dispute between a Member State and an investor of another Member State that has incurred loss or damage by reason of an alleged breach of any rights conferred by this Agreement with respect to the investment of that investor.
2. A natural person possessing the nationality or citizenship of a Member State shall not pursue a claim against that Member State under this Section.
3. This Section shall not apply to claims arising out of events which occurred, or claims which have been raised prior to the entry into force of this Agreement.
4. Nothing in this Section shall be construed so as to prevent a disputing investor from seeking administrative or judicial settlement available within the country of a disputing Member State.

## **Article 30. Conciliation**

1. The disputing parties may at any time agree to conciliation, which may begin at any time and be terminated at the request of the disputing investor at any time.
2. If the disputing parties agree, procedures for conciliation may continue while procedures provided for in Article 33 (Submission of a Claim) are in progress.
3. Proceedings involving conciliation and positions taken by the disputing parties during these proceedings shall be without prejudice to the rights of either disputing parties in any further proceedings under this Section.

## **Article 31. Consultations**

1. In the event of an investment dispute, the disputing parties shall initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third party procedures. Such consultations shall be initiated by a written request for consultations delivered by the disputing investor to the disputing Member State.
2. Consultations shall commence within 30 days of receipt by the disputing Member State of the request for consultations, unless the disputing parties otherwise agree.
3. With the objective of resolving an investment dispute through consultations, a disputing investor shall make all reasonable efforts to provide the disputing Member State, prior to the commencement of consultations, with information regarding the legal and factual basis for the investment dispute.

## **Article 32. Claim by an Investor of a Member State**

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

- (a) that the disputing Member State has breached an obligation arising under Articles 5 (National Treatment), 6 (Most-Favoured-Nation Treatment), 8 (Senior Management and Board of Directors), 11 (Treatment of Investment), 12 (Compensation in Cases of Strife), 13 (Transfers) and 14 (Expropriation and Compensation) relating to the management, conduct, operation or sale or other disposition of a covered investment; and
- (b) that the disputing investor in relation to its covered investment has incurred loss or damage by reason of or arising out of that breach.

## **Article 33. Submission of a Claim**

1. A disputing investor may submit a claim referred to in Article 32 (Claim by an Investor of a Member State) at the choice of the disputing investor:
  - (a) to the courts or administrative tribunals of the disputing Member State, provided that such courts or tribunals have jurisdiction over such claims; or
  - (b) under the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings, (14) provided that both the disputing Member State and the non-disputing Member State are parties to the ICSID Convention; or

(c) under the ICSID Additional Facility Rules, provided that either of the disputing Member State or the non-disputing Member State is a party to the ICSID Convention; or

(d) under the UNCITRAL Arbitration Rules; or

(e) to the Regional Centre for Arbitration at Kuala Lumpur or any other regional centre for arbitration in ASEAN; or

(f) if the disputing parties agree, to any other arbitration institution, provided that resort to any arbitration rules or fora under sub-paragraphs (a) to (f) shall exclude resort to the other.

2. A claim shall be deemed submitted to arbitration under this Section when the disputing investors notice of or request for arbitration (notice of arbitration) is received under the applicable arbitration rules.

3. The arbitration rules applicable under paragraph 1, as in effect on the date the claim or claims were submitted to arbitration under this Section, shall govern the arbitration except to the extent modified by this Agreement.

4. In relation to a specific investment dispute or class of disputes, the applicable arbitration rules may be waived, varied or modified by written agreement between the disputing parties. Such rules shall be binding on the relevant tribunal or tribunals established under this Section, and on individual arbitrators serving on such tribunals.

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

(a) the name of the arbitrator that the disputing investor appoints; or

(b) the disputing investors written consent for the Appointing Authority to appoint that arbitrator.

(14) In the case of the Philippines, submission of a claim to ICSID 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 34. Conditions and Limitations on Submission of a Claim**

1. The dispute shall be submitted to arbitration under Article 33(1)(b) to (f) in accordance with this Section, and shall be conditional upon:

(a) the submission of the investment dispute to such arbitration taking place within 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 disputing investor or a covered investment; and

(b) the disputing investor providing written notice, which shall be submitted at least 90 days before the claim is submitted, to the disputing Member State of its intent to submit the investment dispute to such arbitration and which briefly summarises the alleged breach of the disputing Member State under this Agreement (including the provisions alleged to have been breached) and the loss or damage allegedly caused to the disputing investor or a covered investment; and

(c) the notice of arbitration under Article 33(2) being accompanied by the disputing investors written waiver of the disputing investors right to initiate or continue any proceedings before the courts or administrative tribunals of the disputing Member State, or other dispute settlement procedures, of any proceeding with respect to any measure alleged to constitute a breach referred to in Article 32 (Claim by an Investor of a Member State).

2. Notwithstanding sub-paragraph 1(c), the disputing investor shall not be prevented from initiating or continuing an action that seeks interim measures of protection for the sole purpose of preserving the disputing investors rights and interests and does not involve the payment of damages or resolution of the substance of the matter in dispute, before the courts or administrative tribunals of the disputing Member State.

3. A Member State shall not give diplomatic protection, or bring an international claim, in respect of a dispute which one of its investors and the other Member State have consented to submit or have submitted to arbitration under this Section, unless such other Member State has failed to abide by and comply with the award rendered in such dispute. Diplomatic protection, for the purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

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

## **Article 35. Selection of Arbitrators**

1. Unless the disputing parties otherwise agree, the tribunal shall comprise three arbitrators:

(a) one arbitrator appointed by each of the disputing parties; and

(b) the third arbitrator, who shall be the presiding arbitrator, appointed by agreement of the disputing parties. The third arbitrator shall be a national of a non-Member State which has diplomatic relations with the disputing Member State and non-disputing Member State, and shall not have permanent residence in either the disputing Member State or non-disputing Member State.

2. Any person appointed as an arbitrator shall have expertise or experience in public international law, international trade or international investment rules. An arbitrator shall be chosen strictly on the basis of objectivity, reliability, sound judgment and independence and shall conduct himself or herself on the same basis throughout the course of the arbitral proceedings.

3. Subject to Article 36 (Conduct of the Arbitration), if a tribunal has not been constituted within 75 days from the date that a claim is submitted to arbitration under this Section, the Appointing Authority, on the request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators who have not been appointed.

4. The tribunal shall reach its decisions by a majority of votes and its decisions shall be binding.

5. The parties to the dispute shall bear the cost of their respective arbitrators to the tribunal and share equally the cost of the presiding arbitrator and other relevant costs. In all other respects, the tribunal shall determine its own procedures.

6. The disputing parties may establish rules relating to expenses incurred by the tribunal, including remuneration of the arbitrators.

7. Where any arbitrator appointed as provided for in this Article resigns or becomes unable to act, a successor shall be appointed in the same manner as prescribed for the appointment of the original arbitrator and the successor shall have all the powers and duties of the original arbitrator.

## **Article 36. Conduct of the Arbitration**

1. Where issues relating to jurisdiction or admissibility are raised as preliminary objections, the tribunal shall decide the matter before proceeding to the merits.

2. A disputing Member State may, no later than 30 days after the constitution of the tribunal, file an objection that a claim is manifestly without merit. A disputing Member State may also file an objection that a claim is otherwise outside the jurisdiction or competence of the tribunal. The disputing Member State shall specify as precisely as possible the basis for the objection.

3. The tribunal shall address any such objection as a preliminary question apart from the merits of the claim. The disputing parties shall be given a reasonable opportunity to present their views and observations to the tribunal. If the tribunal decides that the claim is manifestly without merit, or is otherwise not within the jurisdiction or competence of the tribunal, it shall render an award to that effect.

4. The tribunal may, if warranted, award the prevailing party reasonable costs and fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claim or the objection was frivolous or manifestly without merit, and shall provide the disputing parties a reasonable opportunity to comment.

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

6. Where an investment dispute relate to a measure which may be a taxation measure, the disputing Member State and the non-disputing Member State, including representatives of their tax administrations, shall hold consultations to determine whether the measure in question is a taxation measure.

7. Where a disputing investor claims that the disputing Member State has breached Article 14 (Expropriation and Compensation) by the adoption or enforcement of a taxation measure, the disputing Member State and the non-disputing Member State shall, upon request from the disputing Member State, hold consultations with a view to determining whether

the taxation measure in question has an effect equivalent to expropriation or nationalisation.

8. Any tribunal that may be established under this Section shall accord serious consideration to the decision of both Member States under paragraphs 6 and 7.

9. If both Member States fail either to initiate such consultations referred to paragraphs 6 and 7, or to make such joint decisions, within the period of 180 days from the date of the receipt of request for consultation referred to in Article 31 (Consultations), the disputing investor shall not be prevented from submitting its claim to arbitration in accordance with this Section.

### **Article 37. Consolidation**

Where two or more claims have been submitted separately to arbitration under Article 32 (Claim by an Investor of a Member State) and the claims have a question of law or fact in common and arise out of the same or similar events or circumstances, all concerned disputing parties may agree to consolidate those claims in any manner they deem appropriate.

### **Article 38. Expert Reports**

Without prejudice to the appointment of other kinds of experts where authorised by the applicable arbitration rules, the tribunal, at the request of the disputing parties, may appoint one or more experts to report to it in writing on any factual issue concerning environmental, public health, safety or other scientific matters raised by a disputing party in a proceeding, subject to such terms and conditions as the disputing parties may agree.

### **Article 39. Transparency of Arbitral Proceedings**

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

2. Any of the disputing parties that intend to use information designated as confidential information in a hearing shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect the information from disclosure.

3. Any information specifically designated as confidential that is submitted to the tribunal or the disputing parties shall be protected from disclosure to the public.

4. A disputing party may disclose to persons directly connected with the arbitral proceedings such confidential information as it considers necessary for the preparation of its case, but it shall require that such confidential information is protected.

5. The tribunal shall not require a Member State to furnish or allow access to information the disclosure of which would impede law enforcement or would be contrary to the Member States law protecting Cabinet confidences, personal privacy or the financial affairs and accounts of individual customers of financial institutions, or which it determines to be contrary to its essential security.

6. The non-disputing Member State shall be entitled, at its cost, to receive from the disputing Member State a copy of the notice of arbitration, no later than 30 days after the date that such document has been delivered to the disputing Member State. The disputing Member State shall notify all other Member States of the receipt of the notice of arbitration within 30 days thereof.

### **Article 40. Governing Law**

1. Subject to paragraphs 2 and 3, when a claim is submitted under Article 33 (Submission of a Claim), the tribunal shall decide the issues in dispute in accordance with this Agreement, any other applicable agreements between the Member States, and the applicable rules of international law and where applicable, any relevant domestic law of the disputing Member State.

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

3. A joint decision of the Member States, declaring their interpretation of a provision of this Agreement shall be binding on a



tribunal, and any decision or award issued by a tribunal must be consistent with that joint decision.

## **Article 41. Awards**

1. The disputing parties may agree on a resolution of the dispute at any time before the tribunal issues its final award.
2. Where a tribunal makes a final award against either of the disputing parties, the tribunal may award, separately or in combination, only:
  - (a) monetary damages and any applicable interest; and
  - (b) restitution of property, in which case the award shall provide that the disputing Member State may pay monetary damages and any applicable interest in lieu of restitution.
3. A tribunal may also award costs and attorneys fees in accordance with this Agreement and the applicable arbitration rules.
4. A tribunal may not award punitive damages.
5. An award made by a tribunal shall have no binding force except between the disputing parties and in respect of the particular case.
6. Subject to paragraph 7 and the applicable review procedure for an interim award, the disputing party shall abide by and comply with an award without delay. (15)
7. The disputing party may not seek enforcement of a final award until:
  - (a) in the case of a final award under the ICSID Convention:
    - (i) 120 days has elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or
    - (ii) revision or annulment proceedings have been completed;
  - (b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected pursuant to Article 33(1)(e):
    - (i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside, or annul the award; or
    - (ii) a court has dismissed or allowed an application to revise, set aside, or annul the award and there is no further appeal.
8. A claim that is submitted for arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for purposes of Article 1 of the New York Convention.
9. Each Member State shall provide for the enforcement of an award in its territory.

(15) The Parties understand that there may be domestic legal and administrative processes that need to be observed before an award can be complied with.

## **Article 42. Institutional Arrangements**

1. The AIA Council, as established by the AEM under the AIA Agreement, shall be responsible for the implementation of this Agreement.
2. The ASEAN Coordinating Committee on Investment (CCI) as established by the AIA Council and comprising senior officials responsible for investment and other senior officials from relevant government agencies, shall assist the AIA Council in the performance of its functions. The CCI shall report to the AIA Council through the Senior Economic Officials Meeting (SEOM). The ASEAN Secretariat shall be the secretariat for the AIA Council and the CCI.
3. The functions of the AIA Council shall be to:
  - (a) provide policy guidance on global and regional investment matters concerning promotion, facilitation, protection, and liberalisation;

- (b) oversee, coordinate and review the implementation of this Agreement;
- (c) update the AEM on the implementation and operation of this Agreement;
- (d) consider and recommend to the AEM any amendments to this Agreement;
- (e) Update and endorse the Reservation Lists of this Agreement;
- (f) facilitate the avoidance and settlement of disputes arising from this Agreement;
- (g) supervise and coordinate the work of the CCI;
- (h) adopt any necessary decisions; and
- (i) carry out any other functions as the AEM may agree.

### **Article 43. Consultations by Member States**

The Member States agree to consult each other at the request of any Member State on any matter relating to investments covered by this Agreement, or otherwise affecting the implementation of this Agreement.

### **Article 44. Relation to other Agreements**

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

### **Article 45. Annexes, Schedule and Future Instruments**

This Agreement shall include the Annexes, the Schedule and the contents therein, which shall form an integral part of this Agreement, and all future legal instruments agreed pursuant to this Agreement.

### **Article 46. Amendments**

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

### **Article 47. Transitional Arrangements Relating to the Asean Iga and the Aia Agreement**

1. Upon the entry into force of this Agreement, the ASEAN IGA and the AIA Agreement shall be terminated.
2. Notwithstanding the termination of the AIA Agreement, the Temporary Exclusion List and the Sensitive List to the AIA Agreement shall apply to the liberalisation provisions of the ACIA, mutatis mutandis, until such time that the Reservation List of ACIA comes into force.
3. With respect to investments falling within the ambit of this Agreement as well as under the ASEAN IGA, or within the ambit of this Agreement and the AIA Agreement, investors of these investments may choose to apply the provisions, but only in its entirety, of either this Agreement or the ASEAN IGA or the AIA Agreement, as the case may be, for a period of 3 years after the date of termination of the ASEAN IGA and the AIA Agreement.

### **Article 48. Entry Into Force**

1. This Agreement shall enter into force after all Member States have notified or, where necessary, deposited instruments of ratification with the Secretary-General of ASEAN, which shall not take more than 180 days after the signing of this Agreement.
2. 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 1.

### **Article 49. Depositary**

This Agreement shall be deposited with the Secretary-General of ASEAN, who shall promptly furnish a certified copy thereof

to each Member State.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this ASEAN Comprehensive Investment Agreement.

DONE at Cha-am, Thailand, this 26 th Day of February in the Year Two Thousand and Nine, in a single original copy in the English language.

For Brunei Darussalam:

LIM JOCK SENG

Second 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

## **ANNEX 1. Approval in writing**

Where specific approval in writing is required for covered investments by a Member States domestic laws, regulations and national policies, that Member State shall:

- (a) inform all the other Member States through the ASEAN Secretariat of the contact details of its competent authority responsible for granting such approval;
- (b) in the case of an incomplete application, identify and notify the applicant in writing within 1 month from the date of receipt of such application of all the additional information that is required;
- (c) inform the applicant in writing that the investment has been specifically approved or denied within 4 months from the date of receipt of complete application by the competent authority; and
- (d) in the case an application is denied, inform the applicant in writing of the reasons for such denial. The applicant shall have the opportunity of submitting, at that applicants discretion, a new application.

## **ANNEX 2. Expropriation and compensation**

1. An action or a series of related actions by a Member State cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in a covered investment.

2. Article 14(1) addresses two situations:

- (a) the first situation is where an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure; and
- (b) the second situation is where an action or series of related actions by a Member State has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

3. The determination of whether an action or series of actions by a Member State, in a specific fact situation, constitutes an expropriation of the type referred to in subparagraph 2(b), requires a case-by-case, fact-based inquiry that considers, among other factors:

- (a) the economic impact of the government action, although the fact that an action or series of actions by a Member State has an adverse effect on the economic value of an investment, standing alone, does not establish that such an expropriation has occurred;
- (b) whether the government action breaches the governments prior binding written commitment to the investor whether by contract, licence or other legal document; and
- (c) the character of the government action, including, its objective and whether the action is disproportionate to the public purpose referred to in Article 14(1).

4. Non-discriminatory measures of a Member State that are designed and applied to protect legitimate public welfare objectives, such as public health, safety and the environment, do not constitute an expropriation of the type referred to in sub-paragraph 2(b).

## **Modality for the elimination/improvement of investment restrictions and impediments in asean member states**

### **BACKGROUND**

1. According to the ASEAN Economic Community (AEC) Blueprint, ASEAN Member States (AMS) are obliged to start the progressive reduction/elimination of investment restrictions and impediments to be able to achieve free and open investment by the end of 2015. Further to this, for purposes of Articles 9 (Reservations) and 21 (Transparency) of the ASEAN Comprehensive Investment Agreement (ACIA), Member States, through the Coordinating Committee on Investment (CCI), are required to report annually to the ASEAN Investment Area (AIA) Council through the ASEAN Secretariat on any reduction/elimination of the measures in the Reservations Lists undertaken by Member States.

## **SELF-SELECTION MODALITY**

### **A. INTRODUCTION**

2. This modality aims to provide an AMS with a structured phased approach based on the AEC Blueprint schedules to progressively reduce/eliminate investment restrictions and impediments taken by AMS. These restrictions/impediments are reflected in the respective investment reservation lists under the Schedule to ACIA.

### **B. DEFINITIONS**

3. For the purposes of this modality:

- Elimination means the discontinuation/abolition of the measure/or deletion of a sector/sub-sector.
- Improvement means progressive liberalisation of a measure or scoping down where the measure is gradually narrowed/reduced by making it more specific in terms of the description/scope and number of limitations in the measure.

### **C. PROCEDURES**

4. The modality comprises of three components:

- Component 1: Reservations Not Subject to the Elimination/ Improvement
- Component 2: Reservations Subject to Elimination/ Improvement (in accordance with the 3 phases
- Component 3: CCI Peer Review Mechanism

#### **Component 1: Reservations Not Subject to the Elimination/Improvement**

5. Each Member State shall follow the non-exhaustive approach in which there will be no specific list for this Component.
6. Under this approach, Component 1 could cover, but not limited to, land use/ownership, measures prescribed under international conventions where investment is restricted, general exceptions, security exceptions and Constitutional constraints.
7. Each Member State shall self-select the reservations for placement in this Component with justifications provided to CCI for its information.

#### **Component 2: Reservations subject to Elimination/Improvement**

8. Each Member State shall self-select the reservations to be eliminated and/or improved according to the three phases of the AEC Blueprint Strategic Schedule and as agreed in this Modality.
9. Priority should be given to phase-out the ACIA Reservations that were previously contained in the Temporary Exclusion Lists under the ASEAN Investment Area (AIA) Agreement.
10. Elimination and/or improvement of the remaining reservations shall be progressively implemented according to the AEC Strategic Schedule and country-specific characteristics.

#### **Component 3: CCI Peer Review Mechanism**

11. Objective: The CCI Peer Review Mechanism is aimed at monitoring adherence by Member States to the modality for the elimination/improvement of investment impediments and restrictions.
12. Activities:
- a. Peer Reviewing: The peer review process will be part of the agenda for every CCI meeting, which will involve the following:
    - i. Submission of internal written reports by all AMS on the progress made, if any, on the respective country implementation of this modality, with a brief presentation of overall economic situation/investment climate, especially policy context of the elimination and improvements to enable a better understanding of the rationale behind the progress made.
    - ii. Discussion on any new reservations in relation to (a) new and emerging sectors, sub-sectors, industries, products or activities; or (b) existing sectors, sub-sectors, industries, products, or activities; which were unregulated at the time of submission of the original reservation lists.
    - iii. Discussion and clarification with the view to further eliminate/improve investment impediments and restrictions.
  - b. Any

amendments to the ACIA Reservation Lists as a result of the CCI Peer Review process will be subject to the Article 10 (Modification of Commitments) of the ACIA.

## **Protocol to amend the asean comprehensive investment agreement**

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

RECALLING the ASEAN Comprehensive — Investment Agreement (hereinafter referred to as the "ACIA") signed on 26 February 2009 which aims to create a free and open investment regime in ASEAN in order to achieve the end goal of economic integration under the ASEAN Economic Community (AEC) in accordance with the AEC Blueprint;

RECOGNISING the need to provide clarity to Article 9 (Reservations) and Article 10 (Modification of Commitments) of the ACIA and to adopt an efficient mechanism to effect any changes in each Member State's reservation list following subsequent amendments or modifications; and

NOTING that Article 46 (Amendments) of the ACIA provides that the provisions of the ACIA may be modified through amendments mutually agreed upon in writing by the Member States,

HAVE AGREED AS FOLLOWS:

### **1. Amendment to Article 9 (reservations) of the Acia**

Article 9. shall be amended to read as follows:

"4. Each Member State shall reduce or eliminate the reservations specified in the Schedule in accordance with the three phases of the Strategic Schedule of the AEC Blueprint."

### **2. Amendments to Article 10 (modification of Commitments) of the Acia**

1. Article 10(1) shall be amended to read as follows:

"4. For a period of 12 months from the date of entry into force of this Agreement, a Member State may adopt any measures or modify any of its reservations made in the Schedule under Article 9 (Reservations) for prospective applications to investors of any other Member States and their investments, provided that such measures or modification shall not adversely affect any existing investors and investments."

2. The following new paragraph shall be inserted after Article 10(4):

"5. Any amendment or modification of the commitments and reservations in accordance with this Article shall be subject to the procedures prescribed in Annex 3 (Procedures for Amendment or Modification of Reservations)."

### **3. Amendments to Article 42 (institutional Arrangements) of the Acia**

Article 42. shall be amended as follows:

1. The following new sub-paragraph shall be inserted after sub-paragraph (d):

'(e) update and endorse the Reservation Lists of this Agreement;'

2. The existing sub-paragraphs (e), (f), (g) and (h) shall be renumbered accordingly.

### **4. Insertion of Annex 3 to the Acia**

The following shall be inserted as Annex 3:

"ANNEX 3 Procedures for Amendment or Modification of Reservations

1. Any amendment or modification of a Member State's reservations in the Schedule to this Agreement may be made:

(a) For the reduction or elimination of reservations under Article 9(4);

(b) For the modification of reservations within 12 months from the date of entry into force of this Agreement under Article 10(1); and

2. For the modification or withdrawal of commitments and reservations after the expiration of the period referred to in subparagraph (b) above, subject to negotiation and agreement under Article 10(2).

The procedures for amendment or modification of reservations under sub-paragraphs 1(a) and 1(b) above shall be as follows:

(a) A Member State intending to amend or modify its reservation (hereinafter referred to as "Modifying Member State") shall submit a Notification to the Coordinating Committee on Investment (CCI) with a copy furnished to the ASEAN Secretariat. The Notification shall include details of the proposal, such as the reservation being amended or modified, in whole or in part, and the exact nature of the proposed changes. The Template for the Notification is attached as Appendix 1;

(b) The Modifying Member State shall append to the Notification a draft Supplementary Note and the draft reservation containing the proposed amendment or modification. The Template for the Supplementary Note is attached as Appendix 2:

(c) Any other Member State may seek clarification on the proposed amendment or modification within 10 days from the date of receipt of the Notification;

(d) The Modifying Member State shall provide additional information or clarification as sought by the other Member States within 5 days from the date of receipt of the request;

(e) The CCI shall inter-sessionally within 30 days from the date of receipt of the Notification or at its next meeting, whichever is earlier, discuss the proposed amendment or modification, and may exchange views on improving the language of the amended or modified reservation, where appropriate, for clarity and specificity;

(f) After the CCI completes its discussion and exchange of views, it shall inter-sessionally within 5 days after the completion of the discussions or at its next meeting, whichever is earlier, submit a report on the proposed amendment or modification and include the Supplementary Note and the draft reservation for the endorsement of the AIA Council through the Secretary-General of ASEAN;

(g) The amendment or modification and any clarification made thereto shall be noted by the CCI and the AIA Council in their next respective meetings;

(h) The amended or modified reservations shall take effect on the date of the receipt by the Secretary-General of ASEAN of the last of the letters of endorsement of the amendment or modification from the other Member States; and

(i) The endorsement by the AIA Council, the Supplementary Note and the amended or modified reservation of the Modifying Member State shall be deposited with the ASEAN Secretariat, who shall promptly furnish certified copies thereof to each Member State.

3. The provisions set forth in paragraph 2 above shall apply, mutatis mutandis, to the modification or withdrawal of commitments and reservations under sub-paragraph 1(c) with the additional procedures as follows:

(a) Within 30 days from the date of receipt of the Notification for modification or withdrawal, any Member State who considers its interest affected shall communicate in writing to the Modifying Member State its intent to engage in consultations or negotiations with a copy furnished to the ASEAN Secretariat. The ASEAN Secretariat shall also notify the other Member States of such intent;

(b) The Member States concerned shall negotiate with a view to reaching an agreement within 45 days from the date that the communication under sub-paragraph 3(a) was made;

(c) Upon completion of the negotiations, the Member States concerned shall make a joint report on the outcome, which may include provisions for compensatory adjustment. The Modifying Member State shall then submit such report to the CCI;

(d) After the receipt of the joint report under sub-paragraph 3(c), the CCI shall inter-sessionally within 5 days or at its next meeting, whichever is earlier, commence discussion or exchange views on improving the language of the amended or modified reservations, where appropriate, for the purpose of clarity and specificity; and

(e) Thereafter, the procedure shall continue as set out under sub-paragraphs 2(f), 2(g), 2(h) and 2(i) above.

4. The AIA Council may, at the request of a Member State, review the procedures set out in this Annex. The CCI, as directed

by the AIA Council, shall undertake the review and submit its recommendations to the AIA Council. Upon the approval by the AIA Council, the procedures shall be amended."

## **5. Transitory Provisions**

All modifications of reservations made pursuant to Article 10(1) of the ACIA and endorsed by the AIA Council at the AEM-15" AIA Council on 27 August 2012 in Siem Reap, Cambodia, shall be deemed effective from that date.

## **6. Final Provisions**

1. This Protocol shall form an integral part of the ACIA and shall enter into force after all Member States have notified the completion of their internal procedures for the entry into force of this Protocol to, or, where necessary, deposited instruments of ratification or acceptance with, the Secretary-General of ASEAN.

2. The Secretary-General of ASEAN shall promptly notify all Member States of the notifications or deposit of each instrument of ratification or acceptance referred to in paragraph 1.

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

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Protocol to Amend the ASEAN Comprehensive Investment Agreement.

Done at Nay Pyi Taw, Myanmar, this Twenty-Sixth Day of August in the Year Two Thousand and Fourteen, in a single original copy in the English language.

For Brunei Darussalam:

LIM JOCK SENG

Second Minister of Foreign Affairs and Trade

For the Kingdom of Cambodia:

SUN CHANTHOL

Senior Minister, Minister of Commerce Vice Chairman of the Council for the Development of Cambodia

For the Republic of Indonesia:

MUHAMMAD LUTFI

Minister of Trade

For the Lao People's Democratic Republic:

KHEMMANI PHOLSENA

Minister of Industry and Commerce

For Malaysia:

MUSTAPA MOHAMED

Minister of International Trade and Industry

For the Republic of the Union of Myanmar:

KAN ZAW

Union Minister for National Planning and Economic Development

For the Republic of the Philippines:

GREGORY L. DOMINGO

Secretary of Trade and Industry



For the Republic of Singapore:

LIM HNG KIANG

Minister for Trade and Industry

For the Kingdom of Thailand:

CHUTIMA BUNYAPRAPHASARA

Permanent Secretary Acting for the Minister of Commerce

For the Socialist Republic of Viet Nam:

VU HUY HOANG

Minister of Industry and Trade

## Appendix 1. Template for notification

NOTIFICATION TO AMEND OR MODIFY THE ACIA RESERVATION LIST
Modifying Member State:
Date of Notification:
Reservation Number to be Modified:
Sector and/or Subsector to be Modified:
Type or Nature of Modification:
Rationale for Modification:
Source of Measure (copy may be provided):

## Appendix 2. Supplementary note

Country xxxx/RL no: xx /Rev. xx

Date/Month/Year: [xx/xx/oon]

COUNTRY: XXXX

Schedule of ACIA

Supplement 1

(This is authentic in English only)

This text replaces ACIA Reservation List No. X, XX and XXX of Country XXXX

(Description of the Amendment or Modification)

## Second protocol to amend the asean comprehensive investment agreement

The Governments of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Republic of the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand, and the Socialist Republic of Viet Nam, Member States of the Association of Southeast Asian Nations

("ASEAN "), hereinafter collectively referred to as "Member States" or singularly as "Member State"

RECALLING the ASEAN Comprehensive Investment Agreement (hereinafter referred to as the "ACIA") signed on 26 February 2009 and which entered into force on 29 March 2012, which aims to create a free and open investment regime in ASEAN in order to achieve the end goal of economic integration under the ASEAN Economic Community ("AEC");

RECOGNISING the different regimes of each Member State on the treatment of permanent residents under the ACIA;

CONSIDERING the developments on the World Trade Organization ("WTO") membership of Member States and the outcome of the joint assessment on performance requirements pursuant to Article 7 (Prohibition of Performance Requirements) of ACIA;

RECALLING the decisions made during the ASEAN Economic Ministers -181h ASEAN Investment Area Council Meeting on 22 August 2015 in Kuala Lumpur, Malaysia on the treatment of permanent residents and Prohibition of Performance Requirements under the ACIA built-in agenda; and

NOTING that Article 46 (Amendments) of the ACIA provides that the provisions of the ACIA may be modified through amendments mutually agreed upon in writing by the Member States,

HAVE AGREED AS FOLLOWS:

## **1. Amendment to the Definition of 'natural Person'**

1. Subparagraph (g) of Article 4 (Definitions) shall be replaced as follows:

"(g) "natural person" 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 is making or has made an investment 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 investment."

2. Pursuant to the amendment of the definition of "natural person" as in paragraph 1, paragraph 6 of the ACIA Headnote for the List of Reservations shall be deleted.

3. Succeeding paragraphs in the ACIA Headnote shall be renumbered accordingly.

## **2. Amendments to Article 7 (prohibition of Performance Requirements)'**

1. Paragraph 2 shall be replaced as follows:

"2. Member States shall undertake assessment and review of their existing performance requirements and consider additional commitments under this Article, as the need arises."

2. Paragraph 3 as provided below shall be deleted:

"3. Non-WTO Members of ASEAN shall abide by the WTO provisions in accordance with their accession commitments to the WTO."

## **3. Final Provisions'**

1. This Protocol shall form an integral part of the ACIA and shall enter into force after all Member States have notified the completion of their respective internal procedures for the entry into force of this Protocol to, or, where necessary, deposited instruments of ratification or acceptance with, the Secretary-General of ASEAN.

2. The Secretary-General of ASEAN shall promptly notify all Member States of the notifications or deposit of each instrument of ratification or acceptance referred to in paragraph 1.

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

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Protocol

to Amend the ASEAN Comprehensive Investment Agreement. DONE at Ha-Noi, Vietnam, this Twenty-First day of September in the Year Two Thousand and Seventeen, in a single original copy in the English language.

For Brunei Darussalam:

LIM JOCK SENG

Minister at the Prime Minister's Office and Second Minister of Foreign Affairs and Trade

For the Kingdom of Cambodia:

PAN SORASAK

Minister of Commerce

For the Republic of Indonesia:

ENGGARTIASTO LUKITA

Minister of Trade

For the Lao People's Democratic Republic:

KHEMMANI PHOLSENA

Minister of Industry and Commerce

For Malaysia:

MUSTAPA MOHAMED

Minister of International Trade and Industry

For the Republic of the Union of Myanmar:

KYAW WIN

Union Minister for Planning and Finance

For the Republic of the Philippines:

RAMON M. LOPEZ

Secretary of Trade and Industry

For the Republic of Singapore:

LIM HNG KIANG

Minister for Trade and Industry (Trade)

For the Kingdom of Thailand:

APIRADI TANTRAPORN

Minister of Commerce

For the Socialist Republic of Viet Nam:

TRAN TUAN ANH

Minister of Industry and Trade

## **Schedule to the asean comprehensive investment agreement**

### **HEADNOTE. List of reservations**

1. The Schedule of ASEAN Member States sets out, pursuant to Article 9 (Reservations), Member States' measures that do not conform to the obligations under:

(a) Article 5 (National Treatment); and

(b) Article 8 (Senior Management and Board of Directors).

2. Each reservation sets out the following elements, where applicable:

(a) "Sector(s)" refers to either manufacturing, agriculture, fishery, forestry, mining and quarrying, services incidental to these sectors (Mode 3 (commercial presence) of services incidental to these sectors), all or a combination of these sectors in which a reservation is taken;

(b) "Sub-Sector(s)" refers to specific industries/products/activities in which a reservation is taken;

(c) "Industry Classification" refers to the activities covered by the reservation according to:

- International Standard Industrial Classification (ISIC) Revision 3 for manufacturing, agriculture, fishery, forestry, mining and quarrying or, where applicable, ASEAN Harmonised Tariff Nomenclature (AHTN) codes;

- UN Provisional Central Product Certification (pCPC) 1991 (Series M No. 77) for services incidental to manufacturing, agriculture, fishery, forestry, mining and quarrying sectors (pCPC 881 – 885).

As necessary and appropriate, Member States could specify the exact coverage of the reservations if the reservations do not exactly conform to the classification system.

(d) "Level of Government" specifies the level of government (Central or Regional) maintaining the measure for which a reservation is taken;

(e) "Type of Obligation" refers to the obligation of National Treatment (NT) or/and Senior Management and Board of Directors (SMBD), as the case may be, which do not apply to the listed measure(s);

(f) "Description of Measure" shall refer to measures that do not conform to National Treatment and Senior Management and Board of Directors for which a reservation is taken; and

(g) "Source of Measure" is identified for transparency purposes only, for existing measures that apply to the sector, sub-sector or activities covered by the reservations.

3. Member States' commitments under the GATS shall apply to measures affecting the supply of services under Modes 1, 2 and 4 of services incidental to manufacturing, agriculture, fishery, forestry, mining and quarrying. For this purpose, Member States need not make any reservations on measures that do not conform to Article 5 (National Treatment) and Article 8 (Senior Management and Board of Directors) for these sectors until such time when this Agreement is reviewed and additional commitments agreed. In addition, consistent with Article 3 of the Agreement, measures affecting liberalisation of investment in services sectors, other than services incidental to manufacturing, agriculture, fishery, forestry, mining and quarrying sectors (pCPC 881 – 885), do not fall within the scope of this Agreement. Therefore, the reservation lists attached to this Headnote do not include reservations on such measures.

4. Each Member State reserves the right to make future reservations on measures that do not conform to Article 5 (National Treatment) and Article 8 (Senior Management and Board of Directors) on:

(a) new and emerging sectors, sub-sectors, industries, products, or activities; or

(b) existing sectors, subsectors, industries, products, or activities;

which are unregulated at the time of submission of the reservation lists.

5. In the interpretation of a reservation, all elements of the reservation shall be considered. A reservation shall be interpreted in the light of this Agreement against which the reservation is taken. The "Description of Measure" element shall prevail over all other elements.

6. The ASEAN Member States agree that as soon as possible and in any event no later than 6 months from the date of entry into force of the Agreement, to enter into discussions to seek a mutually agreed solution on the treatment of "permanent residents" of a Member State as an investor. Until such discussions result in a mutually agreed solution, any obligations arising from the recognition of any natural person possessing the right of permanent residence in a Member State as investor under this Agreement shall neither apply to, nor be claimed upon, Cambodia, Indonesia, Myanmar, Philippines, Thailand, and Viet Nam.

7. In the case of Brunei Darussalam where the investor is a "permanent resident" of Brunei Darussalam and also non-national of any country, the other Member State concerned may mutually agree to enter into bilateral consultations, on a case-by-case and non prejudicial basis on the issue of whether to recognise the status of such natural person as an investor of Brunei Darussalam.

8. In the case of Thailand, as stipulated in the Foreign Business Act B.E.2542 (1999), nothing in this Agreement shall apply to an investor of the other Member States which is a juridical person constituted or otherwise organised under the law of a Member State that is not owned and/or controlled by nationals of Member States, and its investment. This provision shall be subject to review by the AIA Council on an annual basis.

## **Brunei darussalam**

### **1.**

Sector: All Sectors

Sub-Sector: -

Industry Classification: -

Level of Government: Central

Type of Obligation: National Treatment Senior Management and Board of Directors

Description of Measure: National Treatment shall not apply with respect to registration requirements for establishment of businesses for public or private company.

#### **Sole Proprietors and Co-operative Societies**

Consistent with the national and social development policies of Brunei Darussalam to nurture the development of local entrepreneurship, the registration for sole proprietorships or cooperative societies is only open to nationals of Brunei Darussalam.

#### **Partnerships**

Applications by foreign individuals (1) are subject to prior written approval or clearance by the Department of Immigration, the Department of Labour, and the Department of Economic Planning and Development, before they are registered.

#### **Branch of a foreign company**

The company must at least have one resident agent in Brunei Darussalam.

Source of Measure:

- Companies Act (Cap 39)

- Business Names Act (Cap 92)

- Administrative Directives and Guidelines

(1) For purpose of this reservation, foreign individuals refer to those who do not hold the nationality of Brunei Darussalam.

### **2.**

Sector: All Sectors

Sub-Sector: -

Industry Classification: -

Level of Government: Central

Type of Obligation: National Treatment Senior Management and Board of Directors

Description of Measure: One of the 2 directors or, where there are more than 2 directors, at least 2 of them shall be ordinarily resident in Brunei Darussalam.

Source of Measure :

- Companies Act (Cap 39)
- Administrative Directives and Guidelines

### **3.**

Sector: Manufacturing and Services Incidental to Manufacturing

Sub-Sector: -

Industry Classification: ISIC Category D CPC 884 and 885

Level of Government: Central

Type of Obligation: National Treatment Senior Management and Board of Directors

Description of Measure: All foreign investment in manufacturing that utilises Government industrial sites\* under the control of the Industrial Development Authority (BINA) of Brunei Darussalam must have at least 30% local equity participation, except in situations where the manufactured good is produced entirely for export.

\* As of the entry into force of this Agreement, the sites in operation are as follows:

1. Beribi Industrial Site
2. Lambak Kanan East Industrial Site
3. Lambak Kanan West Industrial Site
4. Serasa Industrial Site
5. Salar Industrial Site
6. Serembangun Industrial Site
7. Sungai Bera Industrial Site
8. Pekan Belait Industrial Site
9. Batu Apoi Industrial Site

Source of Measure :

- National Development Plan
- Industrial Coordination Order 2001 - Administrative Directives and Guidelines

### **4.**

Sector : Agriculture and Services Incidental to Agriculture

Sub-Sector : -

Industry Classification : ISIC Category A Division 01 CPC 8811, 8812

Level of Government : Central

Type of Obligation : National Treatment

Description of Measure : All foreign investment in agriculture that utilises Government sites\* as provided for by the Department of Agriculture of Brunei Darussalam must have at least 30% local equity participation.

\* As of the entry into force of this Agreement, the sites in operation are as follows:

### **Brunei-Muara District**

1. Batumpu, Bengkurong-Masin 2. KKP Tanah Tuah, Kulapis 3. KKP Si Bongkok, Kg Batong & Kg Masin 4. KKP Si Bongkok, Kg Parit, Masin 5. KKP Si Tukak 'B', Kg Limau Manis 6. KKP Lumapas 7. KKP Mulaut, Kg Mulaut 8. KKP Limpaki, Kg Mulaut 9. KKP Sungai Tajau, Wasan-Bebuloh 10. KKP Putat 11. KKP Tanjong Nangka 12. KKP Mentiri 13. KKP Wasan 14. KKP HBC Rimba 15. KKP Tungku 16. KKP Mulaut 17. KKP Limau Manis / Kuala Lurah 18. KKP Kg Bebuloh 19. KKP Jerudong (PP Luahan) 20. KKP Terunjing

### **Tutong District**

1. KKP Sungai Paku, Mukim Telisai 2. KKP Kupang 3. KKP Maraburong 4. KKP Padnunok / Sungai Burong, Kiudang 5. KKP Bang Nukat, Lamunin (GP.133) 6. KKP Birau 7. KKP Batang Mitus 8. KKP Bang Nukat, Lamunin (GP.400) 9. KKP Sg. Supon Besar

### **Belait District**

1. KKP Rampayoh, Kg Labi 2. KKP Merangking, Bukit Sawat 3. KKP Sungai Liang 4. KKP Tunggulian, Kg Tunggulian, Mukim Liang 5. KKP Lot Sengkuang, Labi 6. KKP Malayan 'A' 7. KKP Malayan 'B' 8. KKP Labi Lama, Kg Tarunan, Labi 9. KKP Kg. Sungai Petai, Mukim Labi 10. KKP Kg. Mumong, Mukim Kuala Belait 11. KKP Kg. Kenapol 12. KKP Kg. Singap 13. KKP Kg. Buau 14. KKP Kg. Tanjong Sudai

### **Temburong District**

1. KKP Labu Estate A 2. KKP Labu Estate B 3. KKP Bakarut 4. KKP Perdayan 5. KKP Selapon A 6. KKP Selapon B 7. KKP Senukoh A 8. KKP Senukoh B 9. KKP Lakiun 10. KKP Sembabat 11. KKP Kampong Puni \*KKP: Kawasan Kemajuan Pertanian (Agricultural Development Area).

Source of Measure:

- National Development Plan
- Halal Meat Act (Cap 183)
- Administrative Directives and Guidelines

## **5.**

Sector: Fishery and Services Incidental to Fishing

Sub-Sector: -

Industry Classification: ISIC Category B CPC 882

Level of Government: Central

Type of Obligation: National Treatment

Description of Measure: National Treatment shall not apply to any measure relating to any fishery activities in Brunei Darussalam, including its Economic Exclusive Zone (EEZ). This may include the requirement for all catch/produce to be processed/landed in Brunei Darussalam. All foreign investment in this sector that utilises Government sites\* as provided for by the Department of Fisheries of Brunei Darussalam must have at least 30% local equity participation, except in situations where the product is entirely for export.

\*As of the entry into force of this Agreement, the sites in operation are as follows:

### **Aquaculture sites**

1. Tanjung Pelompong 2. Pengkalan Sibabau, Phase I and I 3. Telisai, Phase I 4. Lalan Pulau Kaingaran 5. Tunggulian, Phase I and III

Source of Measure :

- National Development Plan
- Fisheries Order, 2009

- Fisheries (Fish Culture Farms) Regulations, 2002
- Fisheries (Fish Landing Complexes) Regulations, 2002
- Fisheries (Fish Processing Establishments) Regulations, 2002
- Fisheries Limits Act (Cap 130) - Administrative Directives and Guidelines

## 6.

Sector: Forestry and Services Incidental to Forestry **Except** logging and sawmilling

Sub-Sector: -

Industry Classification: ISIC Category A, Division 02 CPC 8814

Level of Government: Central

Type of Obligation: National Treatment

Description of Measure: All foreign investment in this sub-sector must have at least 30% local equity participation.

Source of Measure:

- National Development Plan
- Forest Act (Cap 46), including any Subsidiary Legislation
- National Forestry Policy (1990)

## 7.

Sector: All Sectors

Sub-Sector: -

Industry Classification: -

Level of Government: Central

Type of Obligation: National Treatment

Description of Measure: National Treatment shall not apply to any measure as may be stipulated by royal decree or 'titah' of His Majesty the Sultan and Yang Di-Pertuan of Negara Brunei Darussalam. Note: Any amendment or modification of an existing measure or adoption of a new measure shall not be more restrictive to existing investors and their investments than the measure applied to such investors or investments immediately before such amendments or modification or adoption.

Source of Measure : Constitution of Brunei Darussalam: Article 4(1), 39, 83(3) and 84 (2)

## 8.

Sector : All Sectors

Sub-Sector : -

Industry Classification : -

Level of Government : Central

Type of Obligation : National Treatment

Description of Measure : National Treatment shall not apply to any measure affecting: (i) the commercialisation of projects, privatisation, corporatisation, or divestment of assets owned by the Government. (ii) the transfer or disposal of equity interests or assets of a state enterprise, a government entity, or a government-linked company (GLC) of Brunei Darussalam.



Source of Measure :

- National Development Plan
- Long-Term Development Plan -Administrative Directives and Guidelines

## **9.**

Sector : All Sectors

Sub-Sector : -

Industry Classification : -

Level of Government : Central

Type of Obligation : National Treatment

Description of Measure : National Treatment shall not apply to any measure on imposing licensing requirements on any business activity, including the regulation and control of such business activity, and to approve or reject the application of such licenses by foreigners, in accordance with its relevant laws and national policies.

Note 1: This includes application of licenses for new business activities and application for renewal of licenses for existing business activities.

Note 2: This reservation shall not include local equity requirements unless otherwise provided for in this schedule.

Source of Measure :

- National Development Plan
- Long-Term Development Plan
- Miscellaneous Licenses (Chapter 127)
- Industrial Coordination Order 2001
- Poisons Act (1984 ed)
- Petroleum Mining Act (Chapter 44)
- Telecoms Order 2001
- Authority for Info-Communications Technology Industry of Brunei (AITI) Operational Handbook
- Architects, Professional Engineers and Quantity Surveyors, Order 2008
- Administrative Directives and Guidelines

## **10.**

Sector: Agriculture, Fishery and Services Incidental to these Sectors

Sub-Sector: -

Industry Classification: -

Level of Government: Central

Type of Obligation: National Treatment

Description of Measure: National treatment shall not apply to any measure with respect to any activities which relate to national food security.

Source of Measure :

- Long-Term Development Plan

- Administrative Directives and Guidelines

## 11.

Sector: All Sectors

Sub-Sector: -

Industry Classification: -

Level of Government: Central

Type of Obligation: National Treatment

Description of Measure: National Treatment shall not apply to any measure relating to the activities using natural resources. This may include limitations in the issuance of permits and quotas.

Source of Measure :

- Long-Term Development Plan
- Administrative Directives and Guidelines
- Forest Act (Cap 46), including any Subsidiary Legislation
- National Forestry Policy (1990)
- Wild Life Protection Act (Cap 102)
- Wild Flora and Fauna Order. (2007)

## 12.

Sector: All Sectors

Sub-Sector: -

Industry Classification: -

Level of Government: Central

Type of Obligation: National Treatment

Description of Measure: National Treatment shall not apply to: 1. any measure affecting all land transactions and use, which shall be subject to approval and consent by His Majesty-in-Council including, but not limited to: i) ownership and lease of land; and ii) the conditions on which such land shall be held. 2. any measure affecting all transactions and use of non-landed property (strata title), which shall be subject to approval by the relevant committee (*Komiti bagi Mempertimbangkan Permohonan Pindahmilik Strata*) chaired by the Minister of Development, which may be imposed, including but not limited to: i) ownership and lease of the property; ii) number of years of lease of the property; iii) maximum number of units allowed; and iv) the conditions on which the property shall be held.

Source of Measure: - Land Code, Revised Edition 1984 (Chapter 40)

- Land Code (Strata), Revised Edition 2000 (Chapter 189)
- The Control of Subdivision and Consolidation of Land Regulation 1973
- The Control of Development and Use of Land and Building Regulation 1974
- Town and Country Planning Act 1972
- Administrative Measures and Guidelines

## 13.

Sector: Forestry and Services Incidental to Forestry

Sub-Sector: Logging and sawmilling

Industry Classification : ISIC 0200 CPC 8814

Level of Government: Central

Type of Obligation: National Treatment

Description of Measure : Permits and licenses are no longer issued for this sub-sector following the implementation of the National Forestry Policy 1990.

Source of Measure : -National Development Plan -Long-Term Development Plan -Forest Act (Cap 46), including any Subsidiary Legislation -National Forestry Policy (1990) -Administrative Directives and Guidelines

## **14.**

Sector: Mining and Quarrying, and Services Incidental to Mining and Quarrying

Sub-Sector : Oil and Gas

Industry Classification : ISIC Category C, Division 11 CPC 883: Services incidental to mining

Level of Government: Central

Type of Obligation: National Treatment

Description of Measure: National Treatment shall not apply to any measure relating to the oil and gas sector.

Source of Measure : -Petroleum Mining Act (Cap 44) -Petroleum (Pipelines) Act (Cap45) -Brunei National Petroleum Company Order 2002. -Income Tax (Petroleum) Act (Cap 119) -Mining Act (Chapter 42) -Administrative Directives and Guidelines

## **15.**

Sector : Mining and Quarrying, and Services Incidental to Mining and Quarrying

Sub-Sector : -

Industry Classification : ISIC Category C, Division 10, Division 14 No CPC Code Available

Level of Government : Central

Type of Obligation : National Treatment

Description of Measure : National treatment shall not apply to any measure affecting the sectoral activities. Foreign equity participation will be considered on a case-by-case basis.

Source of Measure : -Land Code, Revised Edition 1984 (Chapter 40) -Land Code, (Strata) (Chapter 189), Revised Edition 2000 - Pollution Control Guidelines for Industrial Development for Brunei Darussalam -Town and Country Planning Act 1972 -Water Supply Act (Revised Edition 1984) (Chapter 121) -Antiquities and Treasure Trove Act 1967 (Revised 1984, 1991, 2002) -Mining Act (Chapter 42) -Administrative Directives and Guidelines

## **Cambodia**

### **1.**

Sector: All Sectors

Sub-Sector: -

Industry Classification: -

Level of Government: Central Government and Province/Municipality (1)

Type of Obligation: National Treatment

Description of Measure: NT shall not apply to any measure relating to land ownership, leasing, transactions, or use;

including conditions on which such land shall be held, including the use of natural resources associated with land.

**"Ownership of Land"**: Only natural persons or legal entities of Khmer nationality (at least 51% of the equity held by Khmer Nationality) shall have the right to ownership of the land in the Kingdom of Cambodia. The State may also provide to natural persons or legal entities of Khmer nationality ownership over immovable property belonging to the State within the strict limits set forth in the Land Law.

A Foreign Legal Entity may use the land in various forms, including concession, long term lease for 15 (fifteen) years or more, and renewable short term lease. Land Use rights include the rights on buildings, arrangements, or improvements made by the lessee for a duration specified in the contract, provided that the uses are exercised in compliance with the law in force.

Source of Measure:

- Constitution of the Kingdom of Cambodia, Article 44.
- Land Law (30 August 2001).
- Code of Civil Procedure (6 July 2006).
- Law on Investment of the Kingdom of Cambodia (5 August 1994) and Law on the Amendment of the Law on Investment of the Kingdom of Cambodia (24 March 2003).
- Sub-decree 114 ANKr. BK on the Mortgage and Transfer of the Rights over a Long-term lease or and Economic Land Concession (29th August 2007).

(1) Provincial/Municipality refers to regional government.

## 2.

Sector: All Sectors

Sub-Sector

Industry Classification

Level of Government: Central Government and Province/Municipality (2)

Type of Obligation: National Treatment Senior Management and Board of Director

Description of Measure:

National Treatment and Senior Management, Board of Director shall not apply to any measure regarding the hiring of employment policies and obligation of the investor.

Employers must give preference to Cambodians when hiring the workers (Article 263 of Labor Law). Investors shall be obliged to promote the Cambodian staff to a senior management level, and this shall be made overtime.

The maximum percentage of foreigners who may be allowed to be employed in each of the enterprises shall not exceed 10% of the total number of Cambodian employees.

Source of Measure

- Labor Law dated March 13, 1997, Article 21 and Article 264.
- Law on Investment of the Kingdom of Cambodia (5 August 1994) and Law on the Amendment of the Law on Investment of the Kingdom of Cambodia (24 March 2003).
- Sub-Decree No 111 ANK/BK date on September 27, 2005 on the Implementation of the Law on the Amendment to the Law on Investment of the Kingdom of Cambodia.
- Prakas No. 162 MOSALVY dated 16 July 2001 on the use of the foreign manpower issued by the Ministry of Social Affairs, Labor, Vocational Training and Youth Rehabilitation.
- Code of Civil Procedure (6 July 2006).

(2) Provincial/Municipality refers to regional government.

### 3.

Sector: All Sectors

Sub-Sector:

Industry Classification:

Level of Government: Central Government and Province/Municipality (3)

Type of Obligation: National Treatment Senior Management and Board of Director

Description of Measure: NT and SMBD may not apply to any measure relating to investment in the portfolio investment.

Source of Measure:

- Preah Reach Kram No. NS/RKM/1007/028 of 19 October 2007 promulgating the Law on the Issuance and Trading of Non-Government Securities.
- The Anukret No. 97/ANKR/BK of 23 July 2008 on the Conduct and Organization of the Securities and Exchange Commission of Cambodia.
- National Economic Development Policy.
- Stock Market Development Policy and its strategies.

(3) Provincial/Municipality refers to regional government.

### 4.

Sector: Manufacturing

Sub-Sector: Production/processing of psychotropic substances and narcotic substances: schedule 1, 2 and 3 of the 1961 Single Convention on Narcotic Drugs and the 1971 Convention on Psychotropic Substances

Industry Classification: 2429

Level of Government: Central Government and Province/Municipality (4)

Type of Obligation: National Treatment Senior Management and Board of Director

Description of Measure: National Treatment and SMBD shall not apply to any measure relating to the manufacturing of narcotic and psychotropic substances.

Manufacturing of narcotic and psychotropic substances of schedule 1 is prohibited in the Kingdom of Cambodia, but the manufacturing of finished products of schedule 2 and 3 is only permitted according to the needs and planning of the Ministry of Health of Cambodia.

Source of Measure

- Law on the Controlling of Drugs (0197.01/24 1997) Article 1, Article 2, Article 3 and Article 4.
- Schedule 1, 2 and 3 of the 1961 Single Convention on Narcotic Drugs and the 1971 Convention on Psychotropic Substances.
- Sub-Decree No 111 ANK/BK date on September 27, 2005 on the Implementation of the Law on the Amendment to the Law on Investment of the Kingdom of Cambodia.

(4) Provincial/Municipality refers to regional government.

## 5.

Sector: Manufacturing

Sub-Sector: Production of poisonous chemicals, agriculture pesticide/ insecticide and other goods by using chemical substances

Industry Classification: 2421

Level of Government: Central Government and Province/Municipality (5)

Type of Obligation: National Treatment Senior Management and Board of Director

Description of Measure:

The production of poisonous chemicals, agriculture pesticide/insecticide is closed to foreign investors.

The production of other goods by using chemical substances, prohibited by international regulations or the World Health Organization, is closed to all investors.

Source of Measure:

- Prakas No. 598 BRK.KSK dated 15 December 2003 issued by Ministry of Agriculture, Forestry and Fishery.
- Sub-Decree No 111 ANK/BK date on September 27, 2005 on the Implementation of the Law on the Amendment to the Law on Investment of the Kingdom of Cambodia.

(5) Provincial/Municipality refers to regional government.

## 6.

Sector: Forestry

Sub-Sector: Forestry and Logging: Forestry exploitation business

Industry Classification: 0200

Level of Government: Central Government and Province/Municipality (6)

Type of Obligation: National Treatment Senior Management and Board of Director

Description of Measure: NT and SMBD shall not apply to any measure relating to restrictions or regulations on forestry and forestry-related industries.

All activities prescribing in the chapter 8 (article 28 to article 39) of the Forestry Law shall be prohibited. Natural Protected Areas shall be governed by the Law on Environmental Protection and Management of Natural Resources, with the purpose to :

- protect and promote environmental quality and public health through the prevention, reduction, and control of pollution.
- assess the environmental impacts of all proposed projects prior to the issuance of the decision by the Royal Government
- ensure the rational and sustainable conservation, development, management, and use of the natural resources of the Kingdom of Cambodia
- encourage and enable the public to participate in environmental protection and natural resource management
- suppress any acts that cause harm to the environment Cambodia's measures relating to the investments in the Permanent Forest Reserves, except for rubber and eucalyptus plantations, are for the purpose of ensuring the sustainable management of forests for its social, economic and environmental benefits, including conservation of biological diversity and cultural heritage and Investors or the investment must comply with environmental impact assessment screening criteria and assessment process applicable to their proposed investments prior to their establishment, as required by the Law on Environmental Protection and Natural Resource Management of the Kingdom of Cambodia and its Sub- Decree on Environmental Impact Assessment Process (EIAP) for such investment.

Source of Measure:

- Forestry law (Reach Kram NS/RKM/0802/016 dated 31 August 2002).
- Law on Environmental Protection and Natural Resource Management dated 24 December 1996.
- Government Declaration date 25 January 1999 on Management and Elimination of Forest Anarchy.
- Sub-Decree No 111 ANK/BK date on September 27, 2005 on the Implementation of the Law on the Amendment to the Law on Investment of the Kingdom of Cambodia.

(6) Provincial/Municipality refers to regional government.

## **7.**

Sector: Mining

Sub-Sector: Mining including sand exploitation, and Oil and Gas

Industry Classification: 1410, 1110

Level of Government: Central Government and Province/Municipality (7)

Type of Obligation: National Treatment Senior Management and Board of Director

Description of Measure: In order to protect the Natural Environment in all areas within the fresh water and sea water in the Kingdom of Cambodia, all kind of sand exploitation for export abroad shall be prohibited and closed.

National Treatment and Senior Management and Board of Director shall not apply to any measure relating to mining including the sand exploitation and oil and gas activities carried out within Cambodia.

Investment license in mining including sand exploitation and oil and gas activities is required and shall be subject to terms and conditions determined by the relevant regulatory authorities including: the National Petroleum Authority and the Ministry of Industry, Mines and Energy, Ministry of Water Resources Management and Meteorology.

Source of Measure:

- Law on Environmental Protection and National Resource Management dated 24 December 1996.
- Preah Reach Kram NS/RKM/0701/09 on Law on Mineral Resource Management and Exploitation dated 13 July 2001.
- Sub-Decree No: 27 ANRK.BK date on April 06, 1999 on the Water Pollution Control.
- Government Decision No. 29 SSR date on 08 May 2009 on the Limitation of Sand Exploitation.

(7) Provincial/Municipality refers to regional government.

## **Indonesia**

### **1.**

Sector: All Sectors

Sub-Sector

Industry Classification

Level of Government: Central

Type of Obligation: National Treatment

Description of Measure: National Treatment may not apply to any measures affecting land, property and natural resources associated with land, including acquisition, ownership and lease of land and property.

Source of Measure:

- Article 33 of 1945 National Constitution
- Law No.5 of 1960 Concerning Basic Regulations on Agrarian Principles
- Law No. 25 of 2007 Concerning Investment

## **2.**

Sector: All Sectors

Sub-Sector

Industry Classification

Level of Government: Central

Type of Obligation: National Treatment

Description of Measure: Business license is given to a foreign investment (1) as required by the relevant regulatory authorities.

National Treatment may not apply to any measure with regard to the duration (2) of the Business License.

Source of Measure:

- Law No. 25 of 2007 Concerning Investment
- Law No. 4 of 2009 Concerning Mining Mineral and Coal
- Industry Minister Regulation No. 41 of 2008 Concerning Provision and Procedure of Industrial Business Licenses, Expansion Licenses and Industrial Registration
- Agriculture Minister Regulation No. 26 of 2007 Concerning Guidelines for License on Farming Sectors
- Government Policy

(1) For the purpose of this reservation, the term "foreign investment" can be found in Law No. 25 of 2007.

(2) For illustrative examples, the duration of the Business License depends on the respective policy of each sector (e.g. the license period for the manufacturing sector is 30 years and for the fishery and aquaculture (sub sector: Coral) is 5 years).

## **3.**

Sector : All Sectors

Sub-Sector

Industry Classification

Level of Government : Central

Type of Obligation : National Treatment

Description of Measure : Foreign investor (3) investing in Indonesia must take the form of an Indonesian limited liability company which is subject to Indonesia's Corporate Law, denoted as PT (Perseroan Terbatas).

Source of Measure :

- Law No.25 of 2007 Concerning Investment
- Law No. 40 Of 2007 Concerning Limited Liability Company



(3) For the purpose of this reservation, the term "foreign investor" can be found in Law No. 25 of 2007.

#### **4.**

Sector: All Sectors

Sub-Sector

Industry Classification

Level of Government: Central

Type of Obligation: National Treatment

Description of Measure: Foreign investment (4) shall appoint local distribution agents to sell its products to the end-users in Indonesia.

Source of Measure:

- Government Regulation No. 15 of 1998 Concerning The Termination of Foreign Business Activities in The Trade Sectors
- Trade and Industry Minister Decree No. 160/1998 on Amendment of Trade and Industry Minister Decree No. 77 of 1978 on Provision Concerning The Limited Trade Activities for Production Company in the Frame of Capital Investment

(4) For the purpose of this reservation, the term "foreign investment" can be found in Law No. 25 of 2007.

#### **5.**

Sector: All Sectors

Sub-Sector:

Industry Classification:

Level of Government: Central

Type of Obligation: National Treatment

Description of Measure:

1. As may be required by the relevant regulatory authorities, a company in which foreign investors (1) own 100% shares, subject to prior notification before the grant of the license, after certain period since commencement of commercial production, the said foreign investors should sell a part of the company's share to domestic investors (2).

2. In the case of Mineral and Coal Mining subsector (3), mining business license (Izin Usaha Pertambangan) for foreign investment (4) shall be given by the Minister of Energy and Mineral Resources of The Republic of Indonesia.

Subject to prior notification before the grant of mining business license (Izin Usaha Pertambangan), 5 (five) years after the commencement of production, foreign shareholders (5) of foreign investment should sell their shares gradually to Indonesian shareholders (6) according to the following priorities :

- 1) central government,
- 2) provincial government,
- 3) regencies/municipalities,
- 4) state owned enterprises (Badan Usaha Milik Negara and Badan Usaha Milik Daerah),
- 5) national private business entity (7)

The shares of the said Indonesian shareholders shall be at least as the following :

- a. 20% of total shares in the 6th year ;

- b. 30% of total shares in the 7th year;
- c. 37% of total shares in the 8th year;
- d. 44% of total shares in the 9th year;
- e. 51% of total shares in the 10th year.

Source of Measure :

- Law No. 25 of 2007 Concerning Investment
- Law No. 4 of 2009 Concerning Mineral and Coal Mining
- Government Regulation No.20 of 1994 Concerning Share Ownership in Companies Set Up Under Foreign Capital Investments.
- Government Regulation No. 23 of 2010 Concerning the Implementation of Mineral and Coal Mining Activities Jo. Government Regulation No. 24 of 2012 Concerning Amendment of Government Regulation No. 23 of 2010 on the Implementation of Mineral and Coal Mining Activities.

(1) For the purpose of this reservation, the term "foreign investor" can be found in Law No. 25 of 2007.

(2) For the purpose of this reservation, the term "domestic investor" can be found in Law No. 25 of 2007.

(3) For the purpose of this reservation, the scope of Mineral and Coal Mining subsector is defined in Law No. 4 of 2009 Concerning Mineral and Coal Mining and Government Regulation No. 23 of 2010 Concerning the Implementation of Mineral and Coal Mining Activities Jo. Government Regulation No. 24 of 2012 Concerning Amendment of Government Regulation No. 23 of 2010 on the Implementation of Mineral and Coal Mining Activities.

(4) For the purpose of this reservation, the term "foreign investment" can be found in Law No. 25 of 2007.

(5) For the purpose of this reservation, the term "foreign shareholders" can be found in Government Regulation No. 24 of 2012 Concerning Amendment of Government Regulation No. 23 of 2010 on the Implementation of Mineral and Coal Mining Activities.

(6) For the purpose of this reservation, the term "Indonesian shareholders" can be found in Government Regulation No. 23 of 2010 Concerning the Implementation of Mineral and Coal Mining Activities. Jo. Government Regulation No. 24 of 2012 Concerning Amendment of Government Regulation No. 23 of 2010 on the Implementation of Mineral and Coal Mining Activities.

(7) For the purpose of this reservation, the term "national private business entity" can be found in Government Regulation No. 23 of 2010 Concerning the Implementation of Mineral and Coal Mining Activities.

## **6.**

Sector: All Sectors

Sub-Sector

Industry Classification

Level of Government: Central

Type of Obligation: National Treatment Senior Management and Board of Directors

Description of Measure: Foreign investment established under Indonesia's Corporate Law must have certain positions (8) to be occupied by Indonesian nationality

Source of Measure:

- Law No. 13 of 2003 Concerning Manpower - Presidential Decree No. 75 of 1995 Concerning The Employment of Expatriates

(8) For illustrative purposes, this may include but not limited to positions that deals with personnel affairs.

## 7.

Sector: All Sectors

Sub-Sector

Industry Classification

Level of Government: Central and Regional

Type of Obligation: National Treatment

Description of Measure: National Treatment may not apply to any measure with regard to privatization (9), or divestment of assets through transfer or disposal of equity interests or assets of State owned enterprises including Badan Usaha Milik Negara and Badan Usaha Milik Daerah (10).

Source of Measure: Law No. 19 of 2003 Concerning State Owned Enterprises

(9) For the purpose of this reservation, privatization plan can be found in Law No.19 of 2003.

(10) For the purpose of this reservation, Badan Usaha Milik Negara refers to State Owned Enterprises, while Badan Usaha Milik Daerah refers to Provincial Owned Enterprises.

## 8.

Sector : All Sectors

Sub-Sector

Industry Classification

Level of Government : Central

Type of Obligation : National Treatment Senior Management and Board of Directors

Description of Measure : National Treatment and SMBD shall not apply to any measure with regard to special preferences given for Micro, Small and Medium- sized Enterprises, and Cooperatives denoted as Usaha Mikro, Kecil, Menengah dan Koperasi (UMKMK) (11).

Source of Measure :

- Law No. 20 of 2008 Concerning Micro, Small and Medium Enterprises

- Law No. 25 of 1992 Concerning Cooperatives

(11) For the purpose of this reservation, the definition of Micro, Small, and Medium Sized Enterprises (UMKM) can be found in Law No. 20 of 2008. For the definition of Cooperatives can be found in Law No. 25 of 1992. For illustrative purpose, the criteria for Micro, Small, and Medium Sized Enterprises, as stipulated in Law No. 20 of 2008, are as follows : (1) Criteria for Micro Enterprise are as follows: a. has a net asset, excluding land and building, up to IDR 50 millions; or b. has an annual sales up to IDR 300 millions. (2) Criteria for Small Enterprise are as follows: a. has a net asset, excluding land and building, more than IDR 50 millions up to IDR 500 millions; or b. has an annual sales more than IDR 300 millions up to IDR 2.5 billions. (3) Criteria for Medium Enterprise are as follows: a. has a net asset, excluding land and building, more than IDR 500 millions up to IDR 10 billions; or b. has an annual sales more than IDR 2.5 billions up to IDR 50 billions. (4) The nominal amount as determined in paragraph 1, 2, and 3 above may be changed due to the economic condition by the Presidential Regulation.

## 9.

Sector : Agriculture and Fishery

Sub-Sector

Industry Classification

Level of Government : Central

Type of Obligation : National Treatment

Description of Measure : National Treatment shall not apply to any measures with respect to activities which relate to national food security.

Source of Measure :

- Article 33 of 1945 National Constitution

- Law No. 7 of 1996 Concerning Foods - Government Regulation No. 68 of 2002 Concerning Food Security - Government Policy

## 10.

Sector : All Sectors

Sub-Sector

Industry Classification

Level of Government : Central

Type of Obligation : National Treatment

Description of Measure: National Treatment shall not apply to any measure affecting the type of activities which may be conducted on land or the usage of land, including but not limited to, land zoning, land use and urban planning policies.

Source of Measure : Law No. 26 of 2007 Concerning Spatial Planning

## 11.

Sector: Fishery

Sub-Sector

Industry Classification: ISIC 0500

Level of Government: Central

Type of Obligation: National Treatment

Description of Measure: Traditional fishery (12) is not allowed to be undertaken by foreign investors (13). Foreign investors are allowed to undertake fishery activities in Indonesia and its Exclusive Economic Zone, subject to licensing conditions imposed by the relevant regulatory authorities.

Source of Measure:

Law No. 31 of 2004 as amended by Law No. 45 of 2009 Concerning Fishery

Law No. 5 of 1983 Concerning Indonesia's Exclusive Economic Zone

Presidential Regulation No.36 of 2010 Concerning The List of Businesses Closed and List of Businesses Opened With Reservation In The Investment Sector

Regulation of the Minister of Marine Affairs and Fisheries of the Republic of Indonesia No. PER.05/MEN/2008 as amended by No. PER.12/MEN/2009 regarding Capture Fishery Business.

Regulation of the Minister of Marine Affairs and Fisheries of the Republic of Indonesia No. PER.12/MEN/2007 regarding Aquaculture Business Licensing

Regulation of the Minister of Marine Affairs and Fisheries of the Republic of Indonesia No. PER.05/MEN/2009\_ regarding Aquaculture Business Scale

Government Policy

(12) For the purpose of this reservation, the term "traditional fishery" refers to "small scale fisherman" as stipulated in Law Number 31 of 2004 as amended by Law No. 45 of 2009 concerning Fishery and Regulation of the Minister of Marine Affairs and Fisheries of the Republic of Indonesia No. PER.05/MEN/2008 as amended by No. PER.12/MEN/2009 regarding Capture Fishery. Small scale fisherman is defined as any person whose livelihood is fishing to fulfill daily life needs.

(13) For the purpose of this reservation, the term "foreign investor" can be found in Law No. 25 of 2007.

## **12.**

Sector : All Sectors

Sub-Sector

Industry Classification

Level of Government : Central

Type of Obligation : National Treatment

Description of Measure : National Treatment shall not apply to any measures relating to portfolio investment

Source of Measure : Government Policy

## **13.**

Sector: All Sectors

Sub-Sector

Industry Classification

Level of Government: Central

Type of Obligation: National Treatment

Description of Measure: National Treatment may not apply in the measures relating to the employment of expatriates. Restrictions may be imposed on the number, duration and type of expatriates employed.

Source of Measure:

- Law No. 13 of 2003 Concerning Manpower

- Presidential Decree No. 75 of 1995 Concerning The Employment of Expatriates

- Manpower and Transmigration Minister Regulation No. 2 of 2008 Concerning Procedures of Employment of Expatriates

## **14.**

Sector : All Sectors

Sub-Sector

Industry Classification

Level of Government : Regional

Type of Obligation : National Treatment

Description of Measure : National Treatment may not apply to any measures relating to the issuance of investment implementation licenses/permits (13) at the provincial level (14), which shall be considered on a case by case basis.

Source of Measure :

- Law No. 32 of 2004 Concerning Regional Government
- Provincial Regulations

(13) For illustrative purposes, this may include location permit, building permit, and nuisance permit.

(14) For the purpose of this reservation, provincial level means the regional level of government as in ACIA.

## **15.**

Sector: All Sectors

Sub-Sector

Industry Classification

Level of Government: Central

Type of Obligation: National Treatment Senior Management and Board of Directors

Description of Measure: NT and SMBD may not apply in the event where activities restricted to designated enterprises (15) are liberalized to those other than the designated entities, or in the event where such designated enterprise no longer operate on a non-commercial basis.

Source of Measure:

- Government Regulation No. 13 of 1998 Concerning Public Enterprise
- Administrative Guidelines

(15) For illustrative purposes, this may include State Forestry Public Enterprise denoted as Perum PERHUTANI and National Money Printing Public Enterprise denoted as Perum PERURI

## **16.**

Sector: All Sectors

Sub-Sector

Industry Classification

Level of Government: Central

Type of Obligation: National Treatment Senior Management and Board of Directors

Description of Measure: For companies/projects that are in existence before the entry into force of this Agreement, conditions imposed in their approvals for license/permits shall continue to apply. Any changes to these conditions shall be subject to approval.

Source of Measure: Head of Investment Coordinating Board Regulation No. 12 of 2009 Concerning Guidelines and Procedures For Investment Application

## **17.**

Sector: Manufacturing Services Incidental to Manufacturing

Sub-Sector

Industry Classification: ISIC (see below) CPC (see below)

Level of Government: Central

Type of Obligation: National Treatment

Description of Measure: Certain restrictions/requirements which may be inconsistent with National Treatment may be imposed to foreign investors on the establishment of the following line of businesses in Indonesia :

### **Manufacturing**

1. Closed to Foreign Investors.

Salting/drying fish and other waters biota industry and smoked fish industry (ISIC 1512)

Thread coloring from natural and artificial fiber to be patterned/ dipped/tied thread, performed by hand-work tools (ISIC 1711)

Hand painted Batik industry ( ISIC 1712)

Rubber curing industry (ISIC 2519)

Manual or semi mechanical processed hand tool industry for handwork and cutting ( ISIC 2893)

Clay made household necessities industry especially pottery (ISIC 2691)

Handicrafts industry that carries specific cultural asset, art value using natural or artificial raw material:

- Embroidery industry (ISIC 1729)

- Rattan dan bamboo plait industry; plant plait other than rattan and bamboo industry; carving handicraft from wood, except furniture industry; kitchen household industry from wood, rattan and bamboo; wood, rattan, cork industry that is not classified in other locations (ISIC 2029)

- Traditional musical instruments (ISIC 3692)

Hand-tools industry needed for farming to prepare land, process production, post harvest and processing except hoe and shovel (ISIC 2893)

Palm sugar (ISIC 1542)

Processed food from seeds and roots, sago, gnetum gnemon nut and copra industry, soya sauce industry, soy made food and peanuts other than soya sauce, fempe, tofu industry, cracker, chips, peanut cracker, and the like (ISIC 1513; 1514;1549)

Roots peeling and cleaning industry (ISIC 1531)

Traditional medicine Industry (ISIC 2423)

Saw Mill Industry (Production Capacity up to 2000M3/ Year),

Primary Rattan Industry (ISIC 2010)

Mangrove Semi-Finished Goods Art carving industry, except furniture, Kitchen Appliances industry, Goods industry that is not classified elsewhere (ISIC 2029)

Knitted cloth industry especially Lace (ISIC 1730)

Moslem woman's praying cloth, scarf, head scarf, and other traditional industries (ISIC 1810)

Cloth printing industry especially Batik and traditional patterns (ISIC 1712)

Plantation processing product business industry below certain capacity according to Regulation of Minister of Agriculture Number 26 of 2007:

- Fiber and Seed Cotton Industry (ISIC 1514, 1711)

- Crude oil industry (edible oil) from vegetable and animal, coconut oil industry, palm oil industry, rubber to be sheet, thick latex, crumb rubber industry, raw castor oil industry, sugar, sugar cane and sugar cane residue industry, black tea/green tea industry, dry tobacco leaves industry, Copra, Fiber, Coconut Charcoal, Dust, Nata de coco industry, Coffee sorting, cleaning and peeling industry, Cocoa cleaning, peeling and drying industry, cleaning and peeling seed other than coffee and cacao industry, cashew to be dry seed cashew and Cashew Nut Shell Liquid (CNSL) Industry, Peppercorn to be dry white pepper and dry black pepper industry (ISIC 1514, 2429, 1542, 1549, 1600, 2519, 1531)

## **2. Closed to Foreign Investors and Special Permit from Relevant Ministerial/ Government for Domestic Investors.**

Production of Weapons, Ammunition, explosive devices and War Equipment with special permit from the Minister of Defense (ISIC 2927, 2429)

## **3. Special Permit from Relevant Ministerial/ Government Agencies and Foreign Capital Ownership Limitation**

Raw Material for Explosives (Ammonium Nitrate) with maximum foreign equity ownership of 49% and a special permit from the Minister of Defense (ISIC 2411)

Industry of explosive materials and its components for industry need with maximum foreign equity ownership of 49% and a special permit from the Minister of Defense (ISIC 2429)

Sugar Industry (White Crystal Sugar, Refined Crystal Sugar and Raw Crystal Sugar) with maximum foreign equity ownership of 95% and a special permit from the Minister of Industry and the Minister of Agriculture, and it has to be integrated with the sugar plantation. The manufacturing of raw crystal sugar is required for any sugar manufacturer with sugarcane input capacity exceeding 8000 tons per day (ISIC 1542)

Processing of plantation product industry (similar capacity or exceeding a certain capacity, according to Regulation of Minister of Agriculture Number 26 of 2007 with maximum foreign capital ownership of 95% with a special permit from Minister of Agriculture.

- Fiber and Seed Cotton Industry (ISIC 1514, 1711)

- Crude oil industry (edible oil) from vegetable and animal, coconut oil industry, palm oil industry, rubber to be sheet, thick latex, crumb rubber industry, raw castor oil industry, sugar, sugar cane and sugar cane residue industry, black tea/green tea industry, dry tobacco leaves industry, Copra, Fiber, Coconut Charcoal, Dust, Nata de coco industry, Coffee sorting, cleaning and peeling industry, Cocoa cleaning, peeling and drying industry, cleaning and peeling seed other than coffee and cacao industry, cashew to be dry seed cashew and Cashew Nut Shell Liquid (CNSL) Industry, Peppercorn to be dry white pepper and dry black pepper industry (ISIC 1514, 2429, 1542, 1549, 1600, 2519, 1531)

## **4. Foreign Capital Ownership Limitation**

Pharmaceutical Industrial Business: Raw Material Medicine Industry, Patent Medicine Industry, with maximum foreign equity ownership of 75% (ISIC 2423)

## **5. Partnership (17) with Micro, Small and Medium Sized Enterprises and Cooperatives (18)**

Sweetening and saline fruits and vegetable industry (ISIC 1513)

Printed Batik industry ( ISIC 1712)

Rattan processing and preserving industry, bamboo and the like ( ISIC 2010)

Mangrove wood industry:

- Moulding and construction material component industry (ISIC 2022)

- Carving handicrafts industry made of wood industry except furniture, Kitchen ware industry ( ISIC 2029)

Essential Oil Industry ( ISIC 2429)

Construction materials:

- Brick and clay/ceramic industry, other goods made of clay/ceramic industry (ISIC 2691; ISIC 2693)

Goods made from cement industry (ISIC 2695)

Industries of lime and products made of lime (ISIC 2694)



Manufacture of Jewelry and related articles (ISIC 3691)

Wooden ship industry including tools and equipments for maritime tourism and fishing (ISIC 3511)

Agricultural machinery industry using medium technology such as rice peeler, corn peeler and handy-tractor (ISIC 2921)

Industries of multi-various handicrafts:

1. Handicrafts using plants as raw materials.
2. Handicrafts using animals as raw materials.
3. Imitation flowers and decorations.
4. Imitation jewelry (ISIC 3699).
5. Handicrafts from mollusk and the like.
6. Handicrafts made of precious stone and marble.

Non-metal waste recycle (ISIC 3720)

Nails, nuts and bolts industry, component and spare parts to start up motor industry, pumps and compressor industry, component and two and three wheels vehicles accessories industry, bike and becak accesories industry ( ISIC 2899, 2911, 2912, 3591, 3592)

Milk powder process and condensed milk industry ( ISIC 1520)

Fishery Processing Business (Usaha Pengolahan Hasil Perikanan - UPI): Fermentation, Reduction/Chemical Process, Surimi and Jelly Fish Process (ISIC 1512)

(17) For this reservation, Partnership with Micro, Small and Medium Sized Enterprises and Cooperatives means cooperation between micro, small and medium size enterprises and cooperatives and foreign investors, which may take any of the following forms joint-operation (plasma-core), sub-contracting, franchise, distributorship, general trading, joint venture and outsourcing.

(18) For the purpose of this reservation, the definition of Micro, Small, and Medium Sized Enterprises (UMKM) can be found in Law No. 20 of 2008. For the definition of Cooperatives can be found in Law

## **6. Special Permit from Relevant Ministerial/ Government Agencies (applies to both local and foreign investors)**

Special Printing Industry/Security documents such as stamp, stamp duty, valuable paper such as Bank Note Paper, Cheque Paper, Watermark paper, passport, demography document and hologram, Money Printing Industry. Special permit is required from the Minister of Industry and from the National Intelligence Agency (ISIC 2221)

Special Ink Industry. Special permit is required from the Minister of Industry and the National Intelligence Agency (ISIC 2429)

Pulp Industry (from wood). The raw material should be sourced from industrial plantation forests and special permit is required from the Minister of Industry (ISIC 2101)

Cigarette Industries

These industries are closed for new investors (both local and foreign). Any expansion of the existing investment requires a special permit from the Minister of Industry.

- Clove Cigarette Industry (ISIC 1600)
- Regular Cigarette Industry (ISIC 1600)
- Other Cigarette Industries (ISIC 1600)

Lead Smelting Industry. A special permit is required from the Minister of Environment and the Minister of Industry (ISIC 2720)

Narcotics for Pharmaceutical Industry (Pharmaceutical Industry) A special permit is required from the Minister of Health (ISIC 2423)

Saw Mill Industry with production/output capacity above 2000M\*% Year. A special permit is required from the Minister of Forestry (ISIC 2010)

Veneer Industry, Plywood industry, Laminated Veneer Lumber (LVL) Industry. A special permit is required from the Minister of Forestry (ISIC 2021)

Wood chip industry and Wood Pellet Industry. A special permit is required from the Minister of Forestry (ISIC 2029)  
Cyclamate and Saccharin Industry. A special permit is required from the Food and Drug Administration (FDA) and the Minister of Trade [(ISIC 2411)

Lubricating oil industry with special permits from Minister of Energy & Mineral Resources and Minister of Industry (ISIC 2320)

## **Services Incidental to Manufacturing**

### **1. Industries Closed to Both National and Foreign Investors**

Manufacture of food and beverages on a fee or contract basis (CPC 88411)

- Fruits and vegetables canning industry
- Fruits and vegetables pulverizing, juicing and pasting industry
- Ice cream industry
- Cassava starch industry

### **2. Industries Closed to Foreign Investors**

Manufacture of food and beverages on a fee or contract basis (CPC 88411)

- Meat processing and preserving industry
- Fish and the like canning industry
- Cold storage for fish industry and the like
- Margarine industry
- Cooking oil industry
- Milk industry
- Industry of food from milk
- Palm starch industry
- Feed/fishmeal industry
- Feed/fishmeal concentrate industry
- Macaroni, noodle, spaghetti, rice noodle industry and the like
- Tea and coffee processing industry
- Spice, food flavor and food enhancer industry
- Syrup industry
- Other sugar industry other than syrup industry
- Soft drink industry

Manufacture of tobacco on a fee or contract basis: (CPC 88412)

- Kretek (clove) cigarette industry
- White cigarette industry

- Other cigarette industry

- Other products of tobacco

Manufacture of leather products on a fee or contract basis (CPC 88423)

- Leather preserving industry

- Leather tanning industry

Manufacture of wood and of products of wood and cork, except furniture; manufacture of articles of straw and planting materials, on a fee or contract basis (CPC 88430)

- Saw mill industry, including kiln drying

- Plywood industry

- Laminated plywood industry, including decorative plywood

- Molding and building components industry, including kiln drying

Manufacture of chemicals and chemicals products, on a fee or contract basis (CPC 88460)

- Formulated pesticide industry

Manufacture of furniture on a fee or contract basis (88491)

- Wood furniture industry, including finishing and designing Rattan and bamboo furniture industry, including finishing and designing

Source of Measure:

- Law No. 25 of 2007 Concerning Investment

- Presidential Regulation of The Republic of Indonesia No. 36 of 2010 on List of Business Fields Closed to Investment and Business Fields Open, with Conditions, to Investment

- Presidential Decree No. 21 of 2001 concerning Lubricant Supply and Services

- Government Policy

## **18.**

Sector : Agriculture Services Incidental to Agriculture

Sub-Sector

Industry Classification : ISIC (see below) CPC (see below)

Level of Government : Central

Type of Obligation : National Treatment

Description of Measure : Certain restrictions/requirements which may be inconsistent with National Treatment may be imposed to foreign investors on the establishment of the following line of businesses in Indonesia :

### **Agriculture**

1. Closed to Foreign Investors

« For each individual crop cultivation in an area less than or equal to 25 hectares:

- Main food crops are corn, soy, peanuts, green beans, rice, cassava, sweet potato; other food crops are wheat, oats, barley, rye, millet, taro, and other food crops not classified elsewhere (ISIC 0111, 0112).

« For each individual crop cultivation in an area less than 25 hectares:

- Estate crops as follows:

> Sugar cane and other sweetening plant cultivation, tobacco plantation, rubber and other producing latex plantations, cotton plantation, textile raw material crop plantation, Medicinal/pharmaceutical crop plantation, essential oil crop plantation, and other crop plantation that is not classified in other location (ISIC 0111, 0112)

> Coconut plantation, palm plantation, beverage material crop plantation (tea, coffee, and cocoa), cashew plantation, peppercorn plantation, clove plantation, and other spices crop plantation (ISIC 0113)

- Breeding and propagation of the following:

> *Jatropha curcas* plantation, sugar cane and other sweetening plants, tobacco plant, rubber and other latex producing plants, textile raw material plant, medical/pharmaceutical plant, cotton plant, essential oil plant, and other plants that are not classified in other location (ISIC 0111, 0112)

> Coconut plant, palm plant, plants for beverage material (tea, coffee, and cocoa), cashew plant, peppercorn plant, clove plantation, and other spices plant (ISIC 0113)

- Breeding and Propagation of Forest plants (ISIC 0111, 0200)

« Pig breeding and farming in a quantity less than or equal to 125 heads, native chicken ("ayam buras") and its cross-breeding and farming (ISIC 0122)

« Plantation processing product business industry below certain capacity according to Regulation of Minister of Agriculture Number 26 of 2007:

- Dry Clove Flower Industry (ISIC 0140)

« Capturing and Propagating Wildlife from natural Habitat except reptiles (snake, lizard, turtle, soft shell turtle and crocodile) (ISIC 0150)

## **2. Special Permit from Relevant Ministerial/Government Agencies and Foreign Capital Ownership Limitation**

Cultivation of Agricultural Germ Plasm, including food crops, horticulture, plantation, livestock (maximum foreign capital ownership 49%) with special permit from the Minister of Agriculture (ISIC 0111, 0112, 0113, 0121, 0122)

Cultivation and Processing of Genetically Modified Organism (GMO) Products (maximum foreign capital ownership 49%) with special permit from the Minister of Agriculture (ISIC 0111, 0112, 0113, 0121, 0122)

For each individual crop cultivation in an area of more than 25 hectares with special permit from the Minister of Agriculture:

- Main food crops are corn, soy, peanuts, green beans, rice, cassava, sweet potato (maximum foreign capital ownership 49%) (ISIC 0111, 0112)

- Other food crops are wheat, oats, barley, rye, millet, taro, and other food crops not classified elsewhere (maximum foreign capital ownership 95%) (ISIC 0111, 0112).

For each individual crop culturing medium/nursery business with special permit from the Minister of Agriculture:

- Main food crops are corn, soy, peanuts, green beans, rice, cassava, sweet potato (maximum foreign capital ownership 49%) (ISIC 0111, 0112)

- Other food crops are wheat, oats, barley, rye, millet, taro, and other food crops not classified elsewhere (maximum foreign capital ownership 95%) (ISIC 0111, 0112).

Estate Crops Plantation with an area equal to or more than 25 Hectares until a certain area stipulated in Regulation of Minister of Agriculture Number 26 of 2007, is subject to a maximum foreign capital ownership 95% and a special permit from the Minister of Agriculture :

a. Without an integrated processing unit

> *Jatropha Curcas* Plantation, Sugar cane and other sweetening plants, Tobacco plantation, Rubber and other latex producing plantation, raw material Textile Crop plantation, Cotton Plantation, Medicinal/pharmaceutical Crop plantation, Essential oil Crop Plantation, Other Crop plantations that are not classified in other locations (ISIC 0111, 0112)

> Coconut plantation, Palm plantation, Crop Plantation for Beverage material (Tea, Coffee, and Cacao), Cashew plantation, Peppercorn plantation, Clove plantation, Other spices Crop plantations (ISIC 0113)

b. With an integrated processing unit with an input capacity equal to or more than a certain capacity as stipulated in Regulation of Minister of Agriculture Number 26 of 2007

- > Clove plantation and dry flower clove industry (ISIC 0113 & 0140),
- > Cotton plantation and cotton fiber and seed industry (ISIC 0111 & 1514, 1711),
- > Cashew plantation and cashew seed industry and Cashew Nut Shell Liquid (CNSL) (ISIC 0113 & 1531),
- > Peppercorn plantation and dry white peppercorn and dry black peppercorn industry (ISIC 0112 & 1531, 1549),
- > Jatropha Plantation and Jatropha Curcas Oil Industry (ISIC 0111 & 2429),
- > Sugar cane plantation, sugar industry, sugar cane, and sugar cane residue (ISIC 0111 & 1542),
- > Tobacco plantation and dry tobacco leaves industry (ISIC 0111 & 1600),
- > Coconut Plantation and coconut oil industry (ISIC 0113 & 1514),
- > Coconut Plantation and Copra, Fiber, Coconut Charcoal, Dust, Nata de coco industry (ISIC 0113, 1514 & 1549),
- > Palm Plantation and palm oil industry (CPO) (ISIC 0113 & 1514),
- > Cacao Plantation and cleaning, peeling and drying industry (ISIC 0113 & 0140, 1543),
- > Tea plantation and black/green tea industry (ISIC 011381549),
- > Essential oil Crop Plantation and Essential Oil industry (ISIC 0111, 0112, 0113 & 2429),
- > Coffee Plantation and Coffee sorting, cleaning and peeling industry (ISIC 0113 & 0140, 1549),
- > Rubber plantation and sheet, thick latex industry and crumb rubber industry (ISIC 0111 & 2519),
- > Seed plantation other than Coffee and Cacao and Seeds other than Coffee and Cacao cleaning and peeling industry (ISIC 0111, 0112, 0113 & 0140, 1531)

Estate crops plantation with an area more than a certain area related as stipulated in the Regulation of Minister of Agriculture Number 26 of 2007, is required to have an integrated processing unit with an input capacity equal to or more than a certain capacity as stipulated in Regulation of Minister of Agriculture Number 26 of 2007, and is subject to maximum foreign capital ownership 95% and a special permit from the Minister of Agriculture:

- Clove plantation and dry flower clove industry (ISIC 0113 & 0140),
- Cotton plantation and cotton fiber and seed industry (ISIC 0111 & 1514, 1711),
- Cashew plantation and cashew seed industry and Cashew Nut Shell Liquid (CNSL) (ISIC 0113 & 1531), Peppercorn plantation and dry white peppercorn and dry black peppercorn industry (ISIC 0112 & 1531, 1549),
- Jatropha Plantation and Jatropha Curcas Oil Industry (ISIC 0111 & 2429),
- Sugar cane plantation, sugar industry, sugar cane, and sugar cane residue (ISIC 0111 & 1542),
- Tobacco plantation and dry tobacco leaves industry (ISIC 0111 & 1600),
- Coconut Plantation and coconut oil industry (ISIC 0113 & 1514),
- Coconut Plantation and Copra, Fiber, Coconut Charcoal, Dust, Nata de coco industry (ISIC 0113, 1514 & 1549),
- Palm Plantation and palm oil industry (CPO) (ISIC 0113 & 1514),
- Cacao Plantation and cleaning, peeling and drying industry (ISIC 0113 & 0140, 1543),
- Tea plantation and black/green tea industry (ISIC 011381549),
- Essential oil Crop Plantation and Essential Oil industry (ISIC 0111, 0112, 0113 & 2429),
- Coffee Plantation and Coffee sorting, cleaning and peeling industry (ISIC 0113 & 0140, 1549),
- Rubber plantation and sheet, thick latex industry and crumb rubber industry (ISIC 0111 & 2519),

> Seed plantation other than Coffee and Cacao and Seeds other than Coffee and Cacao cleaning and peeling industry (ISIC 0111, 0112, 0113 & 0140, 1531)

Breeding and propagation of the following for an area of 25 hectares or over, until a certain area according to Regulation of Minister of Agriculture Number 26 of 2007 with maximum foreign capital ownership 95%, with a special permit from the Minister of Agriculture:

> Jatropha curcas plantation, Sugar cane and other sweetening plant plantation, Tobacco plantation, raw material Textile Crop plantation, cotton plantation, Rubber and other latex producing plantation, Other crop plantations that are not classified in other locations, Medicinal/pharmaceutical crop plantation, Essential oil Crop Plantation (ISIC 0111, 0112)

> Cashew plantation, Coconut plantation, Palm plantation, Crop Plantation for Beverage material, Peppercorn plantation, Clove plantation, Other spices crop plantation (ISIC 0113)

Product processing plantation industry (harvesting and activities relating to harvesting) with an input capacity equal to or exceeding a certain limit as stated in the Regulation of the Minister of Agriculture Number 26 of 2007, with maximum foreign capital ownership 95%, with a special permit from the Minister of Agriculture:

- Dry Clove Flower Industry (ISIC 0140)

### **3. Foreign Capital Ownership Limitation**

Hunting business in Hunting Parks and Hunting Blocks (maximum foreign capital ownership 49%) (ISIC 0150)

Raising wild animals (ISIC 0150)

### **4. Partnership (19) with Micro, Small and Medium Sized Enterprises and Cooperatives (20)**

Tobacco drying and preliminary processing industry (ISIC 0111)

Silk worm cocoon/chrysalis (natural silk) farming, Bee farming (ISIC 0122)

(19) For this reservation, Partnership with Micro, Small and Medium Sized Enterprises and Cooperatives means cooperation between micro, small and medium size enterprise and Cooperatives and foreign investors, which may take any of the following forms: joint-operation (plasma-core), sub-contracting, franchise, distributorship, general trading, joint venture and outsourcing.

(20) For the purpose of this reservation, the definition of Micro, Small, and Medium Sized Enterprises (UMKM) can be found in Law No. 20 of 2008. For the definition of Cooperatives can be found in Law

### **5. Locational Requirements**

« Pig Breeding and Farming (for quantity of more than 125 heads) with a special permit from the local authority (ISIC 0122)

### **6. Special Permit from Relevant Ministerial/ Government Agencies (applies to both local and foreign investors)**

« Capturing and Propagating reptiles (snake, lizard, turtle, soft shell turtle and crocodile) from natural habitat with a special permit from Minister of Forestry (ISIC 0150)

### **Services Incidental to Agriculture**

#### **Open with certain restriction**

Estate Plantation (CPC 88110) - Pest (diseases &insects) forecasting, control and equipment rental (Partnership" with Micro, small and Medium Sized enterprises and cooperatives")

Agriculture (CPC 88110) (Partnership" with Micro, Small and Medium Sized Enterprises and Cooperatives" ) - Food crops land/soil preparation, harvesting, threshing, rice milling unit (to be located outside of Java Island) - Horticultural pest control (diseases & insects) - Food Crop Pest Control

Livestock (CPC 88110)

a. Partnership (21) with Micro, Small and Medium Sized Enterprises and Cooperatives (22)

> Slaughterhouses for cattle / poultry

b. Partnership (21) with Micro, Small and Medium Sized Enterprises and Cooperatives (22) and Special Permit from Relevant Ministerial/Government Agencies

> Meat Processing/Butchering Plan

Estate Plantation (CPC 88110) : Partnership (21) with Micro, Small and Medium Sized Enterprises and Cooperatives (22)

> Land/Soil preparation

> Landscape Planning and Survey

> Plant breeding / transplantation and nursery

(21) For this reservation, Partnership with Micro, Small and Medium Sized Enterprises and Cooperatives means cooperation between micro, small and medium size enterprise and Cooperatives and foreign investors, which may take any of the following forms: joint-operation (plasma-core), sub-contracting, franchise, distributorship, general trading, joint venture and outsourcing.

(22) For the purpose of this reservation, the definition of Micro, Small, and Medium Sized Enterprises (UMKM) can be found in Law No. 20 of 2008. For the definition of Cooperatives can be found in Law No. 25 of 1992.

Source of Measure:

Law No. 18 of 2004 Concerning Plantation

Law No 18 of 2009 concerning Livestock and Animal Health

Law No. 41 of 1999 Concerning Forestry

Law No. 5 of 1990 Concerning Conservation of Natural Resources and Its Ecosystems

Government Regulation No. 6 of 2007 as amended by Government Regulation No. 3 of 2008 Concerning Forest Administration and Compilation of Forest Management Planning and Utilization of Forest

Government Regulation No. 8 of 1999 Concerning Utilization of Plant and Wild Animal Species Government Regulation number 18 of 2010 concerning Plant Cultivating Business

Presidential Regulation No.36 of 2010 Concerning List of Business Fields Closed to Investment and Business Fields Open, With Conditions, to Investment

Agriculture Minister Regulation No. 26 of 2007 Concerning Guidelines for License on Estate Crops Sector

Agriculture Minister Decree No. 404 of 2002 Concerning Guidelines for License and Registration on Livestock Sector

Agriculture Minister Decree No. 348 of 2003 Concerning Guidelines for License on Horticulture Sector

Agriculture Minister Regulation No 2 of 2009 concerning Guidelines of Veterinary Medical Services

Government policy

## **19.**

Sector: Forestry and Services Incidental to Forestry

Sub-Sector

Industry Classification: ISIC (see below) CPC (see below)

Level of Government: Central

Type of Obligation: National Treatment

Description of Measure: Certain restrictions/requirements which may be inconsistent with National Treatment may be imposed to foreign investors on the establishment of the following line of businesses in Indonesia :

### **Forestry**

## **1. Closed to Foreign Investors**

Exploitation of other forest plants (Sugar Palm, Pecan, Tamarind Seed, Charcoal Raw Material, Cinnamon, etc) (ISIC 0200)

Exploitation of Swallow Nests in Nature (ISIC 0200)

Primary industry of forest product other than wood (Pine Sap, Bamboo) (ISIC 0200)

Gathering wild growing forest plants (ISIC 0200)

Exploitation of wood forest products from the natural forest (ISIC 0200)

Forest ecosystem restoration (ISIC 0200)

Exploitation of wood forest products from the community- based forests (ISIC 0200)

Exploitation of water resources in forest area (ISIC 0200)

## **2. Foreign Capital Ownership Limitation**

Growing and gathering wild plants (maximum foreign capital ownership 49%) (ISIC 0200)

## **3. Partnership (23) with Micro, Small and Medium Sized Enterprises and Cooperatives (24)**

Rattan Exploitation, Bamboo Exploitation, Aquilaria malaccensis (gaharu) Exploitation, Shellac Exploitation, Alternative crop Plant (Sago) Exploitation, Pine Sap Exploitation, Resin Exploitation, Eaglewood Exploitation, Exploitation of Latex Producing Plants (ISIC 0200)

## **4. Special Permit from the Minister of Forestry**

« Development of Technology used on plant and wildlife genetics (ISIC 0200).

### **Services Incidental to Forestry**

#### **Industries Closed to Foreign Investors**

\* Contractors in the field of lumbering (CPC 88140)

Source of Measure:

- Law No. 41 of 1999 Concerning Forestry

- Law No. 5 of 1990 Concerning Conservation of Natural Resources and Its Ecosystems

- Government Regulation No. 6 of 2007 as amended by Government Regulation No. 3 of 2008 Concerning Forest Administration and Compilation of Forest Management Planning and Utilization of Forest

- Government Regulation No. 36 of 2010 Concerning Natural Tourism Concession in the National Park Utilization Zone, Grand Forest Park, Nature Tourism Park

- Government Regulation No. 8 of 1999 Concerning Utilization of Plant and Wild Animal Species

- Presidential Regulation of The Republic of Indonesia No. 36 of 2010 on List of Business Fields Closed to Investment and Business Fields Open, with Conditions, to Investment

- Government Policy

(23) For this reservation, Partnership with Micro, Small and Medium Sized Enterprises and Cooperatives means cooperation between micro, small and medium size enterprise and Cooperatives and foreign investors, which may take any of the following forms: joint-operation (plasma-core), sub-contracting, franchise, distributorship, general trading, joint venture and outsourcing.

(24) For the purpose of this reservation, the definition of Micro, Small, and Medium Sized Enterprises (UMKM) can be found in Law No. 20 of 2008. For the definition of Cooperatives can be found in Law



Sector: Mining & Quarrying Services Incidental to Mining & Quarrying

Sub-Sector

Industry Classification: ISIC (see below) CPC (see below)

Level of Government: Central

Type of Obligation: National Treatment

Description of Measure: Certain restrictions/requirements which may be inconsistent with National Treatment may be imposed to foreign investors on the establishment of the following line of businesses in Indonesia :

### **Mining & Quarrying**

#### **1. Closed to Foreign Investors**

Sea Sand Extraction (ISIC 1410)

#### **2. Foreign Capital Ownership Limitation**

Geothermal Drilling (maximum foreign capital ownership 95%) (ISIC 1110, 1120)

Oil and Gas Drilling Offshore outside of Eastern Indonesia Territory (maximum foreign capital ownership 95%) (ISIC 1110, 1120)

Oil and gas drilling onshore (maximum foreign capital ownership 95%) (ISIC 1110, 1120)

#### **3. Special Permit from Relevant Ministerial/Government Agencies**

Radioactive Mineral Mining (ISIC 1200). Special Permit is required from the National Agency for Atomic Energy (BATAN)

Drilling of crude oil and gas on fee or contract basis (ISIC 1120). Special permit is required from Minister of Energy and Mineral Resources on condition of cooperation with national enterprises and only offshore drilling.

### **Services Incidental to Mining & Quarrying**

#### **1. Closed Only for Foreign Investors:**

Services of bottling and filling of Liquefied Petroleum Gas (LPG) (CPC 8830)

#### **2. Open with certain restriction:**

Operation and Maintenance Services of Geothermal Facility (maximum foreign capital ownership 90%) (ISIC 8830) Operation and Maintenance Services of Oil and Gas Facility (maximum foreign capital ownership 95%) (ISIC 8830)

Services incidental to the following general mining activities (CPC 8830) (Special Permit from the Minister of Energy and Mineral Resources)

- Research for general investigation and exploration of mines in offshore or onshore with various research methods
- Laboratory analysis and mini processing
- Research and feasibility study on environment
- Mine construction, cutting, top layer excavation, mining and mine transportation and mine reclamation
- Consultancy on mining
- Operation and consultancy on planning of building construction and other facilities in surrounding general mining project
- Other business directly related and supporting mining business

Source of Measure:

Law No. 22 of 2001 Concerning Oil and Gas Mining

Law No.4 of 2009 Concerning Mineral and Coal Mining

Law No.27 of 2003 Concerning Geothermal

Presidential Regulation of The Republic of Indonesia No. 36 of 2010 on List of Business Fields Closed to Investment and Business Fields Open, with Conditions, to Investment Presidential Decree No. 21 of 2001 concerning Lubricant Supply and Services

Government Regulation No. 23 of 2010 Concerning the Implementation of Mineral and Coal Mining Activities Government Regulation No. 59 of 2007 as amended by Government Regulation No 70 of 2010 Concerning Geothermal Energy & Mineral Resources Minister Regulation No. 20 of 2008 concerning Enactment of Indonesia's National Work Competence Standards in Oil and Gas Sector

Government Policy

## **21.**

Sector: Fishery

Sub-Sector: Coral

Industry Classification: ISIC 0500

Level of Government: Central

Type of Obligation: National Treatment

Description of Measure: Certain restrictions/requirements which may be inconsistent with National Treatment may be imposed to foreign investors on the establishment of the following line of businesses in Indonesia :

### **1. Closed to Foreign Investors and Special Permit from Relevant Ministerial/Government for Domestic Investors**

Utilization (exploitation) and distribution of coral/decorative coral from nature for aquarium usage

Utilization (exploitation) and distribution of coral/death coral resulted from transplantation/propagation technique

### **2. Foreign Capital Ownership Limitation**

Coral breeding/cultivating with maximum foreign capital ownership of 49%

Source of Measure:

Law No. 27 of 2007 concerning Management of Coastal Areas and Small Islands

Law No. 31 of 2004 as amended by Law No. 45 of 2009 Concerning Fishery

Law No. 5 of 1983 Concerning Indonesia's Exclusive Economic Zone

Presidential Regulation No.36 of 2010 Concerning The List of Businesses Closed and List of Businesses Opened With Reservation In The Investment Sector

Regulation of the Minister of Marine Affairs and Fisheries of the Republic of Indonesia No. PER.05/MEN/2008 as amended by No. PER.12/MEN/2009 regarding Capture Fishery Business. Regulation of the Minister of Marine Affairs and Fisheries of the Republic of Indonesia No. PER.12/MEN/2007 regarding Aquaculture Business Licensing

Regulation of the Minister of Marine Affairs and Fisheries of the Republic of Indonesia No. PER.05/MEN/2009 regarding Aquaculture Business Scale

Decree of the Minister of Forestry of the Republic of Indonesia No. 447/Kpts-II/2003 regarding Procedures on Exploitation or Capturing and Distribution of Wild Plants and Animals

Government Policy

## **22.**

Sector: Agriculture, Manufacturing Services Incidental to Agriculture, Manufacturing

Sub-Sector: Horticulture

Industry Classification: ISIC 0111, 0112, 0113, 0140, 1513, 1514, 1531, 1549, 2423 CPC 88110, 88411

Level of Government: Central

Type of Obligation: National Treatment Senior Management and Board of Directors

Description of Measure:

National Treatment and Senior Management and Board of Directors shall not apply to any measures related to the Horticulture subsector activities including but not limited to breeding and propagation, cultivation, harvest and post-harvest, processing, and their services incidental.

Transition period of four years is provided for existing investors (25) in the Horticulture subsectors to make adjustment to comply with measures stated in the Law No. 13 of 2010 and its implementing regulation.

The definition of Horticulture subsectors can be found in the Law No. 13 of 2010.

Source of Measure

- Law No. 13 of 2010 concerning Horticulture - Government Policy

(25) Existing investors refer to the existing investors before the enactment of Law No. 13 of 2010.

## **Lao pdr**

### **1.**

Sector: All Sectors

Sub-Sector: -

Industry Classification: -

Level of Government: Central

Type of Obligation: National Treatment

Description of Measure: Foreign investors (1) are not allowed to own land, but allowed to lease land or to receive grant concession of land for investment purpose. The period of the lease is between 35 – 50 years and can be extended for another 25 years to a maximum of 75 years, for agriculture, mining and energy.

Source of Measure :

-Land Law No: 04/NA, Art: 3, 64, 65, 66 and 67, Dated: 20 October 2003.

-Law on the Promotion of Foreign Investment No: 11/NA, Art: 04, Dated: 22 October 2004.

(1) Foreign investor means a foreign individual or legal entity investing in Lao PDR. Foreign entity means a foreign company registered outside Lao PDR.

### **2.**

Sector: All Sectors

Sub-Sector: -

Industry Classification: -

Level of Government: Central

Type of Obligation: National Treatment

Description of Measure: Foreign investors needs to obtain investment license as follows:

- For investment of more than USD 5 million in the provinces of Savannakhet, Champasack and Luangpabang, and for investment of more than USD 3 million in other provinces, requirement of investment license from the Ministry of Planning and Investment (MPI).

- Investment licenses may be obtained either from the MPI or from the Committee for promotion and Management of Investment (CPMI), for investment of less than USD 5 million in the provinces of Savannakhet, Champasack and Luangpabang.

- Investment licenses may be obtained either from the MPI or from the Committee for promotion and Management of Investment (CPMI), for investment of less than USD 3 million in the other provinces. The investment term of a foreign investment enterprise depends on the nature, size and conditions of the business activities or project but shall not exceed fifty years and may be extended with the approval of the government. However, the investment term of a foreign investment enterprise shall be for a maximum of seventy-five years.

Source of Measure: Decree No: 301/PM, Dated: 12 October 2005 of Prime Minister regarding the implementation of the Law on the Promotion of the Foreign Investment, Article 39-43.

### **3.**

Sector: All Sectors

Sub-Sector: -

Industry Classification: -

Level of Government: Central

Type of Obligation: National Treatment

Description of Measure: There are 3 types of businesses for foreign investment: Joint Venture (2), wholly-owned foreign and business cooperation by contracts. Foreign investors investing in a Joint Venture must contribute at least thirty percent (30%) of the total investment capital and minimum registered capital USD 100,000.

Source of Measure : Investment Law Article: 7; No: 73/PO, Dated 22 October 2004.

(2) A "joint venture" is an enterprise established and registered under the laws of the Lao's People Democratic Republic, operated and jointly owned by foreign and domestic investors.

### **4.**

Sector : Mining and Quarrying

Sub-Sector : -Exploration and extraction mining and agglomeration of hard coal, lignite, peat

-Exploration and extraction of crude petroleum, natural gas

-Mining of chemical and fertilizer minerals

Industry Classification : ISIC 1010, 1020, 1030 ISIC 1110 ISIC 1421

Level of Government : Central

Type of Obligation : National Treatment

Description of Measure : Investment in mining operations in Lao PDR shall take following forms:

-sole investment by the state;

-joint investment between the state and domestic or foreign investors;

-collective or private investment from domestic investors.

Source of Measure : -Mining Law Article 21, No: 04-97/NA, Dated 12 April 1997. -Decree of Prime Minister regarding the implementation of the Law on the Promotion of Foreign Investment No. 301/PM, Dated 12/10/2005, Article 25 and 25.2.

Justification : Exploitation of natural resources with high technology to preserve the environment and natural resource.

## **5.**

Lao PDR Reservation No. 5 (Manufacturing Sector) is removed from the ACIA Reservation list

## **6.**

Sector: Mining and Quarrying

Sub-Sector: Mining of chemical and fertilizer minerals: Guano (Bat Dung) mining

Industry Classification: 1421

Level of Government: Central

Type of Obligation: National Treatment

Description of Measure: Collection of Guano is reserved for citizens and companies wholly-owned by citizens.

Source of Measure : -Order of the Ministry of Agriculture and Forestry, order of the Ministry of Agriculture and Forestry, No.2050/MAF99, dated 20/12/1999.Regarding to prohibition of Guano excavation for export. -Order of Ministry of Agriculture and Forestry, No. 613/MAF99, Dated 8/7/2005, regarding utilization and management of Guano in Lao PDR.

Justification: May not need to reserve for use of domestic citizens as it may not allow the export in the future.

## **7.**

Sector: Agriculture and Services Incidental to Agriculture

Sub-Sector: Hunting, trapping and game propagation and services related to hunting

Industry Classification: ISIC 0150 CPC 88130

Level of Government: Central

Type of Obligation: National Treatment

Description of Measure: Subject to agreement and specific approval from the Lao government.

Source of Measure : -Decree of Prime Minister regarding the implementation of the Law on the Promotion of Foreign Investment No. 301/PM, Dated 12/10/2005, Article: 24 annex 4. -The measures stipulated in the article 24, 31 and 32 of the Law on wildlife No. 07/NA, 24/12/2007 are applied only Lao national.

## **8.**

Sector: Fishery

Sub-Sector: Operation of fish hatcheries

Industry Classification : ISIC 0500

Level of Government: Central

Type of Obligation : National Treatment

Description of Measure : Operation of fish/aquaculture hatcheries in the Mekong River and its tributaries in Lao PDR is reserved for citizens and companies wholly-owned by Lao citizens. No foreigner is authorize to undertake fishing activity for commercial purposes in Lao PDR.

Source of Measure : -Decree of Prime Minister regarding the implementation of the Law on the Promotion of Foreign Investment No. 301/PM, Dated 12/10/2005, Article: 24 annex 4. -Policy of the Ministry of Agriculture and Forestry Draft of Fishing and Fishery Law: Article 26 (in endorsement process). -Wildlife Law, No. 07/NA, dated 24/12/2007: Article 24, 31 and 32 on catching/hunting aquatic and wild animals.

# Malaysia

## 1.

Sector : All Sectors

Sub-Sector : -

Industry Classification : -

Level of Government : Central

Type of Obligation : National Treatment Senior Management and Board of Directors

Description of Measure : Every company incorporated in Malaysia shall have at least 2 directors who each has his principal or only place of residence within Malaysia (Section 122(1) of the Companies Act 1965 [Act 125]).

Source of Measure : Companies Act 1965 [Act 125]

## 2.

Sector : All Sectors

Sub-Sector : -

Industry Classification : -

Level of Government : Central and Regional

Type of Obligation : National Treatment

Description of Measure : Acquisitions or dealings of land by foreign investors must be approved by the relevant State Authority, subject to such conditions and restrictions as may be imposed by that Authority.

Source of Measure : - Land Acquisition Act, 1960 [Act 486] Land Conservation Act 1960 [Act 385] National Land Code 1965 [Act 56] National Land Code (Penang and Malacca Titles) Act 1963 [Act 518] Strata Titles Act 1985 [Act 318] Building and Common Property (Maintenance and Management) Act 2007 [Act 663] Strata Management Act 2012 [Act 757] Federal Lands Commissioner Act 1957 (Revised 1988) [Act 349] Land (Group Settlement Areas) Act 1960 [Act 530] Malay Reservations Enactment 1933 Kedah Enactment No 63 (Malay Reservations) Kelantan Malay Reservations Enactment, 1930 MY/RL2/Rev.1/Suppl.2 - Kelantan Land Settlement Act 1955 (Revised 1991) [Act 460] - Perlis Malay Reservations Enactment, 1353 - Perlis Land Settlement Enactment, 1966 - Johore Malay Reservation Enactment, 1936 - Terengganu Malay Reservation Enactment, 1360 - Terengganu Settlement Enactment, 1356 - Sabah Land Ordinance (Sabah Cap 68) - Sabah Land Acquisition Ordinance (Sabah Cap 69) - Sarawak Land Code 1958 - Local Government Act 1976 [Act 171] - Town and Country Planning Act 1976 [Act 172] - Federal Territory (Planning) Act 1982 [Act 267] - Federal Capital Act 1960 [Act 190] - Street, Drainage and Building Act 1974 [Act 133]

## 3.

Sector : All Sectors

Sub-Sector : -

Industry Classification : -

Level of Government : Central

Type of Obligation : National Treatment

Description of Measure : Where the Companies Act 1965 [Act 125] or memorandum and articles of association of a company imposes a prescribed foreign shareholding limit, the company may restrict certain entitlement with respect to shares that have exceeded the prescribed limit (1) (excess shares).

Source of Measure : - Companies Act 1965 [Act 125] - Securities Industry (Central Depositories) Act 1991 [Act 453] - Securities Industry (Central Depositories) (Foreign Ownership) Regulations 1996

(1) For example, a company may still grant certain entitlement i.e. dividend payment to the foreigner holding the excess shares but they may not be entitled to vote. For the purposes of this reservation, the term 'foreigner' can be found in Securities Industry (Central Depositories) (Foreign Ownership) Regulations, 1996.

#### **4.**

Sector : All Sectors

Sub-Sector : -

Industry Classification : -

Level of Government : Central

Type of Obligation : National Treatment

Description of Measure : Malaysia reserves the right to adopt or maintain any measure with respect to securities to be listed or listed on a stock exchange and any matter relating to the acquisition of interests, take-overs and mergers of a public listed company.

Source of Measure : - Capital Market and Services Act 2007 [Act 671] - Securities Industry (Central Depositories) Act 1991[Act 453] - Securities Industry (Central Depositories) (Foreign Ownership) Regulations 1996.

#### **5.**

Sector : All Sectors

Sub-Sector : -

Industry Classification : -

Level of Government : Central and Regional

Type of Obligation : National Treatment Senior Management and Board of Directors

Description of Measure : Malaysia reserves the right to adopt or maintain any measures relating to privatisation, divestment of assets through transfer or disposal of equity interests or assets owned wholly or partially by the Government. All privatised projects are subjected to Malaysia's social and economic development policies and the Privatisation Master Plan with regards to foreign participation. In general, foreign participation is restricted to 25% of total equity. However, considerations can be given up to 49% on a case by case basis. Foreign participation may be considered in the following cases: - where foreign expertise is needed to upgrade efficiency and such expertise is not available locally; - where their participation is necessary to promote export market; - where local capital is insufficient; and - where the nature of business requires international linkages and exposure. All conditions imposed on existing privatised entities will continue to be applicable.

Source of Measure : - Malaysia Public Private Partnership (PPP) programme - Privatisation Master Plan - Guidelines on Public Private Partnership (PPP) - Social and economic development plans/policies - New Economic Model

#### **6.**

Sector : All Sectors

Sub-Sector : -

Industry Classification : -

Level of Government : Central and Regional

Type of Obligation : National Treatment Senior Management and Board of Directors

Description of Measure : Malaysia reserves the right to adopt or maintain any measure affecting activities restricted to designated enterprises (2) which are liberalised to those other than the designated entities or where such designated enterprise no longer operate on a non-commercial basis.

Source of Measure : - Control of Padi and Rice Act 1994 [Act 522] Industrial Co-Ordination Act 1975 [Act 156] Government Policy Administrative Guidelines

(2) For illustrative purposes, 'Designated enterprises' may include Padiberas Nasional Berhad (BERNAS) and Kualiti Alam Sdn Bhd.

## **7.**

Sector : All Sectors

Sub-Sector : -

Industry Classification : -

Level of Government : Central and Regional

Type of Obligation : National Treatment Senior Management and Board of Directors

Description of Measure : Malaysia reserves the right to adopt or maintain any measure for the purposes of enhancing Bumiputera (3) participation in the Malaysia economy. Such measures include: - new/additional licences or permits; - assistance, rights, preferences or benefits accorded to Bumiputera; and - providing favourable treatment in relation to acquisition, establishment or operation of any commercial or industrial entity. For greater certainty, such measures do not require an investor by reason of its nationality, to sell or otherwise dispose of an existing investment.

Source of Measure : - Federal Constitution Aboriginal Peoples Act 1954 [Act 134] Interpretation Ordinance 2005 (Cap.61) Interpretation (Definition of Native) (Cap.64) Government Policy New Economic Policy National Development Policy - National Vision Policy - Guidelines on the Acquisition of Properties, Economic Planning Unit - Administrative Guidelines

3 The term 'Bumiputera' covers Malays, natives of Sabah and Sarawak, and aborigines.

## **8.**

Sector : All Sectors

Sub-Sector : -

Industry Classification : -

Level of Government : Central

Type of Obligation : National Treatment Senior Management and Board of Directors

Description of Measure : Malaysia reserves the right to adopt or maintain any measure relating to employment of expatriates. Restrictions may be imposed on the number, duration and type of expatriates employed.

Source of Measure : - Immigration Act 1959/63 [Act 155] - Employment (Restriction) 1968 (Revised 1988) - Expatriate Services Division (ESD) Online Guidebook - Government Policies

## **9.**

Sector : All Sectors

Sub-Sector : -

Industry Classification : -

Level of Government : Central and Regional

Type of Obligation : National Treatment

Description of Measure : Malaysia reserves the right to adopt or maintain any measure relating to National and State unit trusts. This includes unit trust schemes that are created or operated to pursue public policy objectives related to Bumiputera or affirmative action for the socially disadvantaged.



Source of measures : - Federal Constitution New Economic Policy National Development Policy National Vision Policy

## 10.

Sector : All Sectors

Sub-Sector : -

Industry Classification : -

Level of Government : Central and Regional

Type of Obligation : National Treatment

Description of Measure : Malaysia reserves the right to adopt or maintain any measure relating to the issuance of licence/permit including numerical limitations and non-issuance of licences. Malaysia reserves the right to adopt or maintain any measure relating to the conditions (4) imposed in the issuance of licence/permit.

Source of Measure : - Government Policy - Industrial Co-Ordination Act 1975 [Act 156] - Administrative guidelines

(4) For illustrative purposes, this may include the recommendation that employment of workers be reflective of the racial composition of the country and to use local distributors.

## 11.

Sector : All Sectors

Sub-Sector : -

Industry Classification : -

Level of Government : Central and Regional

Type of Obligation : National Treatment

Description of Measure : Malaysia reserves the right to adopt or maintain any measure relating to the rights of statutory bodies.(5)

Source of Measure : - Article 92 of Federal Constitution - Employees Provident Fund Act 1991 [Act 452] - Tabung Haji Act 1995 [Act 535] - Tabung Angkatan Tentera Act 1973 [Act 101] - Kumpulan Wang Amanah Persaraan (Diperbadankan) - State Economic Development Corporation Enactments - State Agriculture Development Corporation Enactments - Iskandar Regional Development Authority Act 2007 [Act 664] - Northern Corridor Implementation Authority Act 2008 [Act 687] - East Coast Economic Region Development Council Act 2008 [Act 688] - Regional Corridors Development Authorities Ordinance 2006 - Sabah Economic Development and Investment Authority (SEDIA) Enactment 2009 - Administrative Guidelines

(5) Examples of statutory bodies include Employees Provident Fund and Lembaga Tabung Haji.

## 12.

Sector: Manufacturing

Sub-Sector: Services Incidental to Manufacturing

Industry Classification: ISIC Divisions 15 to 36

Level of Government: Central and Regional

Type of Obligation: National Treatment Senior Management and Board of Directors

Description of Measure: For companies/projects that are in existence before the entry into force of this Agreement, conditions imposed in their approvals for licence/permits shall continue to apply. Notwithstanding the liberalisation of similar licence conditions for new companies/ projects, or expansion and/or diversification projects, any liberalisation for

existing companies/projects shall be considered on a case by case basis.

Source of Measure:

- Industrial Co-ordination Act 1975.
- Government Policy.
- Administrative Guidelines.

### **13.**

Sector : Manufacturing

Sub-Sector: Services Incidental to Manufacturing

Industry Classification : ISIC (see below) CPC 884-885

Level of Government : Central and Regional

Type of Obligation : National Treatment

Description of Measure : Foreign equity is limited up to 30% in the following activities/products:

- fabrics and apparels of Batik (ISIC 1711, ISIC 1712, ISIC 1810)
- integrated portland cement (ISIC 2694)

Malaysia reserves the right to adopt or maintain any measures relating to the conditions imposed on the following activities/products which may be inconsistent with National Treatment:

Sectors with specific conditions - Pineapple canning (ISIC 1513) - Palm oil milling and refining (ISIC 1514) - Wood-based products utilizing local logs (ISIC 2010, ISIC 2021, ISIC 2022) - Arms, weapons, ammunitions, explosive, pyrotechnic products, propellant powders, detonating or safety fuses, and the like (ISIC 2429, ISIC 2927) - Petroleum refining (ISIC 2320) - Manufacture/Assembly of motor vehicles, passenger cars and commercial vehicles (ISIC 3410) - Sugar refining (ISIC 1542)

Sectors which are currently closed - Liquors and alcoholic beverages (ISIC 15513) - Tobacco processing and cigarettes (ISIC 1600) - Optical discs, including CD, CD-ROM, VCD, DVD (ISIC 2230) - Biodiesel (ISIC 2411) - Collection, storage, treatment and disposal of hazardous and toxic wastes - Ordinary Portland Cement (non-integrated) (ISIC 2694)

Source of Measure : - Industrial Co-Ordination Act 1975 [Act 156] - Customs Act 1967 [Act 235]

### **14.**

Sector : Fishery

Sub-Sector: - Services Incidental to Fishery - Capture fisheries

Industry Classification : ISIC Division 05 CPC 882

Level of Government : Central and Regional

Type of Obligation : National Treatment

Description of Measure : No foreign fishing vessel (6) shall load or unload any fish, fuel or supplies or transship any fish or fish or attempt to fish or conduct any technoeconomic research or waters survey of any fishery, in Malaysian fisheries waters (7) unless authorised to do so. Fishing vessel means any boat, craft, ship or other vessel which is used for equipped to be used for, or of a type used for - fishing; or - aiding or assisting other boat, craft, ship or other vessel in the performance of any activity related to fishing, including any of the activities of preparation, processing, refrigeration, storage, supply or transportation of fish.

Source of Measure : - Fisheries Act 1985 [Act 317] - Lembaga Kemajuan Ikan Malaysia Act 1971 [Act 49] - Exclusive Economic Zone Act 1984 [Act 311] - Continental Shelf Act 1966 [Act 83] - National Land Code [Act 56]

(6) For the purpose of this reservation, the term 'foreign fishing vessels' can be found in Section 2 Fisheries Act 1985 [Act 317]

(7) For greater certainty, under the (Fisheries Act 1985) [Act 317], "Malaysian fisheries waters" means maritime waters under the jurisdiction of Malaysia over which exclusive fishing rights or fisheries management rights are claimed by law and includes the internal waters of Malaysia, the territorial sea of Malaysia and the maritime waters comprised in the exclusive economic zone of Malaysia.

## 15.

Sector: Agriculture

Sub-Sector: Services Incidental to Agriculture

Industry Classification: ISIC Division 01 CPC 8811 – 8813

Level of Government; Central and Regional

Type of Obligation: National Treatment

Description of Measure: Equity ownership must be in line with the national development objectives of growth with equity in order to meet distributional goals.

Source of Measure: - National Agricultural Policy. - Administrative guidelines.

## 16.

Sector : Forestry

Sub-Sector: - Services Incidental to Forestry - Extraction and Harvesting of Timber - Forest Plantation

Industry Classification : ISIC Division 02 CPC 8814

Level of Government : Central and Regional

Type of Obligation : National Treatment

Description of Measure : Malaysia reserves the right to adopt or maintain any measure relating to forest plantation. Extraction and harvesting of timber is closed to foreign investors in Peninsular Malaysia and Sabah. However, for Sarawak, local involvement and majority local control is required. Forest areas to be opened for such activities shall be gradually reduced in the future to enable the resources to be managed sustainably. Services incidental to extraction and harvesting of timber is closed to foreign investors in Peninsular Malaysia and Sabah. However, for Sarawak, maximum foreign equity ownership allowed is 30%; flexibility could be considered.

Source of Measure : - National Forestry Act 1984 [Act 313] F.M.S Forest Enactment 1934 Johor Forest Enactment Kedah Forest Enactment Kelantan Forest Enactment Perlis Forest Enactment S.S Forest Ordinance Sabah Forest Enactment Sarawak Forest Ordinance Terengganu Forest Enactment Administrative guidelines

## 17.

Sector : Mining and Quarrying

Sub-Sector: - Services Incidental Quarrying to Mining and Oil and Gas Upstream Industries

Industry Classification : ISIC Divisions 10 to 14 CPC 883

Level of Government : Central and Regional

Type of Obligation : National Treatment Senior Management and Board of Directors

Description of Measure : PETRONAS and its successor are vested with the entire ownership in, and the exclusive rights, powers, liberties and privileges, which shall be irrevocable, in exploring, exploiting, winning and obtaining petroleum whether onshore or offshore of Malaysia. Malaysia reserves the right to adopt or maintain any measures relating to the oil and gas upstream industry including related activities.

Source of Measure : - Petroleum Development Act 1974 [Act 144] - Petroleum Mining Act 1966 [Act 95]

## 18.

Sector : Mining and Quarrying

Sub-Sector : - Services Incidental Quarrying to Mining and Other mining and quarrying activities

Industry Classification : ISIC Divisions 10 to 14 CPC 883

Level of Government : Central and Regional

Type of Obligation : National Treatment Senior Management and Board of Directors

Description of Measure : Malaysia reserves the right to adopt or maintain any measures relating to mining and quarrying activities. Joint ventures with state or statelinked enterprises may be required.

Source of Measure : - Minerals Development Act 1994 [Act 525] - State Mineral Enactments

## Myanmar

### 1.

Sector: Manufacturing Sector

Sub-Sector: - Distilling, blending, rectifying, bottling and marketing of all kinds of sprits, beverages and non-beverages (ISIC 1551) - Manufacture of malt and malt liquors, beer and other brewery products (ISIC 1553) - Manufacture of soft beverages, aerated and non-aerated products (ISIC 1554) - Manufacture of cigarettes (ISIC 1600) - Manufacture of pulp, paper and paper board (ISIC 2101)

Industry Classification: ISIC 1551, 1553, 1554, 1600, 2101

Level of Government: Central

Type of Obligation: National Treatment

Description of Measure:

(1) A foreign investor is not allowed to establish an enterprise in (a) distilling, blending, rectifying, bottling and marketing of all kinds of spirits, beverages and non-beverages; and (b) manufacture of malt and malt liquors, beer and other brewery products, except through joint-venture with local citizen.

(2) In the manufacture of soft beverages, aerated and non- aerated products a foreign investor must use at least 20% local raw materials. Local cropping raw materials must be used at least 60% after 3 years of factory completion.

(3) A foreign investor is allowed in the manufacture of cigarettes, provided it exports 90% of its produce and (a) it shall use minimum 50% domestically produced tobacco leaves within the first (3) years of operation; or (b) It shall be allowed to use imported tobacco leaves which are bought with at least 50% of the income obtained by exporting domestically tobacco leaves.

(4) For Manufacture of pulp, paper and paper board (ISIC 2101), no new permits are issued to foreign investors (1). Integrated project is compulsory. Integrated project means combining of all plants into a whole Mill which compose Pulp Plant, Paper Plant, Chemical Plant, Recovery Plant, Power Plant and Waste Water Treatment Plant etc.

Source of Measure : - The Foreign Investment Law (2012). - The Foreign Investment Rules(2013) - Myanmar Investment Commission Notification No.(1/2013) - Control of Smoking and Consumption of Tobacco Product Law (2006) - National Food Law(1997) - The Private Industrial Enterprise Law(1990) - Administrative Guideline.

(1) According to the Union of Myanmar Foreign Investment Law, "Foreign Investor" means a person or an economic organization making an investment under a permit.

### 2.

Sector: Manufacturing and Services incidental to Manufacturing

Sub-Sector: - Manufacture of pharmaceutical drugs (ISIC 2423) - Services incidental to manufacture of pharmaceuticals (CPC 88570)

Industry Classification: ISIC 2423, CPC 88570

Level of Government: Central

Type of Obligation: National Treatment

Description of Measure:

For Manufacture of pharmaceutical drugs: Foreign investors are not allowed to manufacture traditional medicines (2). However, they can be allowed if they follow the terms and conditions prescribed by the Ministry of Health.

For Services incidental to manufacture of Pharmaceuticals: Only allowed to State-owned Enterprises under the Ministry. (3) Require permission from Food and Drug Administration (FDA) under the Ministry of Health.

Source of Measure: - The Foreign Investment Law (2012). - The Foreign Investment Rules(2013) - Myanmar Investment Commission Notification No (1/2013) - National Drug Law (1992). The Private Industrial Enterprise Law(1990)

(2) Traditional medicine (also known as indigenous or folk medicine) comprises knowledge systems that developed over generations within various societies before the era of modern medicine. The World Health Organization (WHO) defines traditional medicine as: "the health practices, approaches, knowledge and beliefs incorporation plant, animal and mineral-based medicines, spiritual therapies, manual, techniques and exercises, applied singularly or combination to treat, diagnose and prevent illnesses or maintain well-being."

(3) State-Owned Enterprises means enterprises owned or controlled by the respective ministries under the state budget.

### 3.

Sector: Manufacturing Sector

Sub-Sector: - Manufacture of Refined Petroleum Products ( ISIC 2320) - Services incidental to manufacture of refined petroleum products (CPC 88450)

Industry Classification: ISIC 2320, CPC 88450

Level of Government: Central

Type of Obligation: National Treatment

Description of Measure: State-owned Economic Enterprises are allowed to operate oil refining and undertake refining activities. Myanmar Nationals/ Myanmar Companies (4) , Foreigners/Foreign Companies established under the existing Laws of Myanmar can be allowed to operate oil refining and refining activities on Joint Venture or 100% investment subject to the rules and regulations of the Ministry of Energy.

Source of Measure: - State-owned Economic Enterprises Law (1989). - The Foreign Investment Law (2012). - The Foreign Investment Rules(2013) - Myanmar Investment Commission Notification No (1/2013) - Directives. - Myanmar Citizens Investment Law (1994.)

Justification: For national interest. According to the section 4 of the State-owned Economic Enterprises Law (SEEs), the Government may, by notification, permit in the interest of the Union of Myanmar any economic enterprise which is prescribed under the Section 3, to be operated solely by the Government to be carried out by joint-venture between the Government and any other person or any other organization or under conditions by any person or any economic organization subject to conditions.

(4) Myanmar Companies are companies solely-owned or controlled by Myanmar Nationals.

### 5.

Sector: Forestry and Services Incidental to Forestry

Sub-Sector: - Production and extraction of hard-wood (4) from the natural forest (5) (ISIC 0200) - Services incidental to Forestry (CPC 8814) • Extraction of logs from the natural forests • Protected areas system (6)

Industry Classification: ISIC 0200 CPC 8814

Level of Government: Central

Type of Obligation: National Treatment

Description of Measure: Only allowed to State-owned Enterprise under the Ministry

Source of Measure: - Forest Policy (1995). - State-owned Economic Enterprises Law (1989) - Forest Law (1992) - Protection of Wildlife and Wild Plants and Conservation of Natural Areas Law (1994)

Justification : Conservation of forest resources and the environment. Biodiversity conservation

(4) Hard-wood is used to describe wood from non-monocot angiosperm trees and for those trees themselves. These are usually board-leaved; in temperate and boreal latitude they are mostly deciduous, but in tropics and subtropics mostly evergreen.

(5) Natural forests are the forest which might be managed to some degree or unmanaged. After an adequate amount of time without intervention, such a forest might develop some of the basic structure of virgin forest.

(6) Protected Areas System is an area of land/or sea especially dedicated to the production of biological diversity, and of natural and associated cultural resources, and managed through legal or other effective means (IUCN, 1994).

## 6.

Sector: Fishery

Sub-Sector: Fishing of marine fish, prawns and other aquatic organisms

Industry Classification: ISIC 0500

Level of Government: Central

Type of Obligation: National Treatment

Description of Measure: If any investor desires to engage in a fishery in the exclusive economic zone, he shall apply to the Department of Fisheries in the prescribed form. Such an investor shall form a joint venture with State organization (or) existing joint venture company or private Myanmar Company, subject to the approval of the Government. Provided that in exceptional circumstances, he may apply for permission to operate a fishery in other fisheries waters.(Chapter 3, para 6 at Law Relating to the Fishing Rights of Foreign Fishing Vessels)(1989). Such an investor shall initially discuss with the Department of Fisheries under the Ministry of Livestock and Fishery. The Ministry shall submit the proposal to Cabinet through Myanmar Investment Commission (MIC) and Trade Council. After getting approval from Cabinet, MIC will issue the investment permit. An investor who has been granted a fishery on application under section 6 shall obtain a licence and register at the Department of Fisheries.

Source of Measure: - Law relating to the Fishing Right of Foreign Fishing Vessels (1989). - Myanmar Marine Fisheries Law (1990).

Justification: For fishing of marine fish, prawn, and other aquatic organism, different treatment is given to Myanmar citizens according to the provisions of the Myanmar Marine Fisheries Law (1990).

## 7.

Sector: Services Incidental to Fishery

Sub-Sector: - Services related to processing on board for fish, crustaceans and mollusks and other related services, exploitation of sea-products. - Services related to exploitation of fresh water fisheries. - Quarantine, quality control of aquaculture and processing products, services on supply of feed, medicines and chemical for aquaculture.

Industry Classification: CPC 88200

Level of Government: Central

Type of Obligation: National Treatment

Description of Measure: If any investor desires to engage in fishery activities in the exclusive economic zone, he shall apply to the Department of Fisheries in the prescribed form. Such an investor shall form a joint venture with State organization (or) existing joint venture company or private Myanmar Company, subject to the approval of the Government. Provided that in exceptional circumstances, he may apply for permission to operate fishery activities in other fisheries waters. (Chapter 3, para 6 at Law Relating to the Fishing Rights of Foreign Fishing Vessels)(1989) Such an investor shall initially discuss with the Department of Fisheries under the Ministry of Livestock and Fishery. The Ministry shall submit the proposal to Cabinet through Myanmar Investment Commission (MIC). After getting approval from Cabinet, MIC will issue the investment permit. An investor who has been granted such permit on application under Chapter 3 para 6 shall obtain a licence and register at the Department of Fisheries. Foreign investor shall comply not only with the regulations, directives and notifications of Department of Fisheries but also international rules and regulations.

Source of Measure: - Law relating to the Fishing Rights of Foreign Fishing Vessels (1989). - Myanma Marine Fisheries Law (1990) - Freshwater Fisheries Law (1991) - Law Amending the Myanmar Marine Fisheries Law (1993) - Law Amending the Law relating to the Fishing Rights of Foreign Fishing Vessels (1993)

Justification: For fishing of marine fish, prawn, and other aquatic organism, different treatment is given to Myanmar citizens according to the provisions of the Myanma Marine Fisheries Law (1990)

## **8.**

Sector: Mining and Quarrying, and Services Incidental to Mining and Quarrying

Sub-Sector: - Exploration and Extraction of Natural Gas (ISIC 1110) - Exploration and Extraction of Petroleum (ISIC 1110) - Services relating to Exploration and Extraction of Natural Gas (CPC 88300) - Services relating to Exploration and Extraction of Petroleum (CPC 88300)

Industry Classification: ISIC 1110 CPC 88300

Level of Government: Central

Type of Obligation: National Treatment Senior Management and Board of Directors

Description of Measure: According to the section-3 of State-owned Economic Enterprises (SEEs) Law (1989), Exploration and Extraction of Natural Gas and Petroleum are restricted activities to be carried out solely by the State. However, investor who wants to engage in these activities shall initially discuss with the Ministry of Energy under Production Sharing Contract. The Ministry shall submit the proposal to Cabinet through MIC and Trade Council. After getting approval from Cabinet, the Government will issue notification subject to the Stateowned Economic Enterprises Law. The Management Committee shall consist of a total of 7 members, 4 from the Myanmar side, one of whom shall act as Chairman and 3 from the investor side according to Production Sharing Contract or according to the agreement between Ministry of Energy and the investor.

Source of Measure: State-owned Economic Enterprises Law (1989).

## **9.**

Sector: Services incidental to Mining and Quarrying

Sub-Sector: Gemstone

Industry Classification: CPC 88300

Level of Government: Central

Type of Obligation: National Treatment Senior Management and Board of Directors

Description of Measure: Foreigners and foreign companies are not allowed for prospecting, exploration and mining of gemstone. Services relating to prospecting, exploration and mining of gemstone are only allowed to the Companies formed solely with Myanmar Citizen under the Special Company Act 1950. The composition of Joint Management Committee may consist of a minimum of five members and to be mutually agreed by Product Sharing Contract (PSC) Partners. A minimum of

three members from Myanmar side one of who shall act as chairman and two members from the partner company. The Joint Management Committee is responsible for assisting the General Manager in decision making in financial, technical and procurement issues.

Source of Measure: - Ministerial Policy - State-owned Economic Enterprises Law (1989) - Myanmar Gemstone Law (1995)

## 10.

Sector: All Sector (Land Ownership)

Sub-Sector :

Industry Classification :

Level of Government: Central

Type of Obligation: National Treatment

Description of Measure: National Treatment may not apply to any measures affecting land property and natural resources associated with land (5). Land is owned by the State. However, government-owned lands, lands owned by the government department, organization and Private lands owned by the citizens can be leased up to initial 50 Years depending upon the category of business, industry and the volume of amount and extendable two consecutive terms of 10 years subject to the approval of the Myanmar Investment Commission.

The Farmland Law does not authorize the right of ownership, but provide land use certificate to have the right to utilize the land. The person who has the right to use the farmland shall have the following rights:

(a) right to have the farmland in possession, right to use the farm-land, right to enjoy the benefit arises from this right; (b) right to sell, mortgage, lease, exchange and give the whole or part of the farmland in accord with the stipulated terms and conditions; (c) right to accept the decision of the relevant court in accord with the existing law if the dispute arises relating to the inheritance of the right to use the farmland; (e) right to use for common interest with the investment of village co-operative or with the private investors for the development of agriculture in the farmland; (f) right to use the farm land for common interest, with the foreigner or the organization in which the foreigner is included, in accord with the Foreign Investment Law of the Republic of the Union of Myanmar by cooperating. Collection of land tax/revenue is yet to be decided by the State. The Vacant, Fallow and Virgin Lands Management Law permits for the agriculture, livestock breeding and affiliated economic enterprise in respect of the period: (g) In the agricultural business: (i) for perennial plant and orchard, permit not exceeding 30 years commencing from the year of permission: (ii) for seasonal crop, permit so long as there is breach of the stipulated terms and conditions (h) In the livestock breeding business, permit not exceeding 30 years commencing from the year of permission. (i) Permit multiple extension not exceeding 30 years in total depending upon the type of business after the expiry of the permitted period. (j) For the mineral production business permit will be granted in coordination with the ministry of mines of the Union Government. (k) For other lawful businesses permitted by the Government, permission will be granted in coordination with the respective Ministry of Union Government. (l) The Central Committee for The vacant, fallow and virgin Lands management shall determine the rate of security fees to be paid by the person who has obtained the right to cultivate or utilize the vacant, fallow and virgin lands in accordance with the type of business. (m) Depending upon the type of business and kind of crops, rate of land revenue to be collected and period for exemption of land revenue for cultivation and utilization of vacant fallow and virgin lands shall be decided by the Central Committee for vacant, fallow and virgin Lands. Investment by the foreigners and organizations Involving foreigners can be undertaken according to the approval of Myanmar Investment Commission.

Source of Measure : - The Transfer of Immovable Property Restriction Law (1987). - The Foreign Investment Law (2012) - The Foreign Investment Rule (2013) - Farmland Law (2012) - Farmland Rules (2012) - Vacant, Fallow and Waste Land Management Law (2012) - Vacant, Fallow and Waste Land Management Rules(2012)

(5) For the purpose of reservation, land includes residential land, Commercial land, and industrial land and Agricultural & Livestock land. (d) right to use the farmland so long as there is no breach of the stipulated terms and conditions;

## 11.

Sector: All Sectors

Sub-Sector: -



Industry Classification: -

Level of Government: Central

Type of Obligation: National Treatment

Description of Measure: Company incorporation

A foreign company, whether a hundred percent owned or a joint venture and a branch/ representative office, is required to apply and obtain a permit for business operation. A joint venture with the State equity formed under the Special Company Act 1950 is exempted from obtaining a permit.

Source of Measure:

- Myanmar companies Act (1914)

- Special Company Act (1950)

- Directives

## Philippines

### 1.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Sources of Measure PHILIPPINES : All Sectors : - : - : Central and Regional : National Treatment : National Treatment shall not apply to any measure affecting land and property associated with land, including their acquisition, ownership, lease, development, utilization, conservation and protection. : -1987 Constitution of the Republic of the Philippines. -Civil Code of the Philippines (Republic Act (R.A.) No. 386). -Public Land Act (Commonwealth Act (C.A.) No. 141). -Indigenous Peoples Rights Act of 1997 (R.A. No. 8371). -Foreign Investments Act of 1991 (R.A. No. 7042, as amended by R.A. No. 8179) -Agriculture and Fisheries Modernization Act of 1997 (R.A. No. 8435). -Special Purpose Vehicle Act of 2002 (R.A. No. 9182). -Investors' Lease Act (R.A. No. 7652). -Comprehensive Agrarian Reform Law of 1988 (R.A. No. 6657, as amended by RA No. 9700). -Philippine Mining Act of 1995 (R.A. No. 7942). -Philippine Fisheries Code of 1998 (R.A. No. 8550). -Water Code of the Philippines (Presidential Decree (P.D.) No. 1067). -Condominium Act (R.A. No. 4726). -Local Government Code of 1991 (R.A. No. 7160). -Organic Act for the Autonomous Region in Muslim Mindanao (R.A. No. 6734). -Creating the Cordillera Administrative Region (Executive Order (E.O.) No. 220). -Presidential and Administrative Issuances.

### 2.

Sector : All Sectors Sub-Sector : - Industry Classification : - Level of Government : Central and Regional Type of Obligation : National Treatment Senior Management and Board of Directors Description of Measure : National Treatment and the Senior Management and Board of Directors obligations shall not apply to: 1. a right, franchise, privilege, property or business, which is expressly reserved by the Constitution or the laws of the Philippines to its citizens and its qualified entities that has been transferred, conveyed or leased to a foreign investor not possessing the prescribed requisites by the Constitution or such laws; and 2. a foreign investor that intervenes in the management, operation, administration or control of such businesses which are reserved for Filipinos, whether such investors are officers, employees or laborers therein, except technical personnel whose employment may be specifically authorized by the Secretary of Justice. Note: The election of aliens as members of the board of directors or governing body of corporation or associations engaging in partially nationalized activities shall be allowed in proportion to their allowable participation or share in the capital of such entities. Source of Measure : -1987 Constitution of the Republic of the Philippines. -Act to Punish Acts of Evasion of the Laws on the Nationalization of Certain Rights, Franchises or Privileges (C.A. No. 108, as amended by P. D. No. 715). -Local Government Code of 1991 (R.A. No. 7160). -Organic Act for the Autonomous Region in Muslim Mindanao (R.A. No. 6734). -Creating the Cordillera Administrative Region (E.O. No. 220). -Presidential and Administrative Issuances.

### 3.

Sector : All sectors Sub-Sector : - Industry Classification : - Level of Government : Central Type of Obligation : National Treatment Senior Management and Board of Directors Description of Measure : National Treatment shall not apply to measures affecting the establishment of a corporation, partnership, sole proprietorship, association or branch office of a foreign corporation. The operations of these entities shall be subject to their continuing compliance with registration and qualification requirements. Domestic corporations shall comply with the following requirements: 1. Majority of the incorporators must be residents of the Philippines. 2. Corporate secretary shall be a resident and citizen of the Philippines.

3. Treasurer shall be a resident of the Philippines 4. Majority of the directors must be residents of the Philippines. Branch of a foreign corporation shall have at least one resident agent in the Philippines. Source of Measure : -1987 Constitution of the Republic of the Philippines. -Corporation Code of the Philippines of 1980 (Batas Pambansa (B. P.) Blg. 68). -Presidential and Administrative Issuances.

#### 4.

Sector : All sectors Sub-Sector : - Industry Classification : - Level of Government : Central and Regional Type of Obligation : National Treatment Description of Measure : National Treatment shall not apply to any measure relating to registration of foreign investment (equity and debt) and foreign loans with the Bangko Sentral ng Pilipinas. Note: Registration of a foreign investment (equity and debt) with the Bangko Sentral ng Pilipinas (BSP) is required if the foreign exchange needed to service the repatriation of capital and the remittance of dividends, profits and earnings which accrue thereon shall be sourced from Authorized Agent Banks (AABs) or AAB foreign exchange corporations. The approval and registration with BSP of a foreign loan is required if the foreign exchange needed to service the loan shall be sourced from AABs or AAB foreign exchange corporations, except in the following cases, which require BSP prior approval and registration regardless of source of foreign exchange for servicing: (a) public debt; and (b) private debt which are: (i) guaranteed by government corporations and/or government financial institutions, or by AABs; or (ii) granted by local banks and directly funded or collateralized by offshore loans or deposits. Source of Measure : -1987 Constitution of the Republic of the Philippines. -Foreign Investments Act of 1991 (R.A. No. 7042, as amended by R.A. No. 8179). -Foreign Borrowings Act of 1966 (R.A. No. 4860) -New Central Bank Act (R.A. No. 7653). -Manual of Regulations on Foreign Exchange Transactions (BSP Circular 645). -Local Government Code of 1991 (R.A. No. 7160). -Organic Act for the Autonomous Region in Muslim Mindanao (R.A. No. 6734). -Creating the Cordillera Administrative Region (E.O. No. 220). -Presidential and Administrative Issuances.

#### 5.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure PHILIPPINES : All sectors : : - : Central and Regional : National Treatment : National Treatment shall not apply to any measure relating to cooperatives. No foreign equity allowed. Note: As a general concept, a cooperative is a duly registered association of persons, with a common bond of interest, who have voluntarily joined together to achieve a lawful common, social or economic end, making equitable contributions to the capital required and accepting a fair share of the risks and benefits of the undertaking in accordance with universally accepted cooperative principles. : -1987 Constitution of the Republic of the Philippines. -Cooperative Code of the Philippines (R.A. No. 6938). -Local Government Code of 1991 (R.A. No. 7160). -Organic Act for the Autonomous Region in Muslim Mindanao (R.A. No. 6734). -Creating the Cordillera Administrative Region (E.O. No. 220). -Presidential and Administrative Issuances

#### 6.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure : All sectors : : - : Central : National Treatment Senior Management and Board of Directors : National Treatment and the Senior Management and Board of Directors obligations shall not apply to any measure relating to: 1. certain areas of investments, when national interest<sup>1</sup> so dictates; and, 2. regulation over foreign investments within its national jurisdiction and in accordance with its national goals and priorities, as embodied in the Philippines Medium Term Development Plan and provided that such measure shall not affect such existing investments, where such measure is necessary and would not constitute arbitrary or unjustifiable discrimination or a disguised restriction on foreign investments. : -1987 Constitution of the Republic of the Philippines. -Foreign Investments Act of 1991 (R.A. No. 7042, as amended by R.A. No. 8179). -Omnibus Investments Code of 1987 (E. O. No. 226, as amended). -Special Economic Zone Act of 1995 (R.A. No. 7916, as amended by R.A. No. 8748). -Bases Conversion and Development Act of 1992 (R.A. No. 7227, as amended by R.A. No. 9400). -Medium Term Philippine Development Plan. -Presidential and Administrative Issuances. ∞ 1 Illustrative examples of NT and SMBD obligation-inconsistent measures in relation to national interest can include decreasing allowable foreign equity to allow more efficient control in the production, distribution and sale of commodities, e.g., oil, during an economic crisis or after a natural calamity, and consequent to the decrease in allowable foreign equity is the reduction in the allowable representation in the senior management and board of directors.

#### 7.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure : All sectors : : - : Central : National Treatment Senior Management and Board of Directors : National Treatment and the Senior Management and Board of Directors obligations shall not apply to any measure relating to small and medium sized domestic market enterprise<sup>2</sup>. Foreign equity is restricted to a maximum of 40% for domestic market enterprises with paid-in

equity capital of less than the equivalent of USD 200,000 Note: Members of the Board of Directors or governing body of corporation or associations shall be allowed in proportion to their allowable participation or share in the capital of such enterprises. : -1987 Constitution of the Republic of the Philippines. - Foreign Investments Act of 1991 (R.A. No. 7042, as amended by R.A. No. 8179). -Presidential and Administrative Issuances. ∞ 2 The concept of a small and medium sized domestic market enterprise is an enterprise with paid in equity capital of less than the equivalent of USD 200,000.00.

## 8.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure  
PHILIPPINES : All sectors : - : - : Central : National Treatment Senior Management and Board of Directors : National Treatment and the Senior Management and Board of Directors obligations shall not apply to any measure relating to portfolio investments, which shall include but not be limited to stocks listed in the Philippine Stock Exchange, bonds and other securities. : -1987 Constitution of the Republic of the Philippines. -Manual of Regulations on Foreign Exchange Transactions (BSP Circular 645). - Presidential and Administrative Issuances.

## 9.

Sector : All sectors Sub-Sector : - Industry Classification : - Level of Government : Central and Regional Type of Obligation : National Treatment Description of Measure : National Treatment shall not apply to any measure relating to export requirement. Foreign-owned corporations/entities<sup>3</sup> shall export at least 60% of their output to be considered an export enterprise and subject to certain terms and conditions<sup>4</sup>. Source of Measure : -1987 Constitution of the Republic of the Philippines. -Foreign Investments Act of 1991 (R.A. No. 7042). -Export Development Act of 1994 (R.A. No. 7844). -Omnibus Investments Code of 1987 (E.O. No. 226, as amended). -Special Economic Zone Act of 1995 (R.A. No. 7916 as amended by R.A. No. 8748). -Bases Conversion and Development Act of 1992 (R.A. No. 7227, as amended by R.A. No. 9400). -Local Government Code of 1991 (R.A. No. 7160). -Organic Act for the Autonomous Region in Muslim Mindanao (R.A. No. 6734). - Creating the Cordillera Administrative Region (E.O. No. 220). -Other economic and free port zones' laws. -Other Investment Laws. -Presidential and Administrative Issuances. ∞ 3 For guidance on foreign-owned corporations/entities, a "Philippine National" shall mean a citizen of the Philippines or a domestic partnership or association wholly owned by citizens of the Philippines; or a corporation organized under the laws of the Philippines of which at least sixty percent (60%) of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines or a corporation organized abroad and registered as doing business in the Philippine under the Corporation Code of which one hundred percent (100%) of the capital stock outstanding and entitled to vote is wholly owned by Filipinos or a trustee of funds for pension or other employee retirement or separation benefits, where the trustee is a Philippine national and at least sixty percent (60%) of the fund will accrue to the benefit of Philippine nationals: Provided, That where a corporation and its non- Filipino stockholders own stocks in a Securities and Exchange Commission (SEC) registered enterprise, at least sixty percent (60%) of the capital stock outstanding and entitled to vote of each of both corporations must be owned and held by citizens of the Philippines and at least sixty percent (60%) of the members of the Board of Directors of each of both corporations must be citizens of the Philippines, in order that the corporation shall be considered a Philippine national. 4 Terms and conditions shall include but not be limited to equity restrictions, minimum investment thresholds, technology transfer, and quality requirements.

## 10.

Sector : All sectors Sub-Sector : - Industry Classification : - Level of Government : Central and Regional Type of Obligation : National Treatment Senior Management and Board of Directors Description of Measure : National Treatment and the Senior Management and Board of Directors obligations shall not apply to any measure affecting the grant of licenses and permits. This shall include but not be limited to equity restrictions, minimum investment thresholds, duration or validity, areas or hectareage and other conditions and requirements. Source of Measure : -1987 Constitution of the Republic of the Philippines. -Foreign Investments Act of 1991 (R.A. No. 7042, as amended by R.A. No. 8179). -Omnibus Investments Code of 1987 (E.O. No. 226, as amended). -People's Small-Scale Mining Act of 1991 (R.A. No. 7076). -Philippine Mining Act of 1995 (R.A. No. 7942). -Magna Carta of Small Farmers (R.A. No. 7607). -Decree Authorizing Aliens as well as Associations, Corporations or Partnerships owned in whole or in part by Foreigners to Engage in the Rice and Corn Industry, and for other purposes (P.D. No. 194). -Agriculture and Fisheries Modernization Act of 1997 (R.A. No. 8435). -Revised Forestry Code (P.D. No. 705). -Special Economic Zone Act of 1995 (R.A. No. 7916, as amended by R.A. No. 8748). -Bases Conversion and Development Act of 1992 (R.A. No. 7227, as amended by R.A. No. 9400). -Laguna Lake Development Act (R.A. No. 4850, as amended). -Local Government Code of 1991 (R.A. No. 7160) -Organic Act for the Autonomous Region in Muslim Mindanao (R.A. No. 6734). - Creating the Cordillera Administrative Region (E.O. No. 220). -Presidential and Administrative Issuances.

## 11.

Sector : All Sectors Sub-Sector : - Industry Classification : - Level of Government : Central and Regional Type of Obligation : National Treatment Senior Management and Board of Directors Description of Measure : National Treatment and the Senior Management and Board of Directors obligations shall not apply to any measure relating to privatization programs and divestment of assets requirement<sup>5</sup> . Source of Measure : -1987 Constitution of the Republic of the Philippines. -Omnibus Investments Code of 1987 (E.O. No. 226, as amended). -Build Operate Transfer Law (R.A. No. 7718). -Electric Power Industry Reform Act (R. A. No. 9136). -Local Government Code of 1991 (R.A. No. 7160). -Organic Act for the Autonomous Region in Muslim Mindanao (R.A. No. 6734). -Creating the Cordillera Administrative Region (E.O. No. 220). -Presidential and Administrative Issuances. <sup>5</sup> The divestment of assets shall be in accordance with the law of registration of the entity and other conditions as mutually agreed by the State and the foreign investors.

## 12.

Sector : All sectors Sub-Sector : - Industry Classification : - Level of Government : Regional and Local Type of Obligation : National Treatment Senior Management and Board of Directors Description of Measure : National Treatment and the Senior Management and Board of Directors obligations shall not apply to any measure of Autonomous Region of Muslim Mindanao and the Cordillera Administrative Region. Source of Measure : -1987 Constitution of the Republic of the Philippines. -Local Government Code of 1991 (R.A. No. 7160). -Organic Act for the Autonomous Region in Muslim Mindanao (R.A. No. 6734). -Creating the Cordillera Administrative Region (E.O. No. 220). -Indigenous Peoples Rights Act of 1997 (R.A. No. 8371). -Local Government Code of 1991 (R.A. No. 7160). -Creating the Cordillera Administrative Region (E.O. No. 220). -Presidential and Administrative Issuances.

## 13.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure PHILIPPINES : Manufacturing : Printing and Publishing (e.g., publishing of brochures/pamphlets, printing of catalogues on account of machinery producers) : ISIC 2211, 2219, 2221 : Central : National Treatment : No foreign equity allowed. : -1987 Constitution of the Republic of the Philippines. -Presidential Memorandum dated 04 May 1994. -Presidential and Administrative Issuances.

## 14.

Sector : All Sectors Sub-Sector : - Industry Classification : - Level of Government : Central and Regional Type of Obligation : National Treatment Senior Management and Board of Directors Description of Measure : National Treatment and the Senior Management and Board of Directors (SMBD) obligations shall not apply to any measure relating to the employment of foreign nationals. Restrictions may be imposed on the number, duration and type of SMBD positions where foreign nationals may be employed. Source of Measure : -1987 Constitution of the Republic of the Philippines. -Labor Code of the Philippines, as amended (P.D. No. 442, as amended). -Philippine Immigration Act of 1940, (C.A. No. 613, as amended). -Act to Punish Acts of Evasion of the Laws on the Nationalization of Certain Rights, Franchises or Privileges (C.A. No. 108, as amended by P.D. No. 715). -Omnibus Investments Code of 1987 (E.O. No. 226). -Local Government Code of 1991 (R.A. No. 7160). -Organic Act for the Autonomous Region in Muslim Mindanao (R.A. No. 6734). -Creating the Cordillera Administrative Region (E.O. No. 220). -Presidential and Administrative Issuances.

## 15.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure PHILIPPINES : Manufacturing and Services Incidental : - : ISIC Division 15-36 (All manufacturing) ISIC 2927 (Manufacture of weapons and ammunitions) ISIC 2429 (Manufacture of other chemical products n.e.c.) ISIC 3530 (Manufacture of aircraft and spacecraft) ISIC 2423 (Manufacture of pharmaceuticals, medicinal chemicals and botanical products) ISIC 2710 (Manufacture of basic iron and steel) and 2731 (Casting of iron and steel) ISIC 3220 (Manufacture of television and radio transmitters and apparatus for line telephony and line telegraphy) ISIC 3320 (Manufacture of optical instruments and photographic equipment) : Central and Regional : National Treatment Senior Management and Board of Directors : National Treatment and the Senior Management and Board of Directors obligations shall not apply to measures relating to investments such as but not limited to the following sectors, for reasons of security, defense, risk to health and morals: 1. Manufacture of firecrackers and other pyrotechnic devices 2. Manufacture of arms and explosives 3. Manufacture of dangerous drugs National Treatment and the Senior Management and Board of Directors obligations shall not apply to measures relating to investments such as but not limited to the following sectors, consistent with economic development goals: 1. Manufacture of iron and steel products; and, 2. Establishment, installation, addition and operation of any wood or forest products processing plants. Measures may include but not be limited to foreign equity restrictions and export requirements. : -1987 Constitution of the Republic of the Philippines. -Foreign Investments Act of 1991 (R.A. No. 7042, as amended by R.A. No.

8179.) -Iron & Steel Industry Act (R.A. No. 7103). -Omnibus Investments Code of 1987 (E.O. No. 226). -Comprehensive Dangerous Drugs Act of 2002 (R.A. No. 9165). Page 15 of 20 PHILIPPINES -Local Government Code of 1991 (R.A. No. 7160). -Organic Act for the Autonomous Region in Muslim Mindanao (R.A. No. 6734). -Creating the Cordillera Administrative Region (E.O. No. 220). -Medium Term Philippine Development Plan. - Treaties. -Presidential and Administrative Issuances.

## 16.

Sector : Agriculture and Fishery and Services Incidental Sub-Sector : - Industry Classification : ISIC 0111 (Growing of cereals and other crops n.e.c) ISIC 0500 (Fishing, operation of fish hatcheries and fish farms; service activities incidental to fishing) CPC Groups 881-882 (Services incidental to agriculture, hunting and forestry) (Services incidental to fishing) Level of Government : Central and Regional Type of Obligation : National Treatment Senior Management and Board of Directors Description of Measure : National Treatment and the Senior Management and Board of Directors obligations shall not apply to any measure relating to food security, poverty alleviation and social equity, income enhancement and profitability, global competitiveness and sustainability. This shall include restrictions on foreign equity.<sup>6</sup> Source of Measure : -1987 Constitution of the Republic of the Philippines. -Agriculture and Fisheries Modernization Act of 1997 (R.A. No. 8435). -Decree Authorizing Aliens as well as Associations, Corporations or Partnerships owned in whole or in part by Foreigners to Engage in the Rice and Corn Industry, and for other purposes (P.D. No. 194). -Philippine Fisheries Code of 1998 (R.A. No. 8550). -High Value Crops Development Act of 1995 (R.A. 7900). -Local Government Code of 1991 (R.A. No. 7160). -Organic Act for the Autonomous Region in Muslim Mindanao (R.A. No. 6734). -Creating the Cordillera Administrative Region (E.O. No. 220). - Presidential and Administrative Issuances. <sup>6</sup> For illustrative purposes, small-scale fishing is closed to foreign investments while foreign equity in the production of biofuel crops and deep-sea fishing may be allowed up to 40% subject to other requirements and terms and conditions imposed by the relevant authorities.

## 17.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure PHILIPPINES : Forestry and Services Incidental : : ISIC 0200 (Forestry, logging and related service activities) CPC Group 881 (Services incidental to agriculture, hunting and forestry) Central and Regional : National Treatment : Senior Management and Board of Directors : National Treatment and the Senior Management and Board of Directors obligations shall not apply to any measure relating to utilization, exploitation, occupation, possession, or conduct of any activity within any forest and grazing land. Foreign equity may be allowed up to 40%, subject to government approval Note: Members of the Board of Directors or governing body of corporation or associations shall be allowed in proportion to their allowable participation or share in the capital of such enterprises. : -1987 Constitution of the Republic of the Philippines. -Revised Forestry Code of the Philippines (P.D. No. 705). -Chainsaw Act (R.A. No. 9175). -Local Government Code of 1991 (R.A. No. 7160). -Organic Act for the Autonomous Region in Muslim Mindanao (R.A. No. 6734). -Creating the Cordillera Administrative Region (E.O. No. 220). - Presidential and Administrative Issuances.

## 18.

Sector : Mining and Quarrying and Services Incidental Sub-Sector : - Industry Classification : ISIC Section C (Mining & Quarrying) CPC Group 883 (Services Incidental to Mining) Level of Government : Central and Regional Type of Obligation : National Treatment Senior Management and Board of Directors Description of Measure : National Treatment and the Senior Management and Board of Directors obligations shall not apply to measures relating to exploration, development and utilization of mineral resources<sup>7</sup>. This shall include but not be limited to prohibition on foreign equity in small-scale mining and restriction on foreign equity on other mining activities. Source of Measure : -1987 Constitution of the Republic of the Philippines. -People's Small-Scale Mining Act of 1991 (R.A. No. 7076). -Establishing Small-scale Mining as a New Dimension in Mineral Developments (P.D. No. 1899). -Philippine Mining Act of 1995 (R.A. No. 7942). -Geothermal Energy, Natural Gas and Methane Gas Law (R.A. No. 5092). -Atomic Energy Regulatory and Liability Act of 1968 (R.A. No. 5207). -Coal Development Act of 1976 (PD 972). -Local Government Code of 1991 (R.A. No. 7160). -Organic Act for the Autonomous Region in Muslim Mindanao (R.A. No. 6734). -Creating the Cordillera Administrative Region (E.O. No. 220). -Presidential and Administrative Issuances. <sup>7</sup> For greater certainty, mineral resources shall include, but not be limited to metallic and non-metallic minerals, oil, geothermal, petroleum, natural gas, coal, and radioactive materials such as uranium and thorium.

## 19.

Sector : All Sectors Sub-Sector : - Industry Classification : - Level of Government : Central and Regional Type of Obligation : National Treatment Description of Measure : National Treatment shall not apply to measures affecting national patrimony<sup>8</sup> and the rights of indigenous cultural communities in accordance with national development. Source of Measure : -1987 Constitution of the Republic of the Philippines. -Indigenous Peoples Rights Act of 1997 (R.A. No. 8371). -Local Government

Code of 1991 (R.A. No. 7160). -Organic Act for the Autonomous Region in Muslim Mindanao (R.A. No. 6734). -Creating the Cordillera Administrative Region (E.O. No. 220). -Presidential and Administrative Issuances. ∞ 8 "National patrimony" refers to the natural resources of the Philippines and cultural heritage of the Filipinos. It also refers to Filipinos' intelligence in arts, sciences and letters.

## Singapore

### 1.

Sector : All Sectors Sub-Sector : - : - Level of Government : Central Type of Obligation : National Treatment Description of Measure : 1. Financial institutions extending Singapore dollar (S\$) credit facilities (i) exceeding S\$5 million per entity to non-resident financial entities; or (ii) arranging S\$ equity or bond issues for non-residents, shall ensure that where the S\$ proceeds are to be used outside Singapore, they are swapped or converted into foreign currency upon draw-down or before remittance abroad. 2. Financial institutions shall not extend S\$ credit facilities to nonresident financial entities if there is reason to believe that the S\$ proceeds may be used for S\$ currency speculation. Source of Measure : -Insurance Act, Cap. 142, MAS Notice 149. -Banking Act, Cap. 19, MAS Notice 757. -Finance Companies Act, Cap. 108, MAS Notice 816. -Monetary Authority of Singapore Act, Cap. 186, MAS Notice 1105. -Securities and Futures Act, 2001, Act 42 of 2001, MAS Notice 1201. ∞ Page

### 2.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure SINGAPORE : All Sectors : - : - : Central : National Treatment : Individual investors, apart from the Singapore Government, shall be subject to the following equity ownership limits in the enterprises, and/or their successor bodies, listed below: (i) Singapore Technologies Engineering: 15% (ii) Singapore Power, Power Grid, Power Supply, Power Gas: 10% (iii) PSA Corporation: 5% (iv) Singapore Airlines: 5% For the purposes of this reservation, ownership of equity by an investor in these enterprises and/or their successor bodies includes both direct and indirect ownership of equity. : Government directives.

### 3.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure SINGAPORE : All Sectors : - : - : Central : National Treatment Senior Management and Board of Directors : Only a Singapore citizen, Singapore permanent resident or Singapore Employment Pass holder shall be allowed to register a business without appointing a local manager. A local manager shall be a Singapore citizen, Singapore permanent resident or Singapore Employment Pass holder. All locally incorporated companies shall comply with the following requirements: (i) At least 1 director of the company shall be resident in Singapore. (ii) All branches of foreign companies registered in Singapore shall have at least 2 agents resident in Singapore. To be resident in Singapore, a person shall either be a Singapore citizen or Singapore permanent resident or Singapore Employment Pass holder. : -Business Registration Act, Cap. 32, 2001 Revised Edition. -Companies Act, Cap. 50, 1994 Revised Edition.

### 4.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure SINGAPORE : All Sectors : - : - : Central : National Treatment : : NT shall not apply to any measure affecting the type of activities which may be conducted on land or the usage of land, including but not limited to, land zoning, land use and urban planning policies. Urban Redevelopment Authority Act, Chapter 340, 1985 Revised Edition

### 5.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure SINGAPORE : All Sectors : - : - : Central : National Treatment : NT shall not apply to any measure affecting State Land, including but not limited to alienation and divestment. : State Lands Act, Cap. 314, 1996 Revised Edition/

### 6.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure SINGAPORE : All Sectors : - : - : Central : National Treatment Senior Management and Board of Directors : NT and SMBD shall not apply to any measure affecting: (i) the full or partial devolvement to the private sector of services provided in the exercise of governmental authority; (ii) the divestment of its equity interests in, and/or the assets of, an enterprise that is

wholly owned by the Singapore government; and (iii) the divestment of its equity interests in, and/or the assets of, an enterprise that is partially owned by the Singapore government. : Government Policy.

## 7.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure  
SINGAPORE : Manufacturing : Manufacturing of Arms and Explosives : - : Central : National Treatment Senior Management and Board of Directors : NT and SMBD shall not apply to any measure affecting the arms and explosives sector. The manufacture, use, sale, storage, transport, importation, exportation and possession of arms and explosives are regulated for the protection of vital security interests. : Arms and Explosives Act, Cap. 13, 1985 Revised Edition.

## 8.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure  
SINGAPORE : All Sectors : - : - : Central : National Treatment Senior Management and Board of Directors : NT and SMBD shall not apply to any measure in relation to the retention of a controlling interest by the Singapore Government in Singapore Technologies Engineering ("the Company") and/or its successor body, including but not limited to controls over the appointment and termination of members of the Board of Directors, divestment of equity and dissolution of the Company. : Government Policy.

## 9.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure  
SINGAPORE : Manufacturing : - : 1551, 1553, 1600, 2710, 2731, 1549, 3140 : Central : National Treatment : NT shall not apply to any measure affecting the manufacture for sale or other commercial purpose of any goods scheduled in the Control of Manufacture Act. (i) beer and stout, (ii) cigars, (iii) drawn steel products, (iv) chewing gum, bubble gum, dental chewing gum, or any like substance; : (v) cigarettes (vi) matches, and (vii) firecrackers. Control of Manufacture Act, Cap. 57, 2001 Revised Edition.

## 10.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure  
SINGAPORE : Manufacturing : Manufacturing of Optical Discs : 2230 : Central : National Treatment : NT shall not apply to any measure affecting the manufacture for sale or other commercial purpose of any goods scheduled in the Manufacture of Optical Discs Act. (i) compact discs (CD), including compact discs-read only memory (CD-ROM), (ii) digital video discs (DVD), including digital video discs-read only memory (DVD-ROM), (iii) video compact discs (VCD), (iv) master discs, and (v) stampers. : Manufacture of Optical Discs Act, Cap. 170C, 2005 Edition Revised

## 11.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure  
SINGAPORE : Agriculture : - : - : Central : National Treatment : NT shall not apply to any measure affecting pig farming. (No more licences are issued for this sector.) : Government policy.

## 12.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure  
SINGAPORE : Mining : - : ISIC Divisions 10 – 14 CPC 883 : Central : National Treatment : NT shall not apply to any measure affecting quarrying. (No more licences are being issued for this sector.) : Sand and Granite Quarries Act, Cap. 284, 1985 Revised Edition.

## 13.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure  
SINGAPORE : Manufacturing : Publishing and printing of newspapers Newspapers means any physical publication containing news, intelligence, reports of occurrences, or any remarks, observations or comments relating thereto or to any matter of public interest, printed in any language and published for sale or free distribution at intervals not exceeding one week. : 2212 : Central : National Treatment Senior Management and Board of Directors : NT and SMBD shall not apply to any

measure affecting the publishing or printing of newspapers, including but not limited to, shareholding limits and management control. : Newspaper and Printing Presses Act (Cap. 206).

## Thailand

### 1.

Sector : Manufacturing, Agriculture, Forestry, and Fishery Sub-Sector : -Printing of newspaper -Extraction of Thai herbs - Making or casting Buddha images and monk alms bowls -Rice farming, farming or gardening -Animal farming -Forestry and wood fabrication from natural forest -Fishery for aquatic animals in Thai waters and within Thailand's exclusive economic zone Industry Classification : ISIC 2221, 2423, 2899, 011, 012, 0130, 0140, 0200, 0500 Level of Government : Central Type of Obligation : National Treatment Description of Measure : Foreigner<sup>1</sup> is not allowed to have equity participation of 50% or more of registered capital. Source of Measure : -Foreign Business Act B.E. 2542 (1999), as amended. - Ministerial regulations. - Administrative guidelines. ∞ 1 For the purposes of this reservation, the definition of 'foreigner' can be found in Foreign Business Act B.E. 2542 (1999).

### 2.

Sector : Manufacturing Sub-Sector : -Carved wood -Thai silk yarn, weaving Thai silk or Thai silk pattern printing -Thai musical instruments -Goldware, silverware, nielloware, bronzeware or lacquerware -Crockery of Thai arts and culture -Wood fabrication for furniture and utensil production Industry Classification : ISIC 1711, 1712, 2021, 2023, 2029, 2221, 2693, 2720, 3692 Level of Government : Central Type of Obligation : National Treatment Senior Management and Board of Directors Description of Measure : More than 50% of Thai equity participation is required. Foreigner<sup>2</sup> is allowed to obtain 50% or more of registered capital, subject to all following conditions: 1. Permission by the Minister of Commerce with the approval of the Cabinet is required, and following condition shall be fulfilled; -Thai nationals or Thai juridical persons shall hold the shares of not less than 40% of the capital of that foreign juridical person. -The number of Thai directors shall not be less than two-fifths of the total number of directors. or Promotion under Investment Promotion Act B.E. 2520 (1977) or permission under law governing Industrial Estate Authority of Thailand or other related laws is granted; 2. The minimum capital used at the commencement of the business operation shall not be less than that prescribed by ministerial regulations and shall in no case be less than three million Baht; 3. Foreigner shall apply for license or certificate from Department of Business Development, Ministry of Commerce; and 4. Foreigner shall comply with other conditions prescribed in Foreign Business Act B.E. 2542 (1999) and related laws. Source of Measure : -Foreign Business Act B.E. 2542 (1999), as amended. -Investment Promotion Act B.E. 2520 (1977), as amended. - Ministerial regulations. - Administrative guidelines. 2 For the purposes of this reservation, the definition of 'foreigner' can be found in Foreign Business Act B.E. 2542 (1999).

### 3.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure : Manufacturing : -Rice milling -Plywood, veneer board, chipboard or hardboard -Lime : ISIC 1531, 1532, 2021, 2029, 2694 : Central : National Treatment : More than 50% of Thai equity participation is required. Foreigner<sup>3</sup> is allowed to obtain 50% or more of registered capital, subject to following conditions: 1. Permission under Foreign Business Act B.E. 2542 (1999) by the Director-General of the Department of Business Development with the approval of the Foreign Business Committee is required. or Promotion under Investment Promotion Act B.E. 2520 (1977) or permission under law governing Industrial Estate Authority of Thailand or other related laws is granted; 2. The minimum capital used at the commencement of the business operation shall not be less than that prescribed by ministerial regulations and shall in no case be less than three million Baht; 3. Foreigner shall apply for license or certificate from Department of Business Development, Ministry of Commerce; and 4. Foreigner shall comply with other conditions prescribed in Foreign Business Act B.E. 2542 (1999) and related laws. : -Foreign Business Act B.E. 2542 (1999), as amended. -Investment Promotion Act B.E. 2520 (1977), as amended. - Ministerial regulations. - Administrative guidelines. ∞ 3 For the purposes of this reservation, the definition of 'foreigner' can be found in Foreign Business Act B.E. 2542 (1999).

### 4.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure : Manufacturing : Manufacture of sugar from sugar-cane : ISIC 1542 : Central : National Treatment Senior Management and Board of Directors : Foreigner<sup>4</sup> shall be prohibited from manufacturing of sugar from sugarcane, unless permission is obtained from the Cabinet. : -Foreign Business Act B.E. 2542 (1999), as amended. - Ministerial regulations. - Administrative guidelines. ∞ 4 For the purposes of this reservation, the definition of 'foreigner' can be found in Foreign Business Act B.E.



2542 (1999).

## 5.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure : Manufacturing : Tobacco products : ISIC 1600 : Central : National Treatment Senior Management and Board of Directors : Prohibitions or restrictions which are inconsistent with National Treatment and Senior Management and Board of Directors may apply to foreigner<sup>5</sup> in manufacture of Tobacco products. : Tobacco Act B.E. 2509 (1966), as amended. ∞ 5 For the purposes of this reservation, the definition of 'foreigner' can be found in Foreign Business Act B.E. 2542 (1999).

## 6.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure : Manufacturing : Playing cards : ISIC 2221 : Central : National Treatment Senior Management and Board of Directors : Prohibitions or restrictions which are inconsistent with National Treatment and Senior Management and Board of Directors may apply to foreigner<sup>6</sup> in manufacture, production, or printing of playing card : Playing cards Act B.E. 2586 (1943), as amended. ∞ 6 For the purposes of this reservation, the definition of 'foreigner' can be found in Foreign Business Act B.E. 2542 (1999).

## 7.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure : Manufacturing : Alcoholic beverages and ethyl alcohol : ISIC 1551-3 : Central : National Treatment Senior Management and Board of Directors : Prohibitions or restrictions which are inconsistent with National Treatment and Senior Management and Board of Directors may apply to foreigner<sup>7</sup> in manufacture and production of alcoholic beverages and ethyl alcohol. : Liquor Act B.E. 2493 (1950) Ministerial regulations Administrative guidelines ∞ 7 For the purposes of this reservation, the definition of 'foreigner' can be found in Foreign Business Act B.E. 2542 (1999).

## 8.

Sector : Agriculture and Services Incidental to Agriculture Sub-Sector : -Silkworm farming -Services incidental to silkworm farming -Salt farming, including underground salt -Services incidental to salt farming, including underground salt Industry Classification : ISIC 0122, 1422; CPC 88110, 88120 Level of Government : Central Type of Obligation : National Treatment Senior Management and Board of Directors Description of Measure : More than 50% of Thai equity participation is required. Foreigner<sup>8</sup> is allowed to obtain 50% or more of registered capital, subject to all following conditions: 1. Permission by the Minister of Commerce with the approval of the Cabinet is required, and following condition shall be fulfilled; -Thai nationals or Thai juridical persons shall hold the shares of not less than 40% of the capital of that foreign juridical person. -The number of Thai directors shall not be less than two-fifths of the total number of directors. or Promotion under Investment Promotion Act B.E. 2520 (1977) or permission under law governing Industrial Estate Authority of Thailand or other related laws is granted; 2. The minimum capital used at the commencement of the business operation shall not be less than that prescribed by ministerial regulations and shall in no case be less than three million Baht; 3. Foreigner shall apply for license or certificate from Department of Business Development, Ministry of Commerce; and 4. Foreigner shall comply with other conditions prescribed in Foreign Business Act B.E. 2542 (1999) and related laws. Source of Measure : -Foreign Business Act B.E. 2542 (1999), as amended. -Investment Promotion Act B.E. 2520 (1977), as amended. - Ministerial regulations. - Administrative guidelines. ∞ 8 For the purposes of this reservation, the definition of 'foreigner' can be found in Foreign Business Act B.E. 2542 (1999).

## 9.

Sector : Agriculture Sub-Sector : Plant cultivation, propagation including artificial and transplant propagation, and breeding Industry Classification : ISIC 0111 Level of Government : Central Type of Obligation : National Treatment Description of Measure : More than 50% of Thai equity participation is required. For onion seed, foreigner is allowed to obtain up to 51% of registered capital, subject to laws and regulations. Foreigner<sup>9</sup> is allowed to obtain 50% or more of registered capital, subject to following conditions: 2. Permission under Foreign Business Act B.E. 2542 (1999) by the Director-General of the Department of Business Development with the approval of the Foreign Business Committee is required. Or Promotion under Investment Promotion Act B.E. 2520 (1977) or permission under law governing Industrial Estate Authority of Thailand or other related laws is granted. 3. The minimum capital used at the commencement of the business operation shall not be less than that prescribed by ministerial regulations and shall in no case be less than three million Baht. 4. Foreigner shall

apply for license or certificate from Department of Business Development, Ministry of Commerce; and 5. Foreigner shall comply with other conditions prescribed in Foreign Business Act B.E. 2542 (1999) and related laws. Source of Measure : - Foreign Business Act B.E. 2542 (1999), as amended. - Investment Promotion Act B.E. 2520 (1977), as amended. - Ministerial regulations. - Administrative guidelines. ∞ 9 For the purposes of this reservation, the definition of 'foreigner' can be found in Foreign Business Act B.E. 2542 (1999).

## 10.

Sector : Fishery Sub-Sector : Fishery, specifically aquaculture Industry Classification : ISIC 0500 Level of Government : Central Type of Obligation : National Treatment Description of Measure : More than 50% of Thai equity participation is required. For the culture of tuna deep sea cage and indigenous breeding spiny lobsters; *Panulirus versicolor*, *P. homarus*, *P. ornatus*, *P. longipes*, *P. penicillatus* and *P. polyphagus*, foreigner is allowed to obtain up to 51% of registered capital, subject to laws and regulations. Foreigner<sup>10</sup> is allowed to obtain 50% or more of registered capital, subject to following conditions: 1. Permission under Foreign Business Act B.E. 2542 (1999) by the Director-General of the Department of Business Development with the approval of the Foreign Business Committee is required. Or Promotion under Investment Promotion Act B.E. 2520 (1977) or permission under law governing Industrial Estate Authority of Thailand or other related laws is granted. 2. The minimum capital used at the commencement of the business operation shall not be less than that prescribed by ministerial regulations and shall in no case be less than three million Baht. 3. Foreigner shall apply for license or certificate from Department of Business Development, Ministry of Commerce; and 4. Foreigner shall comply with other conditions prescribed in Foreign Business Act B.E. 2542 (1999) and related laws. Source of Measure : -Foreign Business Act B.E. 2542 (1999), as amended. -Investment Promotion Act B.E. 2520 (1977), as amended. - Ministerial regulations. - Administrative guidelines. ∞ 10 For the purposes of this reservation, the definition of 'foreigner' can be found in Foreign Business Act B.E. 2542 (1999).

## 11.

Sector : Forestry Sub-Sector : Forestry from forest plantation Industry Classification : ISIC 0200 Level of Government : Central Type of Obligation : National Treatment Description of Measure : More than 50% of Thai equity participation is required. Foreigner<sup>11</sup> is allowed to obtain 50% or more of registered capital, subject to following conditions: 1. Permission under Foreign Business Act B.E. 2542 (1999) by the Director-General of the Department of Business Development with the approval of the Foreign Business Committee is required. Or Promotion under Investment Promotion Act B.E. 2520 (1977) or permission under law governing Industrial Estate Authority of Thailand or other related laws is granted. 2. The minimum capital used at the commencement of the business operation shall not be less than that prescribed by ministerial regulations and shall in no case be less than three million Baht. 3. Foreigner shall apply for license or certificate from Department of Business Development, Ministry of Commerce; and 4. Foreigner shall comply with other conditions prescribed in Foreign Business Act B.E. 2542 (1999) and related laws. Source of Measure : -Foreign Business Act B.E. 2542 (1999), as amended. -Investment Promotion Act B.E. 2520 (1977), as amended. - Ministerial regulations. - Administrative guidelines. ∞ 11 For the purposes of this reservation, the definition of 'foreigner' can be found in Foreign Business Act B.E. 2542 (1999), as amended.

## 12.

Sector : Mining Sub-Sector : -Mining, including rock blasting or crushing -Rock salt mining Industry Classification : ISIC 10 -14 Level of Government : Central Type of Obligation : National Treatment Senior Management and Board of Directors Description of Measure : Equity participation of up to 60% by foreigner<sup>12</sup> is allowed subject to criteria listed below; 1. Foreigner which is a juridical person of Member State must be registered as a registered ordinary partnership, limited partnership or limited company in Thailand. 2. A debt to equity ratio of 3:1 or lower shall be maintained. 3. Concessions must be granted by the Department of Primary Industries and Mines, Ministry of Industry as provided by the Mineral Act B.E. 2510 (1967) as amended by the Mineral Act (No.2) B.E. 2516 (1973), the Mineral Act (No.3) B.E. 2522 (1979), the Mineral Act (No.4) B.E. 2534 (1991); and the Mineral Act (No.5) B.E. 2545 (2002). 4. At least two fifths of the member of Board of Directors must be Thai nationals. Source of Measure : -Foreign Business Act B.E. 2542 (1999), as amended. - Administrative guidelines. ∞ 12 For the purposes of this reservation, the definition of 'foreigner' can be found in Foreign Business Act B.E. 2542 (1999).

## 13.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure : Services incidental to Agriculture, Forestry, Fishery, and Manufacturing : -Services incidental to rice farming, farming or gardening, animal farming -Services incidental to forestry and wood fabrication from natural forest -Services incidental to

fishery for aquatic animals in Thai waters and within Thailand's exclusive economic zone -All services incidental to manufacturing : CPC 88110, 88120, 88130, 88140, 8820, 884-885 : Central : National Treatment : More than 50% of Thai equity participation is required. Foreigner<sup>13</sup> is not allowed to have equity participation of 50% or more of registered capital. : -Foreign Business Act B.E. 2542 (1999), as amended. - Ministerial regulations. - Administrative guidelines. ∞ 13 For the purposes of this reservation, the definition of 'foreigner' can be found in Foreign Business Act B.E. 2542 (1999).

#### 14.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure : Services Incidental to Mining : : CPC 8830 : Central : National Treatment Senior Management and Board of Directors : More than 50% of Thai equity participation is required. Foreigner<sup>14</sup> is allowed to obtain 50% or more of registered capital, subject to all following conditions; 1. Permission by the Minister of Commerce with the approval of the Cabinet is required, and following condition shall be fulfilled; -Thai nationals or Thai juridical persons shall hold the shares of not less than 40% of the capital of that foreign juridical person. -The number of Thai directors shall not be less than two-fifths of the total number of directors. Or Promotion under Investment Promotion Act B.E. 2520 (1977) or permission under law governing Industrial Estate Authority of Thailand or other related laws is granted; 2. The minimum capital used at the commencement of the business operation shall not be less than that prescribed by ministerial regulations and shall in no case be less than three million Baht; 3. Foreigner shall apply for license or certificate from Department of Business Development, Ministry of Commerce; and 4. Foreigner shall comply with other conditions prescribed in Foreign Business Act B.E. 2542 (1999) and related laws. : -Foreign Business Act B.E. 2542 (1999), as amended. -Investment Promotion Act B.E. 2520 (1977), as amended. - Ministerial regulations. - Administrative guidelines. ∞ 14 For the purposes of this reservation, the definition of 'foreigner' can be found in Foreign Business Act B.E. 2542 (1999).

#### 15.

Sector : Services Incidental to Agriculture, Forestry, and Fishery Sub-Sector : -All services incidental to Agriculture, except services incidental to rice farming, farming or gardening, and animal farming -All services incidental to Forestry, except forestry and wood fabrication from natural forest -All services incidental to Fishery, except services incidental to fishery for aquatic animals in Thai waters and within Thailand specific economic zone Industry Classification : CPC 88110, 88120, 88130, 88140, 8820, Level of Government : Central Type of Obligation : National Treatment Senior Management and Board of Directors Description of Measure : More than 50% of Thai equity participation is required. Foreigner<sup>15</sup> is allowed to obtain 50% or more of registered capital, subject to following conditions: 1. Permission by the Director-General of the Department of Business Development with the approval of the Foreign Business Committee is required. Or Promotion under Investment Promotion Act B.E. 2520 (1977) or permission under law governing Industrial Estate Authority of Thailand or other related laws is granted; 2. The minimum capital used at the commencement of the business operation shall not be less than that prescribed by ministerial regulations and shall in no case be less than three million Baht; 3. Foreigner shall apply for license or certificate from Department of Business Development, Ministry of Commerce; and 4. Foreigner shall comply with other conditions prescribed in Foreign Business Act B.E. 2542 (1999) and related laws. Source of Measure : -Foreign Business Act B.E. 2542 (1999), as amended. -Investment Promotion Act B.E. 2520 (1977), as amended. - Ministerial regulations. - Administrative guidelines. ∞ 15 For the purposes of this reservation, the definition of 'foreigner' can be found in Foreign Business Act B.E. 2542 (1999).

#### 16.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure : All sectors : : - : Central : National Treatment Senior Management and Board of Directors : In order to operate business in Thailand, foreigner<sup>16</sup> shall obtain a license or certificate from the Department of Business Development, and comply with conditions set forth in the Foreign Business Act B.E. 2542 (1999)<sup>17</sup> and subsidiary legislations. : -Foreign Business Act B.E. 2542 (1999), as amended. - Ministerial regulations. - Administrative guidelines. ∞ 16 For the purposes of this reservation, the definition of 'foreigner' can be found in Foreign Business Act B.E. 2542 (1999). 17 For illustrative purposes, 'conditions set forth in the Foreign Business Act B.E. 2542 (1999)' may include, for example, the ratio of the capital and loans and the number of foreign directors who must have domicile in the Kingdom.

#### 17.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure : All sectors : : - : Central : National Treatment : Minimum capital used at commencement of the business under the Lists attached to the Foreign Business Act B.E. 2542 (1999) shall not be less than that prescribed in the Ministry of Commerce's regulations, which in no case shall be less than three million Baht. In all other cases, minimum capital used at the

commencement of the business operation shall not be less than that prescribed by the Ministry of Commerce's regulations and shall in no case be less than two million Baht. : -Foreign Business Act B.E. 2542 (1999), as amended. -Ministry of Commerce's regulations, as amended. - Administrative guidelines.

## 18.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure : All sectors : - : Central : National Treatment : Foreigner<sup>18</sup> is permitted to own land according to Investment Promotion Act B.E. 2520 (1977), Industrial Estate Authority of Thailand Act B.E. 2522 (1979), and the Petroleum Act B.E. 2514 (1971). Foreigner, who brings money at least 40 million Baht for investment, is allowed to own land for residential purpose not exceeding 1 rai (1 rai = 1,600 square meters) with a permission by the Ministry of Interior. In the case of hiring the land more than 100 rai for commercial or industrial purposes, where a foreigner or a juridical person according to Section 97 of Land Code is a hirer, sub-hirer or transferee of the right of hirer, its investment in an operation of such commerce or industry shall not be less than 100 million Baht, excluding the cost of hire. Also, the total amount of money invested shall be foreign exchange brought into the Kingdom or withdrawn from the foreign currency deposit account or withdrawn from the non-resident Baht account. : -Foreign Business Act B.E. 2542 (1999), as amended. -Hire of Immovable Property for Commerce and Industry Act B.E. 2542 (1999), as amended. -Land Code, as amended. -Act Promulgating the Land Code B.E. 2497 (1954), as amended -Land Code Amendment Act (No.8) B.E. 2542 (1999), as amended. - Ministerial regulations. - Administrative guidelines. ∞ 18 For the purposes of this reservation, the definition of 'foreigner' can be found in the Land Code B.E. 2497 (1954).

## 19.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure : All sectors : - : Central : National Treatment : Foreigner<sup>19</sup> is not allowed to own housing except condominium<sup>20</sup>. The total condominium units owned by foreigners must not exceed 49% of the condominium units in each condominium. : -Foreign Business Act B.E. 2542 (1999), as amended. -Condominium Act B.E. 2522 (1979), as amended. - Ministerial regulations. - Administrative guidelines. ∞ 19 For the purposes of this reservation, the definition of 'foreigner' can be found in the Condominium Act B.E. 2522 (1979). 20 For the purposes of this reservation, the definition of 'condominium' can be found in the Condominium Act B.E. 2522 (1979).

## 20.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure : All sectors : - : Central : National Treatment : National Treatment shall not apply to any measure relating to Small and Medium Enterprise<sup>21</sup>. : -Small and Medium Enterprises Promotion Act B.E. 2543 (2000), as amended. -Fisheries Act B.E. 2490 (1947), as amended. -National Economic and Social Development Plan - Ministerial regulations. - Administrative guidelines. ∞ 21 For the purposes of this reservation, the definition of 'Small and Medium Enterprise' can be found in the Small and Medium Enterprises Promotion Act B.E. 2543. For illustrative purposes, measure relating to Small and Medium Enterprise may include, for example, Thai SMEs may be given priority to the access of land and water resources in designated areas, and foreign participation is not allowed in small-scale/ aquaculture entrepreneur.

## 21.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure : All sectors : - : Central : National Treatment Senior Management and Board of Directors : National Treatment and Senior Management and Board of Director shall not apply to any measure with respect to privatization, or divestment of assets through transfer or disposal of equity interests or assets owned wholly or partially by the government, a state enterprise<sup>22</sup>, a state agency, or a government entity. All conditions imposed on existing privatised entities will continue to be applicable. : -National Economic and Social Development Plan. - Ministerial regulations. - Administrative guidelines. ∞ 22 For illustrative purposes, 'State enterprise' may include, for example, PTT Public Company Limited, Thailand Tobacco Monopoly, Playing Cards Factory, Liquor Distillery Organisation, the Police Printing, Industrial Estate Authority of Thailand, Forest Industry Organisation, and Rubber Estate Organisation.

## 22.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure THAILAND : All sectors : - : Central : National Treatment : National Treatment shall not apply to any measures relating to

portfolio investments. : -Exchange Control Act B.E. 2485 (1942), as amended. -Bank of Thailand Act B.E. 2485 (1942), as amended. -Regulations, Circulars and Guidelines.

## 23.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure : All sectors : - : - : Central : National Treatment : National Treatment shall not apply to any measures relating to foreign exchange transactions by non-residents and measures relating to transactions in, and holdings of, local currency by nonresidents<sup>23</sup>, for the prevention of Thai Baht speculation. : -Exchange Control Act B.E. 2485 (1942), as amended. -Bank of Thailand Act B.E. 2485 (1942), as amended. -Securities and Exchange Act B.E. 2535 (1992), as amended. -Regulations, Circulars and Guidelines. ∞ 23 Examples of measures to prevent Thai Baht speculation include the following: -Measures to limit Thai Baht liquidity -Measures to curb Capital Inflows -Measures on Non-Resident Baht Account (NRBA) and Non-Resident Baht Account for Securities (NRBS) accounts -Measures on Non-deliverable forward.

## 24.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure : All sectors : - : - : Central : National Treatment : : Foreigner<sup>24</sup> is allowed to work in vocations<sup>25</sup> reserved for Thai national. . - Working Aliens Act B.E. 2551 (2008). - Ministerial regulations. - Administrative guidelines. which are not ∞ 24 For the purposes of this reservation, the definition of 'foreigner' can be found in the Working Aliens Act B.E. 2551 (2008). 25 These vocations are listed in Working Aliens Act B.E. 2551 (2008). For illustrative purposes, vocations which are reserved for Thai national may include, for example, farmers, Buddha images makers, monk alms bowls makers, and Thai musical instruments makers.

## 25.

25. Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure : All sectors : - : - : Central : National Treatment Senior Management and Board of Directors : Foreigner<sup>26</sup> shall comply with other conditions<sup>27</sup> relating to investment in accordance with national development. Note: This reservation shall not include local equity requirements unless otherwise provided. : -The Constitution of the Kingdom of Thailand B.E. 2550 (2007). -Foreign Business Act B.E. 2542 (1999), as amended. -Natural Reserved Forest Act B.E. 2507 (1964), as amended. - Commercial Forest Plantation Act B.E. 2535 (1992), as amended. -Chainsaw Act B.E. 2545 (2002), as amended. -Fisheries Act B.E. 2490 (1947), as amended. - Ministerial regulations. - Administrative guidelines. ∞ 26 For the purposes of this reservation, the definition of 'foreigner' can be found in Foreign Business Act B.E. 2542 (1999). 27 For illustrative purposes, conditions may include, for example, the ratio of the capital and loans, and the number of foreign directors who must have domicile in the Kingdom. Forest plantation in the area of natural reserved forests is reserved for Thai nationals only. The applicant for forest plantation in the private areas must have the ownership of such area. Only Thai nationals can apply for the license on the possession of a chainsaw. License for aquaculture in public areas is allowed for Thai nationals only.

## Vietnam

### 1.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure : All Sectors : - : - : Central : National Treatment Senior Management and Board of Directors : National Treatment and Senior Management and Board of Directors shall not apply to any measure in relation to the employment of expatriates. Restrictions<sup>1</sup> may be imposed on the number or ratio, minimum wages, duration and type of expatriates employed. : -Law on Labour, 1994 as amended. -Law on Enterprises, 2005. -Decree 111/2008/ND-CP, dated 10/10/2008. -Decree 03/2006/ND-CP dated 06/01/2006. -Decree 34/2008/ND-CP dated 25/03/2008. ∞ 1 For illustrative purpose, the restriction may include but not limited to: -In the case of managers, executives and specialists, at least 20% of the total number of them shall be Vietnamese nationals. However, a minimum of 3 non-Vietnamese managers, executives and specialists shall be permitted per enterprise; -The legal representative of an enterprise shall reside permanently in Viet Nam as stipulated in the Law on Enterprise, 2005.

### 2.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure VIET NAM : All Sectors : - : - : Central : National Treatment Senior Management and Board of Director : National Treatment and Senior Management and Board of Director shall not apply to any measure in relation to portfolio investment : -Law on

Investment, 2005. -Law on Securities (2006) and its implementing regulations. -Circular, Decree, Decision of Prime Minister and Administrative Guidelines.

### 3.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure : All Sectors : - : - : Central : National Treatment : NT may not apply to conditions imposed in investment licenses permits/certificates that were issued before the entry into force of this Agreement<sup>2</sup> : Decree 101/2006/ND-CP; dated 21/9/2006. ∞ 2 For illustrative purposes, the condition may be the investors' commitment to transferring the invested assets to the Government of Vietnam on a non-compensable basis at the time of termination of their projects.

### 4.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure : All Sectors : - : - : Central : National Treatment Senior Management and Board of Directors : National Treatment and Senior Management and Board of Directors may not apply to any measure relating to establishment, acquisition, organization and operation of foreign invested enterprises<sup>3</sup> or foreign invested projects; including but not limited to the issuance of license/permit, legal form, equity participation<sup>4</sup>, organization, management and duration of investment<sup>5</sup>. : -Law on Investments, 2005. -Law on Enterprises, 2005. -Decree 108/2006/ND-CP, dated 22/9/2006. -Decree 139/2007/ND-CP, dated 05/9/2007. ∞ 3 The definition of "Foreign Invested Enterprises" can be found in the Law on Investment, 2005. 4 In respect of equity participation, this reservation shall apply unless such equity participation is otherwise specified in the other reservations in this reservation list. 5 For illustrative purpose, the measure may include but not limited to: -Foreign investors investing in Viet Nam must have an investment project and perform the procedures for investment registration or evaluation of investment at the State administrative body for investment in order to be issued with an investment certificate. -On legal form, foreign investors cannot establish cooperatives. -On management, the financial reporting by foreign and local investors is different. -On duration of investment, maximum duration of a foreign investment projects is 50 years.

### 5.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure : All Sectors : - : - : Central : National Treatment Senior Management and Board of Directors : National Treatment and Senior Management and Board of Directors may not apply to any measure relating to State Owned Enterprises<sup>6</sup> and monitoring and management of investment by State funds, including but not limited to privatization, equitization or divestment of assets through transfer or disposal of equity interests or assets of State Owned Enterprises : -Law on Investment, 2005; dated 29/11/2005. -Law on Enterprises, 2005; dated 29/11/2005. ∞ 6 The term "State-owned enterprise" is defined under Article 4 of the Law on Enterprises, 2005 as amended as follows: State-owned enterprise means an enterprise in which the State owns more than 50% of the charter capital.

### 6.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure : All Sectors : - : - : Central : National Treatment : National Treatment may not apply in the event where activities restricted to designated enterprises are liberalized to those other than the designated enterprises, or in the event such designated enterprises no longer operate on a non-commercial basis<sup>7</sup>. : -Law on Investment, 2005. -Administrative Guidelines. ∞ 7 For illustrative purposes, 'designated enterprises' may include Vinafood 1, Petroleum Processing and Trading Company, etc.

### 7.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure : All Sectors : - : - : Central : National Treatment : National Treatment may not apply to any measure affecting land, property and natural resources<sup>8</sup> associated with land, including but not limited to acquisition, ownership<sup>9</sup>, lease, policy on the usage of land, land planning, term of land use, rights and obligations of land users. : -Law on Land, 2003 as amended and its implementing regulations. -Law on Real Estate Business, 2006. ∞ 8 Natural resources found in land belong to the Government of Viet Nam. 9 For illustrative purposes, foreign organizations and individuals cannot own land. They can only lease land in line with the duration of their investment project subject to approval of a competent State body, which shall not exceed 50 years.

### 8.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure : All Sectors : - : Central : National Treatment Senior Management and Board of Directors : Based on the requirements for socio-economic development<sup>10</sup> in each period and consistent with the undertakings in international treaties of which the Socialist Republic of Vietnam is a member, the Government regulates the list of investments in which investment is conditional, and the conditions applicable to the establishment of economic organizations, the forms of investment, and opening of the market in a number of sectors as applicable to foreign investors Where an enterprise with foreign owned capital invested in a sector in which investment was unconditional but during the course of the investment activity the list of sectors in which investment is conditional was amended with the result that the relevant sector was included, the investor shall be permitted to continue its investment activity in that sector unconditionally. : -Law on Investment, 2005. -Decree 108/2006/ND-CP; dated 22/9/2006. ∞ 10 For illustrative purposes, socio-economic development plans in each period may include the Five-Year Socio-Economic Development Plans.

## 9.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure : All sectors : - : Central : National Treatment Senior Management and Board of Directors : National Treatment and Senior Management and Board of Directors shall not apply to any measure relating to treatments granted to Small and Medium-sized Enterprises<sup>11</sup> : -Law on Investment, 2005. -Law on Enterprises, 2005. -Decree No 90/2001/ND-CP, dated 23/11/2001. - Decree 56/2009/NĐ-CP, dated 30/6/2009. -Small and Medium-sized Enterprises Development Plan. ∞ 11 The term "small and medium-sized enterprise" is defined under Article 3 of the Decree 56/2009/ND-CP, dated 30/6/2009 of the Government as follows: small and medium-sized enterprise is an enterprise established in accordance with laws which has less than or equal to 300 employees or has total legal capital of less than or equal to 100 billion VND.

## 10.

Sector Sub-Sector : Manufacturing, Agriculture and Forestry, Fishery Services incidental to Manufacturing, Fishery, Mining and Quarrying : Manufacturing: -Production of firecrackers, including fireworks (ISIC 2927); -Production of sky-lanterns (ISIC 3150); -Production of fishing-net (ISIC 1723); -Production and supply of explosive materials (ISIC 2429); -Publishing (ISIC 221): All kinds of publishing product. • Publishing of books, brochures, musical books and other publications (ISIC 2211); • Publishing of newspapers, journals and periodicals (ISIC 2212); • Publishing of recorded media (ISIC 2213); • Other publishing (ISIC 2219). -Printing (ISIC 2221): • Books (including books for the blind), pictures, maps, posters, leaflets, calendars; • Molding and pressing money, value papers, forms with denomination, financial invoices, checks, etc; • Journals, Newspapers, Magazines, Periodicals, Counterfeit stamps, Certificates, Passport, National Identity Cards, etc. -Production of cigarettes and cigars (ISIC 1600); -Production of alcoholic beverages and soft drink (ISIC 1551); -Production of tobacco production (ISIC 1600); -Production of lubrication oil, grease (ISIC 2320); -Production of NPK fertilizer (ISIC 2412); -Production of construction glasses (ISIC 2610); -Production of clay bricks (ISIC 2693); -Production of vertical shaft cement production equipment and baked earth bricks and tiles (ISIC 2694); -Production of D6-D32 mm construction steel rods and D15D114mm seam steel pipe; zinc galvanized and color sheets (ISIC 2710); -Production of fluorescent tubes and bulbs (ISIC 3150); -Production of under 10000DWT cargo ships; under 800 TEU container ships; lighters and under 500 seats passenger ships (ISIC 3511); - Production of oil-well cement, barite and bentonite for drilling fluids (ISIC 2694); -Production and supply of industrial explosive materials using in oil and gas activities (ISIC 2429); -Cane sugar production (ISIC 1542).

Agriculture and Forestry including: -Cultivating, producing or processing rare or precious plants, breeding or husbandry of precious or rare wild animal and processing of those plants or animals (including both living animals and processed matter taken from animals)<sup>12</sup>. Services Incidental to Manufacturing including: -Services related to producing of industrial gas such as oxy, nitro, CO<sub>2</sub> (solid or liquid) (CPC 88460/ISIC 2411); -Services related to producing of caustic soda NaOH (liquid) (CPC 88460/ISIC 2411); -Services incidental to producing of common used insecticides (Foreign investment is allowed in producing of input materials (toxin) only) (CPC 88460/ISIC 2421); -Services related to producing of common used paints (CPC 88460/ISIC 2422) -Services related to dairy processing (CPC 88120); -Services related to cane sugar production and sugar processing industry -Services related to processing of beer and beverages (CPC 88411/ISIC 1551); -Services related to processing of tobacco products such as cigarette, cigar, pipe tobacco, chewing tobacco, farmer cut tobacco based on contracts or a fee: • Processing of reconstituted tobacco based on contracts or a fee (CPC 88412/ISIC 1600) • Processing of hookah based on contracts or a fee (CPC 8412) -Services related to processing of manufactured tobacco for production of cigarette based on contract or a fee (CPC 88412); -Services on distributing acid-sulphuric used in producing other products (CPC 88460/ISIC 2411); -Services related to production of fluorescent tubes and incandescent bulb (CPC 88480); Fishery: -Fresh-water fishing, marine fishing (ISIC 0500) -Coral and natural pearl exploitation.(ISIC 0500) Service Incidental to Fishery, including: -Services related to production of fishing net and twine for fishery sector (CPC 88200) <sup>12</sup> List of rare or precious plants and animals can be found in website: [www.kiemlam.org.vn](http://www.kiemlam.org.vn) -Services on repairing and maintaining of fishing boats (CPC 88200) -Services

related to exploiting of fresh-water fisheries (CPC 88200) -Services related to quarantine, quality control of aquaculture and processing products (CPC 88200) -Services related to processing and preservation of aquatic products (CPC 8841) -Services on canning aquatic products (CPC 8841). Services Incidental to Mining and Quarrying (CPC 88300; ISIC 1120): -Services related to application of science and technology to production, including: • Completion of production technology and process for heatinsulation material for covering pipes (CPC 88520); • Preparation for the following services: o Production of aromatic chemicals for gas industry (CPC 88300); o Discharged water treatment on platform and drilling mud supply (CPC 88300); o Study on waste oil collection and treatment (CPC 88300); o Covering reinforced concrete and anti-corrosive paint for oil and gas pipeline (CPC 88300); o Producing gas tanks, gas fired cooker and gas equipment (CPC 88300); o Issuing quality certification for gas equipment and facilities (CPC 88300). -Services related to testing, adjusting, repairing and maintaining industrial measure and control equipment for oil and gas sector (CPC 88300); -Oil and gas warehouse services (CPC 88300); -Oil and gas supply base services (CPC 88300); -Catering and allied services including food and foodstuff, cleanwater and vegetable to off-shore construction facilities (CPC 88300); -Manpower supply services including professional manpower, skills and foreign language training for manpower supplied to foreign countries, signing manpower supply contracts with foreign companies (CPC 88300); -Services related to gas processing: separating Bupro, Condensate (CPC 88300); -Leasing services related to other machines and equipment including specialized equipment in oil and gas industry (CPC 88300); -Services related to database for oil and gas study (CPC 88300); -Services related to database for geological study and seismic survey for oil and gas industry (CPC 88300);

Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure -Services related to geological and exploration drilling (CPC 88300); -Risk assessment, including field-survey, data collection, using special software on impact assessment of frequency and sensitiveness, proposing mitigation measures (CPC 88300); -Services on Environment Protection and Management, including: • Environmental background study (CPC 88300); • Establishing oil-spill response plan, including environmental sampling and analysis (sediment samples, biology, soil, water, air), measuring water and air quality, obtaining onsite spectrum, collecting and assessing data on nature (such as environmental climatic, and hydrographic data), socio-economic data, etc, making reports on environmental background study, environmental impact assessment, oilspill response plan (CPC 88300); • Proposing environmental management plan in oil and gas activities, particularly for offshore environment and sensitive coastline areas (CPC 88300). : See above : Central : National Treatment Senior Management and Board of Directors : No investment license shall be issued to foreign investors<sup>13</sup> in these sectors and sub-sectors : AIA commitments. Law on Investment, 2005. Law on Environment Protection, 1993. Decree 108/2006/ND-CP, dated 22/9/2006. Decree 59/2006/ND-CP, dated 12/6/2006. Decision 95/2009/QĐ-TTg, dated 17/7/2009. Resolution 12/2000/NQCP; dated 14/8/2000. Decision 38/2007/QĐ-TTg; dated 20/3/2007. Decree 119/2007/ND-CP dated 18/07/2007. Decision 28/2002/QĐ-TTg dated 06/2/2002. Decision 58/2003/QĐ-TTg dated 17/4/2003 Decision 18/2007/QĐ-BCN dated 08/5/2007. Decision 26/2007/QĐ-TTg dated 15/2/2007. Circular 14/2008/TT-BCT, dated 25/11/2008. Decision 32/2000/QĐ-BCN, dated 04/5/2000. Decision 121/2008/QĐ-TTg, dated 29/8/2008. Decree 105/2007/ND-CP, dated 21/6/2007. 13 For the purpose of this reservation, the term "Foreign investor" can be found in the Law on Investment, 2005 Page 13 of 32 VIET NAM Law on Oil & Gas; 1993. Decree 19/2000/ND-CP dated 08/6/2000. Law on Fishery, 2003. Decree 59/2005/ND-CP dated 04/5/2005. Circular 02/2005/TT-BTS dated 04/5/2005. Circular 62/2008/TT-BNN dated 20/5/2008. Law on Technical Standard and Criteria dated 29/06/2006. Ordinance 12/2003/PL-UBTVQH dated 26/07/2003. Ordinance on Veterinary dated 29/04/2004. Decree 59/2005/ND-CP dated 04/5/2005. Decree 123/2006/ND-CP dated 27/10/2006. Decree 191/2004/ND-CP dated 18/11/2004. Decision 10/2007/QĐ-TTg dated 11/1/2006. Decision 117/2008/QĐ-BNN dated 11/12/2008. Decision 118/2008/QĐ-BNN dated 11/12/2008. Decision 116/2008/QĐ-BNN dated 03/12/2008. Circular 02/2005/TT-BTS dated 04/5/2005. Circular 62/2008/TT-BNN dated 20/5/2008. Decree 32/2006/ND-CP dated 30/03/2006. Law on Environmental protection. Decision 328/2005/QĐ-TTg. Direction 21/2004/CT-TTg. Decree 25/2009/ND-CP. Decision 88/2007/QĐ-TTg dated 13/6/2007

## 11.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure : All sectors : - : Central : National Treatment Senior Management and Board of Directors : National Treatment and Senior Management and Board of Directors shall not apply to any measures in relation to maintaining food security<sup>14</sup> : -Decree 12/2006/ND-CP dated 23/01/2006. -Policy on national food security ∞ 14 For illustrative purpose, Foreign owned enterprises shall not be allowed to export rice and paddy until Jan 1st 2011.

## 12.

Sector : Manufacturing Sub-Sector : -Production of industrial explosive devices (ISIC 2429) -Cement production (ISIC 2694) - Production of ready mixed concrete, stone crushing (ISIC 2695) -Automobile assembly and manufacture (ISIC 3410) - Motorcycle assembly and manufacture (ISIC 3591) Industry Classification : ISIC 2429, 2694, 2695, 3410, 3591 Level of Government : Central Type of Obligation : National Treatment Description of Measure : Investment in these sub-sectors shall



be subject to planning of the Government which may give preferences to local investors<sup>15</sup> Source of Measure : -Law on Mineral 2005 and its guiding legal documents. -Decision No 150/2007/QĐ-TTg, dated 10/9/2007. -Decree No 39/2009/ND-CP dated 23 April 2009. -Decision 121/2008/QĐ-TTg, dated 29/8/2008. -Decision 02/2007/QĐ-BCT, dated 29/8/2007. ∞ 15 For illustrative purpose, local manufacturer of motorcycles may be given privileges in terms of production quantity to meet the demand of domestic market and location preferences.

### 13.

Sector : Manufacturing Sub-Sector Industry Classification Level of Government Type of Obligation : -Processing of aqua-product and canned seafood (shall be in joint venture form, subject to materials, technology requirements) (ISIC 1512) -Vegetable oil production and processing (in conjunction with development of local raw materials resources) (ISIC 1514) -Dairy processing (in conjunction with development of local raw materials resources) (ISIC 1520) -Leather tanning (in conjunction with development of local raw materials resources and subject to environmental protection requirement) (ISIC 1911) -Paper production (in conjunction with development of local raw materials resources) (ISIC 2101) -Production of automobile tires and tubes up to 450mm (subject to quality requirement) (ISIC 2511) -Production of rubber gloves, labour sanitary boots (subject to quality requirements) (ISIC 2520) -Assembly of marine engines (subject to technology requirements) (ISIC 2911) -Production of electro-mechanical and refrigeration equipment (subject to technology requirement) (ISIC 2919) -Manufacturing of cultivation, processing, reaping machines, insecticide pumps, spare parts of agricultural machines and engines (subject to technology and quality requirements) (ISIC 2921) -Production of household electric appliances (subject to technology requirement) (ISIC 2930) -Production of electrical fans (manufacturing new types of products and subject to quality requirements) (ISIC 2930) -Production of bicycle manufacture (Manufacturing new types of products and subject to quality requirements) (ISIC 3592) -Production of sanitary ceramics, porcelain and tiles (Subject to technology requirement) (ISIC 2691) -Manufacturing and assembling of transport vehicles (ISIC 3410) : See above. : Central : National Treatment Page 17 of 32 VIET NAM Description of Measure : Manufacturing projects/investments in these sectors shall comply with specific requirements on local raw material resources<sup>16</sup>, technology and/or environment and/or quality which may be inconsistent with National Treatment article under ACIA Source of Measure : -Decision No 17/2004/QĐ-BCN dated 08/3/2004. -Decision No 22/2005/QĐ-BCN dated 26/4/2005 -Decision No 36/2007/QĐ-BCN dated 06/8/2007. -Decision No 07/2007/QĐ-BCN dated 30/01/2007. -Decision No 177/2004/QĐ-TTg dated 05/10/2004. -Decision 147/QĐ-TTg dated 04/09/2007. -Decision 36/2007/QĐ-BCN dated 06/08/2007. -Decision 249/QĐ-TTg dated 10/10/2005. -Decree 80/2006/ND-CP dated 09/8/2006 -Decree 12/2006/ND-CP dated 23/01/2006 . ∞ 16 For greater clarity, the requirement on local raw material resources is not local content requirement.

### 14.

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure : Services incidental to Manufacturing : 1 Services related to manufacturing of water pumps used in agriculture (CPC 88530/ISIC 12912) 2 Services related to producing of plastic packing (CPC 88470) 3 Services related to producing of PP packing (CPC 88492) : CPC 884 – CPC 885 : Central : National Treatment : Sub-sector 1: Foreign investment is restricted and subject to foreign equity requirement of maximum of 30%. Sub-sectors 2 and 3: Foreign investment is restricted. : Law on Investment, 2005 and its guiding documents.

### 15.

Sector Sub-Sector : Services Incidental to Manufacturing : -Services related to producing of electronic scales for postal operation (CPC 88560/ISIC 32) -Services related to producing of small capacity microwave equipment, main distribution frame component (MDF), subscriber local loop equipment, terminal boxes of different size, wiring cables (CPC 88550) -Services related to producing of small capacity telephone switching systems (CPC 88560) -Services related to producing of optical fiber terminals (CPC 88560) -Services related to producing of telephone sets (CPC 88560) -Services related to producing of H<sub>3</sub>PO<sub>4</sub> and HCl acids (CPC 88460/ISIC 2411) -Services related to producing of chemical products such as phosphor, silicate-natri, tripolyphosphat, aluminium hydroxide, light powder, calcium chloride, active coal and black carbon (CPC 88460/ISIC 2429) -Services related to manufacturing of products from structure metal (CPC 88520/ISIC 2811) -Services related to manufacturing of barrels, tanks and metal containers (CPC 88460/ISIC 2812) -Services related to processing of vegetable oil (In conjunction with development of local raw materials resources requirement) (CPC 88110/ISIC 0112) -Services related to manufacturing of lifting and loading equipment and machinery (CPC 88530/ISIC 2915) -Services related to manufacturing of other common used machinery (CPC 88530/ISIC 2919) -Services related to testing and control of computer's quality (With the commitment to investment supports, training and technology transfer) (CPC 88540) -Services related to packaging integrated circuits (IC) (Subject to technology transfer requirements) (CPC 88560) -Services related to assembling of electronics components, electronic and telecommunication products based on contracts or a fee (Subject to technology transfer requirements) (CPC 88550) -Services related to designing of machinery and equipment by computer

(computer-aid-design CAD) (Subject to technology transfer requirements) (CPC 88540) -Other services (Subject to planning of the Government) -Services related to processing of alcohol (Subject to brand, quality requirements) (CPC 88411)

Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure : CPC 884 – CPC 885 : Central : National Treatment : Investment in these services sub-sectors shall be subject to technology and quality requirements which may be inconsistent with National Treatment Article under ACIA.17 : Law on Technical Standard and Criteria, 2006. Decree 40/2008/ND-CP dated 07/4/2008 ∞ 17 For illustrative purpose, requirements on quality of services provided by foreign invested enterprises may be higher than those applied to local enterprises.

## **16.**

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure : Mining & Quarrying : Oil and gas : ISIC 111, ISIC 112 : Central : National Treatment Senior Management and Board of Directors : National Treatment and Senior Management and Board of Directors shall not apply to any measure relating to oil and gas activities carried out within Viet Nam. Investment in oil and gas activities shall be subject to approval by the Government of Viet Nam. : -Law on Investment, 2005. -Law on Minerals, 2005. -Decree 160/2005/ND-CP; dated 27/12/2005. -Decree 07/2009/ND-CP dated 22/01/2009

## **17.**

Sector : Mining & Quarrying, except Oil and Gas Sub-Sector : - Industry Classification : ISIC1310, 1320, 1410 Level of Government : Central Type of Obligation : National Treatment Senior Management and Board of Directors Description of Measure : National Treatment and Senior Management and Board of Directors may not apply to any measure in relation to mining & quarrying investment, including but not limited to the following sectors: -Survey, exploration and exploitation of minerals -Exploitation, processing of rare and precious minerals, raw materials -Exploitation, processing of rare and precious minerals, rare metals, raw materials; exploitation of clay for production of construction materials; exploitation of high-quality sand for production of construction and technical glasses -Projects in exploitation of precious or rare mineral shall be subject to approval by the Government of Vietnam -Mineral activities related to the special, toxic, rare and precious minerals including basic geological investigation, prospecting, exploration, exploitation and processing Source of Measure : - Decree 108/2006/ND-CP dated 22/9/2006. -Law on Minerals, 2005. -Decree 160/2005/ND-CP dated 27/12/2005. -Decree 07/2009/ND-CP dated 22/01/2009

## **18.**

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure : Services incidental to Mining and Quarrying : - : CPC 883 : Central : National Treatment : Foreign equity participation in joint ventures shall not exceed 49%. From 11 January 2010, the foreign equity participation in joint ventures may be 51%. From 11 January 2012, 100% foreign-invested enterprises may be permitted. National Treatment shall not apply to any measure relating to the services incidental to mining and quarrying activities. Investment in the oil and gas related activities carried out within Viet Nam shall be subject to law, regulations and procedures of Viet Nam. : Law on Investment, 2005.

## **19.**

Sector : Fishery Sub-Sector : - Industry Classification : - Level of Government : Central Type of Obligation : National Treatment Description of Measure : National Treatment shall not apply to any measure relating to fishery activities within Viet Nam sovereignty and jurisdiction waters as defined in accordance with the 1982 UNCLOS. Source of Measure : -Law on Fishery, 2003. -Decree 108/2006/ND-CP, dated 22/09/2006. -Decree 49/1998/ ND-CP dated 13/7/1998. -Decree 86/2001/ND-CP dated 16/11/2001. -Decree 191/2004/ND-CP dated 18/11/2004. -Decree 59/2005/ND-CP dated 04/5/2005. -Decision 10/2007/QD-TTg dated 11/1/2006. -Circular 02/2005/TT-BTS dated 04/5/2005. -Circular 62/2008/TT-BNN dated 20/5/2008.

## **20.**

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure : Service incidental to Fishery : Fry production and aquaculture operation : CPC 88200 : Central : National Treatment : Requirements on technology, fry quality of foreign invested enterprises must be higher than those that apply to local enterprises : -Law on Technical Standard and Criteria, 2006. -Law on Fishery, dated 26/11/2003. -Decree 59/2005/ND-CP dated 04/5/2005. -Circular 02/2005/TT-BTS dated 04/5/2005. -Circular 62/2008/TT-BNN dated 20/5/2008.

## **21.**

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure : Service incidental to Fishery : 1. Services related to sending vessels for buying seaproducts (CPC 88200) 2. Services related to hiring of fishing boats and employees (CPC 88200) 3. Services related to processing on board for fish (CPC 88200) crustaceans and mollusks and other related services 4. Services related to exploiting of sea-products (CPC 88200) 5. Services on collecting and buying aquatic products (CPC : 8820) : CPC 88200 : Central : National Treatment Sub-sectors 1 and 2: Foreign investment is restricted and subject to foreign equity requirement of maximum of 30%. : Sub-sectors 3 and 4: Foreign investment is restricted and subject : to foreign equity requirement of maximum of 40%. Decree 33/2010/ND – CP dated 31/03/2010 - Decree 32/2010/ND-CP dated 30/03/2010 - Decree 59/2005/ND – CP dated 04/5/2005 - Decree 14/2009/ND-CP dated 13/2/2009 - Decree 27/2005/ND-CP dated 08/03/2005 - Administrative Guidelines

## **22.**

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure : Forestry : : ISIC 0200 : Central : National Treatment : National Treatment shall not apply to any measure relating to investment in forestry activities, including but not limited to the following: -Not to grant license to exploit natural forest to foreign investors - To provide rights and obligations of foreign individuals and organizations different from those of Vietnamese individuals and organizations : -Law on Protection and Development of Forest, 2004. -Decree 23/2006/QĐ-TTg dated 3/3/2006. -WTO's commitments.

## **23.**

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure VIET NAM : Services incidental to Agriculture, Hunting and Forestry : Services relating to investigation, evaluation and exploitation for natural forest, including exploitation of woods and wild, rare and precious animals, hunting, trapping, aerial seed planting and aerial chemicals spraying and dusting, microbial plant, animal genetic resource in agriculture. : CPC 8812 : Central : National Treatment : No investment license will be issued for foreign investors in those sub-sectors. : Law on Investment, 2005. Law on Protection and Development of Forest, 2004.

## **24.**

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure : Services incidental to Agriculture, Hunting and Forestry : Services incidental to agriculture, hunting and forestry, other than services relating to investigation, evaluation and exploitation for natural forest, including exploitation of woods and wild, rare and precious animals hunting and trapping, aerial seed planting and aerial chemicals spraying and dusting, micro-bial plant, animal genetic resource in agriculture. : CPC 881 : Central : National Treatment Senior Management and Board of Directors : Foreign investors are only permitted to invest in the form of jointventure or business co-operation contract. Foreign equity shall not exceed 51% of the legal capital<sup>18</sup> of joint venture. Foreign investments in these sectors are restricted to certain geographical areas<sup>19</sup> as may be approved on a case-by-case basis. : -Law on Investment dated 29/11/2005 -Law on Protection and Development of Forest dated 03/12/2004 <sup>18</sup> "Legal capital" means, as defined by the Law on Enterprises 2005, article 4, provision 7, the minimum level of capital as stipulated by law to form an enterprise. <sup>19</sup> The certain geographical areas may include, but not limited to natural reserves.

## **25.**

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure : Manufacturing : Aircraft Manufacture Industry : CPC 88590 (ISIC 353) : Central : National Treatment : The foreign equity participation shall not exceed 49% of the legal capital<sup>20</sup> of the Joint-venture companies operating in air-plane manufacture : Decision No 38/2007/QĐ-TTg dated 20/3/ 2007 <sup>20</sup> "Legal capital" means, as defined by the Law on Enterprises 2005, article 4, provision 7, the minimum level of capital as stipulated by law to form an enterprise.

## **26.**

Sector Sub-Sector Industry Classification Level of Government Type of Obligation Description of Measure Source of Measure : Manufacturing and Services incidental to Manufacturing : -Manufacture of railway rolling stock, spare parts, wagon and coach -Services related to manufacturing of railway rolling stock, spare : parts, wagon and coach Manufacture of railway rolling stock, spare parts, wagon and coach : CPC 88590 (ISIC 352) : Central : National Treatment Joint-venture form is only permitted and foreign equity participation : shall not exceed 49% of the legal capital<sup>21</sup> of the Joint venture. : Decision 1686/QĐ-TTg dated 20/11/2008. <sup>21</sup> "Legal capital" means, as defined by the Law on Enterprises 2005, article 4, provision 7,

the minimum level of capital as stipulated by law to form an enterprise.