SECOND PROTOCOL TO AMEND THE AGREEMENT ESTABLISHING THE ASEAN-AUSTRALIA-NEW ZEALAND FREE TRADE AREA

PREAMBLE

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

RECALLING the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area, signed at Cha-am, Petchaburi, Thailand on 27 February 2009, as amended by the First Protocol to Amend the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area, done at Nay Pyi Taw, Myanmar on 26 August 2014 (the "Agreement");

RECOGNISING the need to upgrade the Agreement, including in the areas of trade in goods, rules of origin, customs procedures and trade facilitation, trade in services, investment, movement of natural persons, electronic commerce, competition and consumer protection, micro, small and medium enterprises, trade and sustainable development, and government procurement, to ensure that the Agreement retains its relevance to business and adds value to developments in other fora including the Regional Comprehensive Economic Partnership (RCEP) signed on 15 November 2020;

DESIRING to modernise the Agreement to take account of changing global business and trade practices and the evolving regional economic architecture, including incorporating and implementing provisions to facilitate trade and investment and remove unnecessary barriers to accelerate post-pandemic recovery; and

NOTING that Article 6 (Amendments) of Chapter 18 (Final Provisions) of the Agreement provides for amendments thereto to be agreed in writing by the Parties,

HAVE AGREED AS FOLLOWS:

Article 1. Amendment to the Agreement

1. In accordance with Article 6 (Amendments) of Chapter 18 (Final Provisions), the Parties have agreed to amend the Agreement on the terms set out in the Appendix to this Protocol.

2. This Protocol shall form an integral part of the Agreement.

Article 2. Entry Into Force

1. This Protocol shall be subject to ratification, acceptance or approval by each Party in accordance with its applicable legal procedures. The instrument of ratification, acceptance or approval of a Party shall be deposited with the Depositary, who shall promptly notify all other Parties of each deposit.

2. This Protocol shall enter into force 60 days after the date on which Australia, New Zealand and at least four ASEAN Member States have deposited their instruments of ratification, acceptance or approval.

3. For each Party ratifying, accepting or approving the Protocol after the date on which Australia, New Zealand and at least four ASEAN Member States have deposited their instruments of ratification, acceptance or approval in accordance with Paragraph 2, this Protocol shall enter into force for that Party 60 days after the date of the deposit of its own instrument of ratification, acceptance or approval.

Article 3. Depositary

This Protocol shall be deposited with the Secretary-General of ASEAN who is designated as the Depositary for this Protocol. The Depositary shall promptly provide a certified copy of the original text of this Protocol to each Party.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Second Protocol to Amend the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area. DONE at Semarang, Indonesia, this day of in the Year , in a single original copy in the English language.

For the Government of Brunei Darussalam:

DATO DR. AMIN LIEW ABDULLAH

Minister at the Prime Minister's Office and

Minister of Finance and Economy II

For the Government of the Kingdom of Cambodia:

(NAME IN BOLD AND CAPS)

(Designation)

For the Government of the Republic of Indonesia:

ZULKIFLI HASAN

Minister of Trade

For the Government of the Lao People's Democratic Republic:

(NAME IN BOLD AND CAPS)

(Designation)

For the Government of Malaysia:

TENGKU DATUK SERI UTAMA ZAFRUL TENGKU ABDUL AZIZ

Minister of Investment, Trade and Industry

For the Government of the Republic of the Union of Myanmar:

(NAME IN BOLD AND CAPS)

(Designation)

For the Government of the Republic of the Philippines:

(NAME IN BOLD AND CAPS)

(Designation)

For the Government of the Republic of Singapore:

GAN KIM YONG

Minister for Trade and Industry

For the Government of the Kingdom of Thailand:

(NAME IN BOLD AND CAPS)

(Designation)

For the Government of the Socialist Republic of Viet Nam:

(NAME IN BOLD AND CAPS)

(Designation)

For the Government of Australia:

TIM WATTS

Assistant Minister for Foreign Affairs

For the Government of New Zealand:

RINO TIRIKATENE

Minister of State for Trade and Export Growth

Chapter 1. ESTABLISHMENT OF FREE TRADE AREA, OBJECTIVES AND GENERAL DEFINITIONS

1. Objectives

The objectives of this Agreement are to:

(a) progressively liberalise and facilitate trade in goods among the Parties through, inter alia, progressive elimination of tariff and non-tariff barriers in substantially all trade in goods among the Parties;

(b) progressively liberalise trade in services among the Parties, with substantial sectoral coverage;

(c) facilitate, promote and enhance investment opportunities among the Parties through further development of favourable investment environments;

(d) establish a co-operative framework for strengthening, diversifying and enhancing trade, investment and economic links among the Parties; and

(e) provide special and differential treatment to ASEAN Member States, especially to the newer ASEAN Member States, to facilitate their more effective economic integration.

2. Establishment of the ASEAN-Australia-New Zealand Free Trade Area

The Parties hereby establish, consistent with Article XXIV of GATT 1994 and Article V of GATS, an ASEAN, Australia and New Zealand Free Trade Area.

3. General Definitions

For the Purposes of this Agreement, Unless the Context Otherwise Requires:

(a) AANZFTA means the ASEAN-Australia-New Zealand Free Trade Area;

(b) Agreement means the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area;

(c) Agreement on Customs Valuation means the Agreement on Implementation of Article VI! of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement;

(d) ASEAN means the Association of Southeast Asian Nations which comprises 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 and whose members are referred to in this Agreement collectively as the ASEAN Member States and individually as an ASEAN Member State;

(e) customs duties means any customs or import duty and a charge of any kind, including any tax or surcharge, imposed in connection with the importation of a good, but does not include any:

(i) charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article Ill of GATT 1994, in respect of the like domestic product or in respect of an article from which the imported product has been manufactured or

produced in whole or in part;

(ii) anti-dumping or countervailing duty applied consistently with the provisions of Article VI of GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, as may be amended and the Agreement on Subsidies and Countervailing Measures in Annex 1A to the WTO Agreement, as may be amended; or

(iii) fee or any charge commensurate with the cost of services rendered;

(f) days means calendar days, including weekends and holidays;

(g) essential goods means goods considered by a Party as essential for disaster relief and urgent medical purposes during a humanitarian crisis, epidemic or pandemic; (1)

(1) A Party may refer to guidelines issued by relevant international organisations, of which all Parties are members, when determining if a good is essential.

(h) FTA Joint Committee means the ASEAN, Australia and New Zealand FTA Joint Committee established pursuant to Article 1 (FTA Joint Committee) of Chapter 19 (Institutional Provisions);

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

(j) GATT 1994 means the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement;

(k) HS Code means the Harmonized Commodity Description and Coding System established by the International Convention on the Harmonized Description and Coding System done at Brussels on 14 June 1983, as amended;

(l) humanitarian crisis means an event that poses, or series of events that pose, an imminent threat to or affect the health, safety or well-being of, a community or a region, and may include natural or human-induced disasters and may occur throughout a large land area;

(m) IMF means the International Monetary Fund;

(n) IMF Articles of Agreement means the Articles of Agreement of the International Monetary Fund adopted at Bretton Woods on 22 July 1944;

(o) Least Developed Country means any country designated as such by the United Nations and which has not obtained graduation from the least developed country category;

(p) Least Developed Country Party means any Party that is a Least Developed Country;

(q) MSMEs means micro, small and medium enterprises, and may be further defined, where applicable, in accordance with the respective laws, regulations, or national policies of each Party;

(r) newer ASEAN Member States means the Kingdom of Cambodia, the Lao People's Democratic Republic, the Republic of the Union of Myanmar and the Socialist Republic of Viet Nam;

(t) originating good means a good that qualifies as originating under Chapter 3 (Rules of Origin);

(u) Parties means the ASEAN Member States, Australia and New Zealand collectively;

(v) Party means an ASEAN Member State or Australia or New Zealand;

(w) Second Protocol means the Second Protocol to Amend the Agreement Establishing the ASEAN- Australia-New Zealand Free Trade Area;

(x) TRIPS Agreement means the Agreement on Trade-Related Aspects of Intellectual Property Rights, in Annex 1C to the WTO Agreement; WTO means the World Trade Organization; and WTO Agreement means the Marrakesh

(y) Agreement Establishing the World Trade Organization, done on 15 April 1994.

Chapter 2. TRADE IN GOODS

Section A. General Provisions and Market Access for Goods

1. National Treatment on Internal Taxation and Regulation

Each Party shall accord national treatment to the goods of the other Parties in accordance with Article III of GATT 1994. To this end, Article III of GATT 1994 shall be incorporated into and shall form part of this Agreement, mutatis mutandis.

2. Reduction or Elimination of Customs Duties

Except as otherwise provided in this Agreement, each Party shall progressively reduce or eliminate customs duties on originating goods of the other Parties in accordance with its schedule of tariff commitments in Annex 1 (Schedules of Tariff Commitments).

3. Acceleration of Tariff Commitments

1. Nothing in this Agreement shall preclude the Parties from negotiating and entering into arrangements to accelerate or improve tariff commitments made under this Agreement. An agreement among the Parties to accelerate or improve tariff commitments shall be incorporated into this Agreement, in accordance with Article 6 (Amendments) of Chapter 21 (Final Provisions). Such acceleration or improvement of tariff commitments shall be implemented by the Parties.

2. Two or more Parties may also enter into consultations to consider accelerating or improving tariff commitments set out in their schedules of tariff commitments in Annex 1 (Schedules of Tariff Commitments). An agreement between these Parties to accelerate or improve their respective tariff commitments under this Agreement shall be incorporated into this Agreement, in accordance with Article 6 (Amendments) of Chapter 21 (Final Provisions). Tariff concessions arising from such acceleration or improvement of tariff commitments shall be extended to all Parties.

3. A Party may, at any time, unilaterally accelerate the reduction or elimination of customs duties on originating goods of the other Parties set out in its schedule of tariff commitments in Annex 1 (Schedules of Tariff Commitments). A Party intending to do so shall inform the other Parties before the new rate of customs duties takes effect, or in any event, as early as practicable.

4. Temporary Admission of Goods

1. Each Party shall allow, as provided for in its laws and regulations, goods to be brought into its customs territory conditionally relieved, totally or partially, from payment of import duties and taxes, if such goods:

(a) are brought into its customs territory for a specific purpose;

(b) are intended for re-exportation within a specific period; and

(c) have not undergone any change, except normal depreciation and wastage due to the use made of them.

2. Each Party shall, on the request of the person concerned and for reasons its customs authority considers valid, extend the time limit for duty-free temporary admission provided for in Paragraph 1 beyond the period initially fixed.

3. No Party shall condition the duty-free temporary admission of a good provided for in Paragraph 1, other than to require that the good:

(a) be used solely by or under the personal supervision of a national or resident of another Party in the exercise of the business activity, trade, profession, or sport of that person;

(b) not be sold or leased while in its territory;

(c) be accompanied by a security or guarantee in an amount no greater than the customs duties, taxes, fees, and charges that would otherwise be owed on entry or final importation, releasable on exportation of the good;

(d) be capable of identification when imported and exported;

(e) be exported on the departure of the person referred to in Subparagraph (a), or within such other period related to the purpose of the temporary admission as the Party may establish in accordance with its laws and regulations;

(f) be admitted in no greater quantity than is reasonable for its intended use; and

(g) be otherwise admissible into the Party's territory under its laws and regulations.

4. If any condition that a Party imposes under Paragraph 3 has not been fulfilled, the Party may apply the customs duty and

any other charge that would normally be owed on the good, in addition to any other charges or penalties provided for in its laws and regulations.

5. Each Party shall permit a good temporarily admitted under this Article to be re-exported through a customs port other than that through which it was admitted.

6. Each Party shall, if it is in accordance with its laws and regulations, (1) provide that the importer or other person responsible for a good admitted under this Article shall not be liable for failure to export the good on presentation of satisfactory proof to the importing Party that the good has been destroyed within the original period fixed for temporary admission or any lawful extension.

(1) This Paragraph shall apply to Parties who have relevant laws and regulations.

5. Temporary Admission for Containers and Pallets

1. Each Party shall, as provided for in its laws and regulations, or the provisions of the related international agreements to which it is party, grant duty-free temporary admission for containers and pallets, regardless of their origin, in use or to be used in the shipment of goods in international traffic.

2. For the purposes of this Article, âcontainerâ means an article of transport equipment (lift-van, movable tank, or other similar structure):

(a) fully or partially enclosed to constitute a compartment intended for containing goods;

(b) of a permanent character and accordingly strong enough to be suitable for repeated use;

(c) specially designed to facilitate the carriage of goods, by one or more modes of transport, without intermediate reloading;

(d) designed for ready handling, particularly when being transferred from one mode of transport to another;

(e) designed to be easy to fill and to empty; and

(f) having an internal volume of one cubic metre or more.

"Container" shall include the accessories and equipment of the container, appropriate for the type concerned, provided that such accessories and equipment are carried with the container. "Container" shall not include vehicles, accessories or spare parts of vehicles, or packaging or pallets. "Demountable bodies" shall be regarded as containers.

3. For the purposes of this Article, "pallet" means a device on the deck of which a quantity of goods can be assembled to form a unit load for the purpose of transporting it, or of handling or stacking it with the assistance of mechanical appliances. This device is made up of two decks separated by bearers, or of a single deck supported by feet; its overall height is reduced to the minimum compatible with handling of fork lift trucks or pallet trucks; it may or may not have a superstructure.

4. Subject to Chapter 8 (Trade in Services) and Chapter 11 (Investment), in respect of containers granted temporary admission pursuant to Paragraph 1: (2)

(a) each Party shall allow a container used in international traffic that enters its territory from the territory of another Party to exit its territory on any route that is reasonably related to the economic and prompt departure of such container; (3)

(b) no Party shall require any security or impose any penalty or charge solely by reason of any difference between the port of entry and the port of departure of a container;

(c) no Party shall condition the release of any security that it imposes in respect of the entry of a container into its territory on the container's exit through any particular port of departure; and

(d) no Party shall require that the carrier bringing a container from the territory of another Party into its territory be the same carrier that takes the container to the territory of another Party.

(2) For greater certainty, nothing in this Paragraph shall affect the right of a Party to adopt or maintain measures in accordance with Article 1 (General Exceptions) or Article 2 (Security Exceptions) of Chapter 18 (General Provisions and Exceptions).

(3) For greater certainty, nothing in this Subparagraph shall be construed to prevent a Party from adopting or maintaining highway and railway

safety or security measures of general application, or from preventing a container from entering or exiting its territory in a location where the Party does not maintain a customs port. A Party may, in accordance with its laws and regulations, provide the other Parties with a list of ports available for exit of containers.

6. Duty-Free Entry of Samples of No Commercial Value

Each Party shall grant duty-free entry to samples of no commercial value, imported from the territory of another Party, subject to its laws and regulations, regardless of their origin.

7. Elimination of Agricultural Export Subsidies

Consistent with their rights and obligations under the WTO Agreement, each Party agrees to eliminate and not reintroduce all forms of export subsidies for agricultural goods destined for the other Parties.

8. Transposition of Schedules of Tariff Commitments

1. Each Party shall ensure that the transposition of its Schedule in Annex 1 (Schedules of Tariff Commitments), undertaken in order to implement Annex 1 (Schedules of Tariff Commitments) in the nomenclature of the revised HS Code following periodic amendments to the HS Code, is carried out without impairing the tariff commitments set out in Annex 1 (Schedules of Tariff Commitments).

2. The transposition of the schedules of tariff commitments referred to in Paragraph 1 shall be carried out in accordance with the methodologies and procedures adopted by the Committee on Trade in Goods. The procedures should, at a minimum, provide for:

(a) the timely circulation by each Party of a draft schedule of tariff commitments in the nomenclature of the revised HS Code, accompanied by a two-way transposition setting out, at national tariff line level:

(i) a concordance between the draft schedule of tariff commitments in the nomenclature of the revised HS Code and the schedule of tariff commitments in the nomenclature of the then current HS Code; and

(ii) a concordance between the schedule of tariff commitments in the nomenclature of the then current HS Code and the draft schedule of tariff commitments in the nomenclature of the revised HS Code;

(b) the provision of comments by other Parties on the draft schedules circulated in accordance with Subparagraph (a), and consultations between the Parties, as necessary, with a view to resolving any concerns raised;

(c) the requirement to make publicly available in a timely manner the schedules of tariff commitments in the nomenclature of the revised HS Code shall be made publicly available in a timely manner, following completion of the process _ in Subparagraphs (a) and (b); and

(d) the positive consideration of proposals for technical assistance for the purpose of implementing Subparagraph (a).

9. Modification of Concessions

In exceptional circumstances, where a Party faces unforeseen difficulties in implementing its tariff commitments, that Party may, with the agreement of all other interested Parties, modify or withdraw a concession contained in its Schedule in Annex 1 (Schedules of Tariff Commitments). In order to seek to reach such agreement, the relevant Party shall engage in negotiations with any interested Parties. In such negotiations, the Party proposing to modify or withdraw its concessions shall maintain a level of reciprocal and mutually advantageous concessions no less favourable to the trade of all other interested Parties than that provided for in this Agreement prior to such negotiations, which may include compensatory adjustments with respect to other goods. The mutually agreed outcome of the negotiations, including any compensatory adjustments, shall apply to all the Parties and shall be incorporated into this Agreement in accordance with Article 6 (Amendments) of Chapter 21 (Final Provisions).

Section B. Non-Tariff Measures

10. Application of Non-Tariff Measures

1. A Party shall not adopt or maintain any non-tariff measure on the importation of any good of another Party or on the

exportation of any good destined for the territory of another Party, except in accordance with its rights and obligations under the WTO Agreement or this Agreement.

2. Each Party shall ensure the transparency of its non-tariff measures permitted under Paragraph 1 and shall ensure that any such measures are not prepared, adopted, or applied with the view to or with the effect of creating unnecessary obstacles to trade among the Parties.

11. Quantitative Restrictions and Non-Tariff Measures

1. Except as otherwise provided in this Agreement, no Party shall adopt or maintain any prohibition or restriction other than duties, taxes, or other charges, whether made effective through quotas, import or export licences, or other measures, on the importation of any good of another Party or on the exportation of any good destined for the territory of another Party, except in accordance with its rights and obligations under the relevant provisions of the WTO Agreement. To this end, Article Xl of GATT 1994 shall be incorporated into and shall form part of this Agreement, mutatis mutandis.

2. Where a Party adopts an export prohibition or restriction in accordance with Subparagraph 2(a) of Article Xl of GATT 1994, that Party shall, upon request:

(a) inform another Party or Parties of such prohibition or restriction and its reasons together with its nature and expected duration, or publish such prohibition or restriction; and

(b) provide another Party or Parties that may be seriously affected with a reasonable opportunity for consultation with respect to matters related to such prohibition or restriction.

12. Publication and Administration of Trade Regulations

1. Article X of GATT 1994 shall be incorporated into and shall form part of this Agreement, mutatis mutandis.

2. In accordance with its laws and regulations and to the extent possible, each Party shall make laws, regulations, decisions and rulings of the kind referred to in Paragraph 1 available on the internet.

13. Technical Consultations on Non-Tariff Measures

1. A Party may request technical consultations with another Party on a measure it considers to be adversely affecting its trade. The request shall be in writing and shall clearly identify the measure and the concerns as to how the measure adversely affects trade between the Party requesting technical consultations (the "requesting Party" for the purposes of this Article) and the Party to which a request has been made (the "requested Party" for the purposes of this Article).

2. Where the measure is covered by another Chapter, any consultation mechanism provided in that Chapter shall be used, unless otherwise agreed between the requesting Party and the requested Party (collectively, "the consulting Parties").

3. Except as provided in Paragraph 2, the requested Party shall respond to the requesting Party and enter into technical consultations within 60 days of the receipt of the written request referred to in Paragraph 1, unless otherwise determined by the consulting Parties, with a view to reaching a mutually satisfactory solution within 180 days of the request. Technical consultations may be conducted via any means mutually agreed by the consulting Parties.

4. Except as provided in Paragraph 2, the request for technical consultations shall be circulated to all the other Parties. Other Parties may request to join the technical consultations on the basis of interests set out in their requests. The participation of any other Party is subject to the consent of the consulting Parties. The consulting Parties shall give full consideration to such requests.

5. If the requesting Party considers that a matter is urgent or involves perishable goods, it may request that technical consultations take place within a shorter time frame than that provided for under Paragraph 3.

6. Except as provided in Paragraph 2, each Party shall submit an annual notification to the Committee on Trade in Goods regarding any use of technical consultations under this Article, whether as the requesting Party or the requested Party. This notification shall contain a summary of the progress and outcomes of the consultations.

7. For greater certainty, technical consultations under this Article shall be without prejudice to a Party's rights and obligations pertaining to dispute settlement proceedings under Chapter 20 (Consultations and Dispute Settlement) and the WTO Agreement.

14. Non-Tariff Measures on Essential Goods During Humanitarian Crises, Epidemics or Pandemics

1. During a humanitarian crisis, epidemic or pandemic, nothing in this Article shall prevent a Party from exercising its rights or obligations under the WTO Agreement, or any other international agreements to which it is a party.

2. During a humanitarian crisis, epidemic or pandemic, which adversely impacts Parties on a substantial scale, each Party shall, to the extent possible:

(a) facilitate timely information-sharing with regard to non-tariff measures on essential goods;

(b) refrain from introducing trade-restricting non-tariff measures on essential goods unless necessary, and in which case such non-tariff measures must be targeted, proportionate, transparent, temporary and in conformity with its rights and obligations under the WTO Agreement and other relevant international agreements; and

(c) endeavour to ensure the timely notification and publication, in accordance with the WTO Agreement, of regulatory information on matters pertaining to its non-tariff measures on essential goods.

3. The Committee on Trade in Goods shall be convened, where necessary and possible, to identify and resolve any unnecessary non-tariff measures on trade in essential goods in an expedited and timely manner during a humanitarian crisis, epidemic or pandemic. A Party may request essential goods from another Party and the requested Party shall, to the extent possible, positively consider the request, subject to the requested Party's internal situation and considerations.

4. Chapter 20 (Consultations and Dispute Settlement) shall not apply to any matter arising under this Article.

15. Import Licensing Procedures

1. Each Party shall ensure that all automatic and non- automatic import licensing procedures are implemented in a transparent and predictable manner, and applied in accordance with the Import Licensing Agreement. (4) No Party shall adopt or maintain a measure that is inconsistent with the Import Licensing Agreement.

2. Each Party shall, promptly after the date of entry into force of the Second Protocol for that Party, notify the other Parties of its existing import licensing procedures. The notification shall include the information specified in paragraph 2 of Article 5 of the Import Licensing Agreement. A Party shall be deemed to be in compliance with this paragraph if:

(a) it has notified the procedures to the WTO Committee on Import Licensing established by Article 4 of the Import Licensing Agreement (the âWTO Committee on Import Licensingâ), together with the information specified in paragraph 2 of Article 5 of the Import Licensing Agreement; and

(b) in the most recent annual submission due before the date of entry into force of the Second Protocol for that Party to the WTO Committee on Import Licensing in response to the annual questionnaire on import licensing procedures referred to in paragraph 3 of Article 7 of the Import Licensing Agreement, it has provided, with respect to those existing import licensing procedures, the information requested in that questionnaire.

3. Each Party shall notify the other Parties of any new import licensing procedure and any modification it makes to its existing import licensing procedures, to the extent possible 30 days before the new procedure or modification takes effect. In no case shall a Party provide the notification later than 60 days after the date of the new or modified procedure's publication. A notification provided under this Paragraph shall include the information specified in paragraph 2 of Article 5 of the Import Licensing Agreement. A Party shall be deemed to be in compliance with this Paragraph if it notifies a new import licensing procedure or a modification to an existing import licensing procedure to the WTO Committee on Import Licensing in accordance with paragraph 1, 2, or 3 of Article 5 of the Import Licensing Agreement.

4. Before applying any new or modified import licensing procedure, a Party shall publish the new procedure or modification on an official government website. To the extent possible, the Party shall do so at least 21 days before the new procedure or modification takes effect.

5. The notification required under Paragraphs 2 and 3 is without prejudice to whether the import licensing procedure is consistent with this Agreement.

6. A notification made under Paragraph 3 shall state if, under any import licensing procedure that is a subject of the notification:

(a) the terms of an import license for any product limit the permissible end users of the product; or

(b) the Party imposes any of the following conditions on eligibility for obtaining a license to import the product:

(i) membership in an industry association;

(ii) approval by an industry association of the request for an import license;

(iii) a history of importing the product, or similar products;

(iv) minimum importer or end user production capacity;

(v) minimum importer or end user registered capital; or

(vi) a contractual or other relationship between the importer and distributor in the Party's territory.

7. Each Party shall, to the extent possible,Â° answer within 60 days all reasonable enquiries from another Party regarding the criteria employed by its licensing authorities when granting or denying import licenses. Each Party shall publish sufficient information for the other Parties and traders to know the basis for granting or allocating import licenses.

8. No Party shall refuse an application for an import license for minor documentation errors that do not alter the basic data contained therein. Minor documentation errors may include formatting errors, such as the width of a margin or the font used, and spelling errors which are obviously made without fraudulent intent or gross negligence.

9. If a Party denies an import license application with respect to a good of another Party, it shall, on request of the applicant and within a reasonable period after receiving the written request, provide the applicant with a written explanation of the reason for the denial.

5 Paragraphs 7 and 9 of this Article may be reviewed during the review process set out in Article 9 (Review) of Chapter 21 (Final Provisions).

(4) For the purposes of this Article, "Import Licensing Agreement" means the Agreement on Import Licensing Procedures in Annex 1A of the WTO Agreement.

16. Fees and Charges Connected with Importation and Exportation

1. Each Party shall ensure, in accordance with paragraph 1 of Article VIII of GATT 1994 and its interpretive notes, that all fees and charges of whatever character (other than import or export duties, charges equivalent to an internal tax or other internal charge applied consistently with paragraph 2 of Article Ill of GATT 1994, and anti-dumping and countervailing duties) imposed on or in connection with importation or exportation are limited in amount to the approximate cost of services rendered and do not represent an indirect protection to domestic goods or a taxation of imports or exports for fiscal purposes.

2. No Party shall apply fees and charges imposed in connection with importation or exportation until information on them, and on any updates or changes to those fees and charges, has been published, in accordance with its laws and regulations. Such information shall include the reason for the fees and charges, the responsible authority, and when and how payment is to be made. Such information shall be published promptly on the internet to the extent possible.

3. No Party shall require consular transactions, including related fees and charges, in connection with the importation of a good of another Party.

4. No Party shall require that any customs documentation supplied in connection with the importation of any good of another Party be endorsed, certified, or otherwise sighted or approved by the importing Party's overseas representatives, or entities with authority to act on the importing Party's behalf, nor impose any related fees or charges.

5. Each Party shall, in accordance with its laws and regulations, periodically review its fees and charges in connection with importation or exportation, with a view to reducing their number and diversity if practicable.

Section C. Institutional Arrangements

17. Sectoral Initiatives

1. The Parties shall make reasonable efforts to initiate a work programme on sector-specific issues, to be established and overseen by the Committee on Trade in Goods. The Parties shall endeavour to finalise such a work programme no later than

two years after the initiation of the work programme.

2. The Parties shall agree on the sectors to be included in such a work programme, taking into consideration the interests of all the Parties, including those sectors proposed during the course of the negotiation of the Second Protocol or other sectors as may be identified by a Party.

3. Any work programme initiated under this Article should be conducted to:

(a) enhance the Parties' understanding of the issues;

(b) facilitate input from businesses and other relevant stakeholders; and

(c) explore possible actions by the Parties that would facilitate trade.

4. Based on the outcome of any work programme initiated under this Article, the Committee on Trade in Goods may make recommendations to the FTA Joint Committee.

18. Contact Points and Consultations

1. Each Party shall designate a contact point to facilitate communication among the Parties on any matter relating to this Chapter.

2. Where a Party considers that any proposed or actual measure of another Party or Parties may materially affect trade in goods between the Parties, that Party may, through the contact point, request detailed information relating to that measure and, if necessary, request consultations with a view to resolving any concerns about the measure. The other Party or Parties shall respond promptly to such requests for information and consultations.

19. Committee on Trade In Goods

1. The Parties hereby establish a Committee on Trade in Goods consisting of representatives of the Parties.

2. The Committee on Trade in Goods may meet at the request of any Party or the FTA Joint Committee to consider any matter arising under this Chapter, or under:

(a) Chapter 3 (Rules of Origin);

(b) Chapter 4 (Customs Procedures and Trade Facilitation),

(c) Chapter 5 (Sanitary and Phytosanitary Measures);

(d) Chapter 6 (Standards, Technical Regulations and Conformity Assessment Procedures); and

(e) Chapter 7 (Safeguard Measures).

3. The functions of the Committee on Trade in Goods shall include:

(a) monitoring and reviewing the implementation and operation of Chapter 2 (Trade in Goods);

(b) identifying and recommending measures to promote and facilitate improved market access, including through consultations on_ the acceleration or improvement of tariff commitments under this Agreement;

(c) addressing and minimising unnecessary barriers to trade in goods between the Parties, including those relevant issues on tariff and non-tariff measures, other than technical issues solely within the competence of another subsidiary body;

(d) considering matters related to the classification of goods under the HS Code for the application of Annex 1 (Schedules of Tariff Commitments) and the transposition of each Partyâs Schedule in Annex 1 (Schedules of Tariff Commitments) following periodic amendments to the HS Code, in accordance with Article 8 (Transposition of Schedules of Tariff Commitments);

(e) reviewing non-tariff measures covered by this Chapter with a view to considering the scope for additional means to enhance the facilitation of trade in goods between the Parties. The Committee on Trade in Goods shall submit to the FTA Joint Committee an initial report on progress in this work, including any recommendations, within two years of entry into force of the Second Protocol. Any Party may nominate non-tariff measures for consideration by the Committee on Trade in Goods;

(f) discussing any other matter related to Chapter 2 (Trade in Goods), including the implementation and promotion of good

regulatory practice on measures affecting trade in goods and exploring avenues for enhancing co-operation on the use of good regulatory practice and supply chain connectivity, as appropriate;

(g) inviting, as agreed by all Parties, input to the Committee on Trade in Goods from businesses, including MSMEs and other stakeholders, on matters affecting trade in goods;

(h) making publicly available information on its work programmes (including work on_ non-tariff measures), as agreed by all Parties;

(i) receiving reports from, and reviewing the work of:

(i) the ROO Sub-Committee established pursuant to Article 18 (Sub-Committee on Rules of Origin) of Chapter 3 (Rules of Origin),

(ii) the SPS Sub-Committee established pursuant to Article 10 (Meetings Among the Parties on Sanitary and Phytosanitary Matters) of Chapter 5 (Sanitary and Phytosanitary Measures); and

(iii) the STRACAP Sub-Committee established pursuant to Article 13 (Sub-Committee on Standards, Technical Regulations and Conformity Assessment Procedures) of Chapter 6 (Standards, Technical Regulations and Conformity Assessment Procedures); and

(j) reporting, as required, to the FTA Joint Committee.

4. The Committee on Trade in Goods may agree to establish subsidiary working groups or refer issues for consideration to the ROO Sub-Committee established pursuant to Article 18 (Sub-Committee on Rules of Origin) of Chapter 3 (Rules of Origin).

5. The Committee on Trade in Goods may hold its meetings in person, or by any other means as mutually determined by the Parties, and whenever necessary, invite relevant officials to its meetings.

20. Application

Each Party shall take such reasonable measures as may be available to it to ensure observance of the provisions of this Chapter by the regional and local governments and authorities within its territories.

Chapter 3. RULES OF ORIGIN

1. Definitions

For the purposes of this Chapter:

(a) aquaculture means the farming of aquatic organisms including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants, from seedstock such as eggs, fry, fingerlings and larvae, by intervention in the rearing or growth processes to enhance production such as regular stocking, feeding, or protection from predators;

(b) back-to-back Proof of Origin means a Proof of Origin issued by an intermediate Party's Issuing Authority/Body, approved exporter, or exporter based on one or more Proof(s) of Origin issued by the first exporting Party;

(c) CIF means the value of the good imported and includes the cost of freight and insurance up to the port or place of entry into the country of importation. The valuation shall be made in accordance with Article VII of GATT 1994 and the Agreement on Customs Valuation;

(d) FOB means the free-on-board value of the good, inclusive of the cost of transport to the port or site of final shipment abroad. The valuation shall be made in accordance with Article Vil of GATT 1994 and the Agreement on Customs Valuation;

(e) Generally Accepted Accounting Principles means those principles recognised by consensus or with substantial authoritative support in a Party, with respect to the recording of revenues, expenses, costs, assets and liabilities; the disclosure of information; and the preparation of financial statements. These principles may encompass broad guidelines of general application as well as detailed standards, practices and procedures;

(f) good means any merchandise, product, article or material;

(g) identical and interchangeable materials means materials that are fungible as a result of being of the same kind and commercial quality, possessing the same technical and physical characteristics, and which once they are incorporated into

the finished product cannot be distinguished from one another for origin purposes by virtue of any markings or mere visual examination;

(h) indirect material means a good used in the production, testing, or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good, including:

(i) fuel and energy;

(ii) tools, dies and moulds;

(iii) spare parts and materials used in the maintenance of equipment and buildings;

(iv) lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings;

(v) gloves, glasses, footwear, clothing, safety equipment and supplies;

(vi) equipment, devices and supplies used for testing or inspecting goods;

(vii) catalysts and solvents; and

(viii) any other goods that are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production;

(i) intermediate Party means a Party, other than the exporting Party and the importing Party, through which goods are transported;

(j) material means any matter or substance used or consumed in the production of goods or physically incorporated into a good or subjected to a process in the production of another good;

(k) non-originating good or non-originating material means a good or material that does not qualify as originating under this Chapter;

(l) originating good or originating material means a good or material that qualifies as originating under this Chapter;

(m) packing materials and containers for transportation means goods used to protect a good during its transportation, different from those containers or materials used for its retail sale;

(n) producer means a person who grows, mines, harvests, farms, raises, breeds, extracts, gathers, collects, captures, fishes, traps, hunts, manufactures, produces, processes or assembles a good;

(o) production means methods of obtaining goods including growing, mining, harvesting, farming, raising, breeding, extracting, gathering, collecting, capturing, fishing, trapping, hunting, manufacturing, producing, processing or assembling;

(p) Product-Specific Rules are the rules in Annex 3B (Product-Specific Rules) that specify that the materials used to produce a good have undergone a change in tariff classification or a specific manufacturing or processing operation, or satisfy a regional value content criterion or a combination of any of these criteria; and

(q) Proof of Origin means a proof of origin as set out in Rule 1 of Annex 3A (Operational Certification Procedures).

2. Originating Goods

1. For the purposes of this Chapter, a good shall be treated as an originating good if it is either:

(a) wholly produced or obtained in a Party as provided in Article 3 (Goods Wholly Produced or Obtained);

(b) not wholly produced or obtained in a Party provided that the good has satisfied the requirements of Article 4 (Goods Not Wholly Produced or Obtained); or

(c) produced in a Party exclusively from originating materials from one or more of the Parties,

and it meets all other applicable requirements of this Chapter.

2. A good which complies with the origin requirements of Paragraph 1 will retain its eligibility for preferential tariff treatment if exported to a Party and subsequently re-exported to another Party.

3. Goods Wholly Produced or Obtained

For the purposes of Article 2.1(a) (Originating Goods), the following goods shall be considered as wholly produced or obtained in a Party:

(a) plants and plant goods, including fruit, flowers, vegetables, trees, seaweed, fungi and live plants, grown, harvested, picked, or gathered in a Party; (1)

(b) live animals born and raised in a Party;

(c) goods obtained from live animals in a Party;

(d) goods obtained from hunting, trapping, fishing, farming, aquaculture, gathering, or capturing in a Party;

(e) minerals and other naturally occurring substances extracted or taken from the soil, waters, seabed or beneath the seabed in a Party;

(f) goods of sea-fishing and other marine goods taken from the high seas, in accordance with international law (2), by any vessel registered or recorded with a Party and entitled to fly the flag of that Party;

(g) goods produced on board any factory ship registered or recorded with a Party and entitled to fly the flag of that Party from the goods referred to in Subparagraph (f);

(h) goods taken by a Party, or a person of a Party, from the seabed or beneath the seabed beyond the Exclusive Economic Zone and adjacent Continental Shelf of that Party and beyond areas over which third parties exercise jurisdiction under exploitation rights granted in accordance with international law; (3)

(i) goods which are:

(i) waste and scrap derived from production and consumption in a Party provided that such goods are fit only for the recovery of raw materials; or

(ii) used goods collected in a Party provided that such goods are fit only for the recovery of raw materials; and

(j) goods produced or obtained in a Party solely from products referred to in Subparagraphs (a) to (i) or from their derivatives.

(1) For the purposes of this Article, "in a Party" means the land, territorial sea, Exclusive Economic Zone, Continental Shelf over which a Party exercises sovereignty, sovereign rights or jurisdiction, as the case may be, in accordance with international law. For the avoidance of doubt, nothing contained in the above definition shall be construed as conferring recognition or acceptance by one Party of the outstanding maritime and territorial claims made by any other Party, nor shall be taken as pre-judging the determination of such claims.

(2) International lawâ refers to generally accepted international law such as the United Nations Convention on the Law of the Sea.

(3) "International law" refers to generally accepted international law such as the United Nations Convention on the Law of the Sea.

4. Goods Not Wholly Produced or Obtained

1. For the purposes of Article 2.1(b) (Originating Goods), a good shall qualify as an originating good of a Party if it satisfies all applicable requirements of Annex 3B (Product-Specific Rules).

2. Where Annex 3B (Product-Specific Rules) provides a choice of rule between a regional value content based rule of origin, a change in tariff classification based rule of origin, a specific process of production, or a combination of any of these, a Party shall permit the producer or exporter of the good to decide which rule to use in determining if the good is an originating good.

5. Calculation of Regional Value Content

1. For the purposes of Article 4 (Goods Not Wholly Produced or Obtained), the formula for calculating the regional value

content will be either:

(a) Direct Formula

AANZFTA Material Cost + Labour Cost + Overhead Cost + Profit + Other Costs / FOB x 100% or

(b) Indirect/Build-Down Formula

FOB - Value of Non-Originating Materials / FOB x 100%

where:

(i) AANZFTA Material Cost is the value of originating materials, parts or produce that are acquired or self-produced by the producer in the production of the good;

(ii) Labour Cost includes wages, remuneration and other employee benefits;

(iii) Overhead Cost is the total overhead expense;

(iv) Other Costs are the costs incurred in placing the good in the ship or other means of transport for export including, but not limited to, domestic transport costs, storage and warehousing, port handling, brokerage fees and service charges;

(v) FOB is the free-on-board value of the goods as defined in Article 1 (Definitions); and

(vi) Value of Non-Originating Materials is the CIF value at the time of importation or the earliest ascertained price paid for all non-originating materials, parts or produce that are acquired by the producer in the production of the good. Non-originating materials include materials of undetermined origin but do not include a material that is self-produced.

2. The value of goods under this Chapter shall be determined in accordance with Article VII of GATT 1994 and the Agreement on Customs Valuation.

6. Cumulative Rules of Origin

1. Unless otherwise provided in this Agreement, goods and materials which comply with the origin requirements provided in Article 2 (Originating Goods), and which are used in another Party as materials in the production of another good or material, shall be considered as originating in the Party where working or processing of the finished good or material has taken place.

2. In addition to Paragraph 1, the Participating Parties shall extend the application of cumulation referred to in Paragraph 1 to all production undertaken on, and value-added to, non- originating materials in any Participating Party, which are used in another Participating Party as materials in the production of another good or material. Such production undertaken on, or value added to, a non-originating material in the territory of one or more of the Participating Parties shall contribute towards the originating content of a good or material for the purpose of determining the origin of a good or material finished in the territory of a Participating Party, regardless of whether that production or value added was sufficient to confer originating status to the material itself.

3. The Participating Parties shall implement Paragraph 2 180 days after the date of entry into force of the Second Protocol.

4. For the purposes of this Article, "Participating Party" means:

(a) a Party that does not make a notification under Paragraph 5; or

(b) a Party that has withdrawn its notification in accordance with Paragraph 6.

5. Paragraph 2 shall not apply to a Party (4) if that Party notifies the other Parties in writing through the FTA Joint Committee of its intention to not implement Paragraph 2 (and is therefore a "non-Participating Party" for the purposes of this Article) within 120 days after the date of entry into force of the Second Protocol.

6. A Party that has made a notification under Paragraph 5 may at any time notify the other Parties in writing through the FTA Joint Committee of its withdrawal of the notification. 180 days after the date of a Party's notification of withdrawal, Paragraph 2 shall apply with respect to that Party

7. For greater certainty, for the purposes of Paragraph 2:

(a) production undertaken or value added that does not confer originating status to a non-originating material in the territory of a non-Participating Party shall not contribute towards the originating content of a good or material for the

purpose of determining the origin of a good or material finished in the territory of a Participating Party;

(b) production undertaken or value added that does not confer originating status to a non-originating material in the territory of a Participating Party shall not contribute towards the originating content of a good or material for the purpose of determining the origin of a good or material finished in the territory of a non-Participating Party; and

(c) production undertaken or value added that does not confer originating status to a non-originating material in the territory of a non-Participating Party shall not contribute towards the originating content of a good or material for the purpose of determining the origin of a good or material finished in the territory of another non- Participating Party.

(4) For greater certainty, a Party for whom the Second Protocol has not entered into force may also make a notification under this Paragraph.

7. Minimal Operations and Processes

Where a claim for origin is based solely on regional value content, the operations or processes listed below, undertaken by themselves or in combination with each other, are considered to be minimal and shall not be taken into account in determining whether or not a good is originating:

(a) ensuring preservation of goods in good condition for the purposes of transport or storage;

(b) facilitating shipment or transportation;

(c) packaging (5) or presenting goods for transportation or sale;

(d) simple processes, consisting of sifting, classifying, washing, cutting, slitting, bending, coiling and uncoiling and other similar operations;

(e) affixing of marks, labels or other like distinguishing signs on products or their packaging; and

(f) mere dilution with water or another substance that does not materially alter the characteristics of the goods.

(5) This excludes encapsulation which is termed "packaging" by the electronics industry.

8. De Minimis

1. A good that does not satisfy a change in tariff classification requirement pursuant to Annex 3B (ProductSpecific Rules) will nonetheless be an originating good if:

(a) (i) for a good, other than that provided for in Chapters 50 to 63 of the HS Code, the value of all non-originating materials used in the production of the good that did not undergo the required change in tariff classification does not exceed 10 per cent of the FOB value of the good;

(ii) for a good provided for in Chapters 50 to 63 of the HS Code, the weight of all non-originating materials used in its production that did not undergo the required change in tariff classification does not exceed 10 per cent of the total weight of the good, or the value of all non-originating materials used in the production of the good that did not undergo the required change in_ tariff classification does not exceed 10 per cent of the FOB value of the good; and

(b) the good meets all other applicable criteria of this Chapter.

2. The value of such materials shall, however, be included in the value of non-originating materials for any applicable regional value content requirement.

9. Accessories, Spare Parts, Tools and Instructional or other Information Materials

1. For the purposes of determining the origin of a good, accessories, spare parts, tools and instructional or other information materials presented with the good shall be considered part of that good and shall be disregarded in determining whether all the non-originating materials used in the production of the originating good have undergone the applicable change in tariff classification, provided that:

(a) the accessories, spare parts, tools and instructional or other information materials presented with the good are not invoiced separately from the originating good; and

(b) the quantities and value of the accessories, spare parts, tools and instructional or other information materials presented with the good are customary for that good.

2. Notwithstanding Paragraph 1, if the good is subject to a regional value content requirement, the value of the accessories, spare parts, tools and instructional or other information materials presented with the good shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

3. Paragraphs 1 and 2 do not apply where accessories, spare parts, tools and instructional or other information materials presented with the good have been added solely for the purpose of artificially raising the regional value content of that good, provided it is proven subsequently by the importing Party that they are not sold therewith.

10. Identical and Interchangeable Materials

The determination of whether identical and interchangeable materials are originating materials shall be made either by physical segregation of each of the materials or by the use of Generally Accepted Accounting Principles of stock control applicable, or inventory management practice, in the exporting Party.

11. Treatment of Packing Materials and Containers

1. Packing materials and containers for transportation and shipment of a good shall not be taken into account in determining the origin of any good.

2. Packing materials and containers in which a good is packaged for retail sale, when classified together with that good, shall not be taken into account in determining whether all of the non-originating materials used in the production of the good have met the applicable change in tariff classification requirements for the good.

3. If a good is subject to a regional value content requirement, the value of the packing materials and containers in which the good is packaged for retail sale shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

12. Indirect Materials

An indirect material shall be treated as an originating material without regard to where it is produced and its value shall be the cost registered in the accounting records of the producer of the good.

13. Recording of Costs

For the purposes of this Chapter, all costs shall be recorded and maintained in accordance with the Generally Accepted Accounting Principles applicable in the Party in which the goods are produced.

14. Direct Consignment, Transit and Transshipment

An originating good shall retain its originating status as determined under Article 2 (Originating Goods) if the following conditions have been met:

(a) the good has been transported to the importing Party without passing through any non-Party; or

(b) the good has transited through one or more non- Parties, provided that:

(i) the good has not undergone subsequent production or any other operation outside the territories of the Parties other than unloading, reloading, storing, or any other operations necessary to preserve them in good condition or to transport them to the importing Party; and

(ii) the good has not entered into commerce or free circulation in the non-Party.

15. Proof of Origin

A claim that goods are eligible for preferential tariff treatment shall be supported by a Proof of Origin in accordance with Annex 3A (Annex on Operational Certification Procedures).

16. Denial of Preferential Tariff Treatment

The Customs Authority of the importing Party may deny a claim for preferential tariff treatment when:

(a) the good does not qualify as an originating good; or

(b) the importer, exporter or producer fails to comply with any of the relevant requirements of this Chapter.

17. Review and Appeal

The importing Party shall grant the right of appeal in matters relating to the eligibility for preferential tariff treatment to producers, exporters or importers of goods traded or to be traded between the Parties, in accordance with its laws, regulations and administrative practices.

18. Sub-Committee on Rules of Origin

1. For the purpose of the effective and uniform implementation of this Chapter, the Parties hereby establish a Sub-Committee on Rules of Origin (the "ROO Sub- Committee"). The functions of the ROO Sub-Committee shall include:

(a) monitoring of the implementation and administration of this Chapter;

(b) discussion of any issue that may arise in the course of implementation, including any matters that may have been referred to the ROO Sub- Committee by the Committee on Trade in Goods established pursuant to Article 19 (Committee on Trade in Goods) of Chapter 2 (Trade in Goods) or the FTA Joint Committee;

(c) discussion of any proposed modifications of the rules of origin under this Chapter; and

(d) consultations on issues relating to rules of origin and administrative co-operation.

2. The ROO Sub-Committee shall consist of representatives of the Parties. It shall meet from time to time as mutually determined by the Parties.

19. Consultations, Review and Modification

1. The Parties shall consult regularly to ensure that this Chapter is administered effectively, uniformly and consistently in order to achieve the spirit and objectives of this Agreement.

2. The FTA Joint Committee, upon recommendation of the Committee on Trade in Goods and the ROO Sub-Committee, may adopt revisions to the:

(a) List of Data Requirements for inclusion in the Application for a Certificate of Origin and the Certificate of Origin, as set out in Appendix 3A.1 (List of Data Requirements); and

(b) Minimum Data Requirements for Declaration of Origin, as set out in Appendix 3A.2 (Minimum Data Requirements - Declaration of Origin).

3. The List of Data Requirements and the Minimum Data Requirements for Declaration of Origin, and any subsequent revisions, adopted in accordance with Paragraph 2 shall be promptly published and shall come into effect on the date determined by the Parties through the FTA Joint Committee and on the basis of a report from the ROO Sub-Committee, through the Committee on Trade in Goods.

4. The FTA Joint Committee, upon recommendation of the Committee on Trade in Goods and the ROO Sub-Committee, shall adopt the transposition of Annex 3B (Product-Specific Rules) that is in the nomenclature of the revised HS Code following periodic amendments to the HS Code. Such transposition shall be carried out without impairing the existing commitments and shall be completed in a timely manner. The Parties shall promptly publish the transposition of Annex 3B (Product-Specific Rules) in the nomenclature of the revised HS Code.

5. This Chapter may be reviewed and modified in accordance with Article 6 (Amendments) of Chapter 21 (Final Provisions) as and when necessary, upon request of a Party, and subject to the agreement of the Parties, and may be open to such reviews and modifications as may be agreed upon by the FTA Joint Committee.

20. Electronic System for Origin Information Exchange

The Parties may develop an electronic system for origin information exchange to ensure the effective and efficient

implementation of this Chapter in a manner jointly determined by the relevant Parties.

Chapter 4. CUSTOMS PROCEDURES AND TRADE FACILITATION

1. Objectives

The objectives of this Chapter are to:

(a) ensure predictability, consistency and transparency in the application of customs laws and regulations of the Parties;

(b) promote efficient administration of customs procedures, and the expeditious clearance of goods;

(c) simplify customs procedures of the Parties and harmonise them to the extent possible with relevant international standards;

(d) promote co-operation between the customs authorities of the Parties; and

(e) facilitate trade between the Parties, including through a strengthened environment for global and regional supply chains.

2. Scope

This Chapter shall apply to customs procedures applied to:

(a) goods traded among the Parties; and

(b) means of transport which enter or leave the customs territories of the Parties

3. Definitions

For the purposes of this Chapter:

(a) customs authority means any authority that is responsible under the law of each Party for the administration and enforcement of its customs laws and regulations;

(b) customs procedures means the measures applied by the customs authority of a Party to goods and to the means of transport that are subject to customs laws and regulations;

(c) customs laws and regulations means the statutory and regulatory provisions relating to the importation, exportation, movement, or storage of goods, the administration and enforcement of which are specifically charged to a customs authority, and any regulations made by a customs authority, under its statutory powers;

(d) Customs Valuation Agreement means the Agreement on Implementation of Article VI! of the General Agreement on Tariffs and Trade 1994, contained in Annex 1A to the WTO Agreement;

(e) express consignment means all goods imported by or through an enterprise that operates a consignment service for the expeditious cross- border movement of goods and assumes liability to the customs authority for those goods; and

(f) means of transport means various types of vessels, vehicles, and aircrafts which enter or leave the customs territory of a Party carrying natural persons, goods or articles.

4. Customs Procedures

1. Each Party shall ensure that its customs procedures and practices are predictable, consistent, transparent, and facilitate trade, including through the expeditious clearance of goods.

2. The customs procedures of each Party shall, where possible and to the extent permitted by its customs laws and regulations, conform with the standards and recommended practices of the World Customs Organization and the World Trade Organization.

3. The customs authority of each Party shall review its customs procedures with a view to simplifying such procedures to facilitate trade.

5. Customs Co-operation

1. To the extent permitted by its customs laws and regulations, the customs authority of each Party may, as deemed appropriate, assist the customs authority of another Party, in relation to:

(a) the implementation and operation of this Chapter;

(b) developing and implementing customs best practice and risk management techniques;

(c) simplifying and harmonising customs procedures;

(d) advancing technical skills and the use of technology;

(e) application of the Customs Valuation Agreement; and

(f} such other customs issues as the Parties may mutually determine.

2. Subject to available resources, the customs authority of the Parties may, as deemed appropriate, explore and undertake co-operation projects, including:

(a) capacity building programmes to enhance the capability of customs personnel of the Parties; and

(b) technical assistance programmes to facilitate the Partiesâ development in customs reform and modernisation, including implementation of the single windows outlined in Article 13 (Single Window).

6. Consistency

1. Each Party shall ensure consistent implementation and application of its customs laws and regulations throughout its customs territory. For greater certainty, this does not prevent the exercise of discretion granted to the customs authority of a Party where such discretion is granted by that Party's customs laws and regulations, provided that the discretion is exercised consistently throughout that Party's customs territory and in accordance with its customs laws and regulations.

2. In fulfilling the obligation in Paragraph 1, each Party shall endeavour to adopt or maintain administrative measures to ensure consistent implementation and application of its customs laws and regulations throughout its customs territory, preferably by establishing an administrative mechanism which ensures consistent application of the customs laws and regulations of that Party among its regional customs offices.

3. If a Party fails to comply with Paragraphs 1 and 2, another Party may consult with that Party on the matter relating thereto in accordance with Article 24 (Consultation).

4. Each Party is encouraged to share with the other Parties its practices and experiences relating to the administrative mechanism referred to in Paragraph 2 with a view to improving the operations thereof.

7. Transparency

1. Each Party shall promptly publish, on the internet to the extent possible, the following information in a _non-discriminatory and easily accessible manner in order to enable governments, traders and other interested persons to become acquainted with them:

(a) procedures for importation, exportation and transit (including port, airport and other entry-point procedures), and required forms and documents;

(b) applied rates of duties and taxes of any kind imposed on or in connection with importation or exportation;

(c) fees and charges imposed by or for governmental agencies on or in connection with importation, exportation or transit;

(d) rules for the classification or valuation of products for customs purposes;

(e) laws, regulations and administrative rulings of general application relating to rules of origin;

(f) import, export or transit restrictions or prohibitions;

(g) penalty provisions for breaches of import, export or transit formalities;

(h) procedures for appeal or review;

(i) agreements or parts thereof with any country or countries relating to importation, exportation or transit; and

(j) contact information for the enquiry points, as well as information on how to make enquiries on customs matters, as provided for in Article 8 (Enquiry Points).

2. The publication or provision of the information referred to in Paragraph 1 shall, to the extent possible, be in English.

3. To the extent possible, when developing new, or amending existing, customs laws and regulations, each Party shall publish, or otherwise make readily available, such proposed new or amended customs laws and regulations and provide a reasonable opportunity for interested persons to comment on the proposed new or amended customs laws and regulations, unless such advance notice is precluded.

4. Each Party shall, to the extent practicable and in a manner consistent with its laws and regulations, ensure that new or amended laws and regulations of general application related to the movement, release and clearance of goods, including goods in transit, are published or information on them made otherwise publicly available, as early as possible before their entry into force, in order to enable traders and other interested persons to become acquainted with them.

8. Enquiry Points

Each Party shall designate one or more enquiry points to answer reasonable enquiries of interested persons concerning customs matters and to facilitate access to forms and documents required for importation, exportation and transit.

9. Confidentiality

1. Nothing in this Chapter shall be construed to require any Party to furnish or allow access to confidential information, the disclosure of which it considers would:

(a) be contrary to the public interest as determined by its laws and regulations;

(b) be contrary to any of its laws and regulations including laws and_ regulations protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions;

(c) impede law enforcement; or

(d) prejudice legitimate commercial interests, which may include the competitive position of particular enterprises, whether public or private.

2. Where a Party provides information to another Party in accordance with this Chapter and designates the information as confidential, the Party receiving the information shall maintain the confidentiality of the information, use it only for the purposes specified by the Party providing the information, and not disclose it without the specific written permission of the Party providing the information.

10. Advance Rulings

1. Each Party shall issue an advance ruling to any person with justifiable cause, in accordance with its laws, regulations and administrative rules, with respect to the:

(a) tariff classification of a product;

(b) origin of goods; and

(c) appropriate method or criteria, and the application thereof, to be used for determining the customs value of a good under a particular set of facts in accordance with the Customs Valuation Agreement.

2. On receipt of all necessary information, each Party shall issue an advance ruling on tariff classification, origin and valuation in a reasonable, specified and time-bound manner, and to the extent possible within 90 days or in such shorter time as specified by its laws, regulations and administrative rules. A Party:

(a) may at any time during the course of an evaluation of an application for advance ruling, request that the applicant provide additional information, which may include a sample of the good, necessary to evaluate the application;

(b) may reject a request for an advance ruling where the additional information requested in accordance with Paragraph 2(a) is not provided in a reasonable, specified period, which is determined at the time of the request for additional information, and the Party requests the additional information from the applicant in writing;

(c) may decline to issue an advance ruling if the facts and circumstances forming the basis of the advance ruling are the

subject of administrative or judicial review. A Party that declines to issue an advance ruling shall promptly notify the applicant in writing, setting forth the relevant facts, circumstances and the basis for its decision to decline to issue the advance ruling; and

(d) shall provide that when issuing an advance ruling, it shall be valid from the date it is issued, or another date specified in the advance ruling, provided that the laws, regulations and administrative rules, and facts and circumstances, on which the advance ruling is based remain unchanged.

3. The customs authority of each Party shall establish a validity period for an advance ruling of at least three years from the date of its issuance.

4. An issuing Party may modify or revoke an advance ruling if:

(a) the ruling was based on an error of fact;

(b) the information provided is false or inaccurate;

(c) there is a change in the material facts or circumstances on which the ruling was based;

(d) any of the conditions, to which the ruling was made subject, cease to be met or complied with; or

(e) a change is required to conform with a judicial decision or a change in its laws, regulations or administrative rules.

5. Each Party shall provide that a modification or revocation of an advance ruling shall take effect on the date on which the modification or revocation is issued, or on such later date as may be specified therein.

6. Where a Party revokes, modifies or invalidates an advance ruling with retroactive effect, it may only do so where the advance ruling was based on incomplete, incorrect, false or misleading information.

7. Where a Party revokes, modifies or invalidates the advance ruling, it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision.

8. An advance ruling issued by a Party shall be binding on that Party in respect of the applicant that sought it.

9. Each Party shall publish, at a minimum:

(a) the requirements for an application for an advance ruling, including the information to be provided and the format;

(b) the time period by which it will issue an advance ruling; and

(c) the length of time for which an advance ruling is valid.

10. Each Party may make publicly available any information on advance rulings which it considers to be of significant interest to other interested parties, taking into account the need to protect commercially confidential information.

11. Preshipment Inspection

1. No Party shall require the use of preshipment inspections in relation to tariff classification and customs valuation.

2. Without prejudice to the rights of any Party to use other types of preshipment inspection not referred to in Paragraph 1, each Party is encouraged not to introduce or apply new requirements regarding their use.

3. Paragraph 2 refers to preshipment inspections covered by the Agreement on Preshipment Inspection, and does not preclude preshipment inspections for sanitary and phytosanitary purposes.

12. Pre-arrival Processing

1. Each Party shall adopt or maintain procedures allowing for the submission of documents and other information required for the importation of goods, in order to begin processing prior to the arrival of the goods with a view to expediting the release of the goods upon arrival.

2. Each Party shall provide, as appropriate, for advance lodging of documents and other information referred to in Paragraph 1 in electronic format for pre-arrival processing of such documents.

13. Single Window

1. Each Party shall, to the extent possible, establish or maintain a single window, enabling traders to submit clear and readable electronic copies of documentation and/or data requirements for importation, exportation or transit of goods through a single-entry point to the participating authorities or agencies. After the examination by participating authorities or agencies of the documentation or data, the results shall be notified to the applicants through the single window in a timely manner.

2. In cases where documentation or data requirements have already been received through the single window, the same documentation or data requirements shall not be requested by participating authorities or agencies except in urgent circumstances or in accordance with other limited exceptions which are made public.

3. Each Party shall adopt or maintain procedures to determine duties and taxes upon the submission of a customs declaration and to allow collection of payment electronically upon approval of a customs declaration.

4. In implementing initiatives related to this Article, each Party shall take into account the relevant standards and best practices recommended by the World Customs Organization and other international organisations, taking into consideration the available infrastructure and capabilities of each Party.

5. The Parties are encouraged to co-operate in relation to exchanging trade-related electronic documents according to their respective laws and regulations through the single window.

14. Valuation

The Parties shall determine the customs value of goods traded among them in accordance with the provisions of the Customs Valuation Agreement.

15. Trade Facilitation Measures for Authorised Operators

1. Each Party shall provide additional trade facilitation measures related to import, export or transit formalities and procedures, pursuant to Paragraph 3, to operators who meet specified criteria (the "authorised operators"). Alternatively, a Party may offer such trade facilitation measures through customs procedures generally available to all operators and is not required to establish a separate scheme.

2. The specified criteria to qualify as an authorised operator shall be related to compliance, or the risk of non-compliance, with requirements specified in a Party's laws, regulations or procedures.

(a) Such criteria, which shall be published, may include:

(i) an appropriate record of compliance with customs and other related laws and regulations;

(ii) a system of managing records to allow for necessary internal controls;

(iii) financial solvency, including, where appropriate, provision of a sufficient security or guarantee; and

(iv) supply chain security.

(b) Such criteria shall not:

(i) be designed or applied so as to afford or create arbitrary or unjustifiable discrimination between operators where the same conditions prevail; and

(ii) to the extent possible, restrict the participation of MSMEs.

3. The trade facilitation measures provided pursuant to Paragraph 1 shall include at least three of the following measures: (1)

(a) low documentary and data requirements, as appropriate;

(b) low rate of physical inspections and examinations, as appropriate;

(c) rapid release time, as appropriate;

(d) deferred payment of duties, taxes, fees and charges;

(e) use of comprehensive guarantees or reduced guarantees;

(f) a single customs declaration for all imports or exports in a given period; and

(g) clearance of goods at the premises of the authorised operator or another place authorised by a customs authority.

4. Each Party is encouraged to develop an authorised operator scheme on the basis of international standards, where such standards exist, except when such standards would be an inappropriate or ineffective means for the fulfilment of the legitimate objectives pursued.

5. In order to enhance the trade facilitation measures provided to authorised operators, each Party shall afford to the other Parties the possibility of negotiating mutual recognition of authorised operator schemes.

6. The Parties are encouraged to co-operate, where appropriate, in developing their respective authorised operator schemes using the contact points in Article 24 (Consultation) and the relevant AANZFTA body through the following:

(a) exchanging information on such schemes and on initiatives to introduce new schemes;

(b) sharing perspectives on business views and experiences, and best practices in business outreach;

(c) sharing information on approaches to mutual recognition of such schemes; and

(d) considering ways to enhance the benefits of such schemes to promote trade, and, in the first instance, to designate customs officers as coordinators for authorised operators to resolve customs issues.

(1) A measure listed in Paragraph 3(a) to (g) that is generally available to all operators will be deemed to be provided to authorised operators.

16. Release of Goods

1. Each Party shall adopt or maintain procedures that:

(a) provide for the release of goods within a period of time no greater than that required to ensure compliance with its laws and regulations;

(b) provide, to the extent possible, for goods to be released within 48 hours of arrival and lodgment of all necessary information for customs clearance; and

(c) allow the release of imported goods prior to the final determination by its customs authority of the applicable customs duties, other duties and taxes, provided that the good is otherwise eligible for release from customs and that all other regulatory requirements have been met.

2. Notwithstanding Paragraph 1(c), each Party may, in accordance with its laws and regulations, require the importer to provide:

(a) a guarantee; or

(b) payment of customs duties, taxes, fees and charges determined prior to or upon arrival of goods and a guarantee for any amount not yet determined in the form of a surety, a deposit or another appropriate instrument.

3. If a Party allows for the release of goods conditioned on a guarantee, according to its laws and regulations, it shall adopt or maintain procedures that:

(a) ensure that the amount of any guarantee is no greater than that required to ensure that obligations arising from the importation of the goods will be fulfilled; and

(b) ensure that any guarantee shall be discharged as soon as possible after its customs authority is satisfied that the obligations arising from the importation of the goods have been fulfilled.

4. Nothing in this Article shall affect the right of a Party to examine, detain, seize, confiscate or deal with goods in any manner consistent with its laws and regulations.

17. Express Consignments

1. Each Party shall adopt or maintain customs procedures to expedite the clearance of express consignments for at least those goods entered through air cargo facilities while maintaining appropriate customs control and selection, (2) by:

(a) providing for pre-arrival processing of information related to express consignments;

(b) permitting, to the extent possible, the single submission of information covering all goods contained in an express consignment, through electronic means;

(c) minimising the documentation required for the release of express consignments;

(d) providing for express consignment to be released under normal circumstances as rapidly as possible, and within six hours when possible, after the arrival of the goods and submission of the information required for release;

(e) endeavouring to apply the treatment in Subparagraphs (a) to (d) to shipments of any weight or value recognising that a Party is permitted to require additional entry procedures, including declarations and supporting documentation and payment of duties and taxes, and to limit such treatment based on the type of good, provided that the treatment is not limited to low value goods such as documents; and

(f) providing, to the extent possible, for a de minimis shipment value or dutiable amount for which customs duties and taxes will not be collected, aside from certain prescribed goods. Internal taxes, such as value added taxes and excise taxes, applied to imports consistently with Article Ill of GATT 1994, shall not be subject to this provision.

2. Nothing in Paragraph 1 shall affect the right of a Party to examine, detain, seize, confiscate or refuse the entry of goods, or to carry out post-clearance audits, including in connection with the use of risk management systems. Further, nothing in Paragraph 1 shall prevent a Party from requiring, as a condition for release, the submission of additional information and the fulfilment of non-automatic licensing requirements.

(2) In cases where a Party has an existing procedure that provides the treatment in this Article, this provision would not require that Party to introduce separate expedited release procedures.

18. Perishable Goods

1. With a view to preventing avoidable loss or deterioration of perishable goods, and provided all regulatory requirements have been met, each Party shall:

(a) provide for the release of perishable goods, to the extent possible, within six hours of the arrival of the goods and the submission of the necessary customs information; and

(b) provide for the release of perishable goods, in exceptional circumstances where it would be appropriate to do so, outside the business hours of its customs authority.

2. Each Party shall give appropriate priority to perishable goods when scheduling any examinations that may be required.

3. Each Party shall either arrange or allow an importer to arrange for the proper storage of perishable goods pending their release. (3) Each Party may require that any storage facilities arranged by the importer have been approved or designated by its relevant authorities. The movement of the goods to those storage facilities, including authorisations for the operator moving the goods, may be subject to the approval, where required, of the relevant authorities.

4. Each Party shall, where practicable and consistent with its laws and regulations, on request of the importer, provide for the release to take place at those storage facilities.

(3) This requirement can be relaxed for a Party until it has met its obligations under the Agreement on Trade Facilitation.

19. Facilitation of Essential Goods During Humanitarian Crises, Epidemics or Pandemics

1. Each Party shall, to the extent permitted by its laws and regulations, expedite and facilitate the movement, release and clearance, including transit through its exit or entry points, of all essential goods.

2. Each Party shall, to the extent permitted by its laws and regulations, expedite the release of essential goods upon arrival, including by adopting or maintaining procedures allowing for the submission of import documentation and other required information, including manifests, prior to the arrival of the essential goods, in order to allow the processing of such documentation and information to begin prior to the arrival of the essential goods.

3. Each Party shall, to the extent permitted by its laws and regulations, clear essential goods using documents received through electronic means during a humanitarian crisis, epidemic or pandemic.

20. Risk Management

1. Each Party shall adopt or maintain a risk management system for assessment and targeting that enables its customs authority to focus its inspection activities on high-risk consignments and expedite the release of low-risk consignments. Each Party may also select, on a random basis, consignments for such inspection activities as part of its risk management.

2. Each Party shall design and apply risk management in a manner so as to avoid arbitrary or unjustifiable discrimination, or a disguised restriction on international trade.

3. Each Party shall base risk management on an assessment of risk through appropriate selectivity criteria. Such selectivity criteria may include the HS Code, nature and description of the goods, country of origin, country from which the goods were shipped, value of the goods, compliance record of traders and means of transport.

21. Post-Clearance Audit

1. With a view to expediting the release of goods, each Party shall adopt or maintain post-clearance audit to ensure compliance with its customs and other related laws and regulations.

2. Each Party shall select a person or a consignment for post-clearance audit in a risk-based manner, which may include appropriate selectivity criteria. Each Party shall conduct post-clearance audits in a transparent manner. Where the person is involved in the audit process and conclusive results have been achieved, the Party shall, without delay, notify the person whose record was audited of the results, the person's rights and obligations and the reasons for the results.

3. The Parties acknowledge that the information obtained in post-clearance audit may be used in further administrative or judicial proceedings.

4. Each Party shall, wherever practicable, use the result of post-clearance audit in applying risk management.

22. Time Release Studies

1. Each Party is encouraged to measure the time required for the release of goods by its customs authority periodically and in a consistent manner, and to publish the findings thereof, using tools such as the Guide to Measure the Time Required for the Release of Goods issued by World Customs Organization with a view to assessing its trade facilitation measures and considering opportunities for further improvement of the time required for the release of goods.

2. Each Party is encouraged to share with the other Parties its experiences in the time release studies referred to in Paragraph 1, including methodologies used and bottlenecks identified.

23. Review and Appeal

1. Each Party shall provide that any person to whom its customs authority issues an administrative decision (4) has the right, within its territory, to:

(a) an administrative appeal to or review by an administrative authority higher than or independent of the official or office that issued the decision; and

(b) a judicial appeal or review of the decision. (5)

2. The legislation of a Party may require that an administrative appeal or review be initiated prior to a judicial appeal or review.

3. Each Party shall ensure that its procedures for appeal or review are carried out in a non-discriminatory manner.

(4) For the purposes of this Article, "administrative decision" means a decision with a legal effect that affects the rights and obligations of a specific person in an individual case. It shall be understood that an administrative decision for the purposes of this Article covers an administrative action within the meaning of Article X of the GATT 1994 or failure to take an administrative action or decision as provided for in a Party's laws and regulations. For addressing such failure, each Party may maintain an alternative administrative mechanism or judicial recourse to direct the customs authority to promptly issue an administrative decision in place of the right to appeal or review under Subparagraph 1(a).

(5) Brunei Darussalam may comply with this paragraph by establishing or maintaining an independent body to provide impartial review of the determination.

4. Each Party shall ensure that, in a case where the decision on appeal or review under Subparagraph 1(a) is not given either:

(a) within set periods as specified in its laws or regulations; or

(b) without undue delay,

the petitioner has the right to either further appeal to, or further review by, the administrative authority or the judicial authority or any other recourse to the judicial authority. (6)

5. Each Party shall ensure that the person referred to in Paragraph 1 is provided with the reasons for the administrative decision to enable that person to have recourse to procedures for appeal or review, where necessary.

6. Each Party is encouraged to make the provisions of this Article applicable to an administrative decision issued by a relevant border agency other than its customs authority.

(6) Nothing in this Paragraph shall prevent a Party from recognising administrative silence on appeal or review as a decision in favour of the petitioner in accordance with its laws and regulations.

24. Consultation

1. A Party may, at any time, request consultations with any other Party regarding any significant customs matter arising from the operation or implementation of this Chapter, providing relevant details related to the matter. Such consultations shall be conducted through the Parties' designated contact points and shall commence within 30 days following the date of the receipt of the request, unless the Parties mutually determine otherwise.

2. In the event that such consultations fail to resolve the matter, the requesting Party may refer the matter to the Committee on Trade in Goods.

3. Each Party shall designate one or more contact points for the purposes of this Chapter. Information on the contact points shall be provided to the other Parties and any change to that information shall be notified promptly.

Chapter 5. SANITARY AND PHYTOSANITARY MEASURES

1. Objectives

The objectives of this Chapter are to:

(a) facilitate trade among the Parties while protecting human, animal or plant life or health in the territory of each Party;

(b) provide greater transparency in and understanding of the application of each Party's regulations and procedures relating to sanitary and phytosanitary measures;

(c) strengthen co-operation among the competent authorities of the Parties which are responsible for matters covered by this Chapter; and

(d) enhance practical implementation of the principles and disciplines contained within the SPS Agreement.

2. Scope

This Chapter Shall Apply to All Sanitary and Phytosanitary Measures of a Party That May, Directly or Indirectly, Affect Trade Among the Parties.

3. Definitions

For the Purposes of this Chapter:

(a) competent authorities means those authorities within each Party recognised by the national government as responsible for developing and administering the various sanitary and phytosanitary measures within that Party;

(b) international standards, guidelines and recommendations shall have the same meaning as set out in paragraph 3 of Annex A to the SPS Agreement;

(c) sanitary or phytosanitary measure shall have the same meaning as set out in paragraph 1 of Annex A to the SPS Agreement; and

(d) SPS Agreement means the Agreement on the Application of Sanitary and Phytosanitary Measures in Annex 1A to the WTO Agreement.

4. General Provisions

1. Each Party affirms its rights and obligations with respect to each other Party under the SPS Agreement.

2. Each Party commits to apply the principles of the SPS Agreement in the development, application or recognition of any sanitary or phytosanitary measure with the intent to facilitate trade among the Parties while protecting human, animal or plant life or health in the territory of each Party.

5. Equivalence

1. The Parties' shall strengthen co-operation on equivalence in accordance with the SPS Agreement and relevant international standards, guidelines and recommendations, in order to facilitate trade among the Parties.

2. To facilitate trade, the competent authorities of the relevant Parties may develop equivalence arrangements and make equivalence decisions, in particular in accordance with Article 4 of the SPS Agreement and with the guidance provided by the relevant international standard setting bodies and by the WTO Committee on Sanitary and Phytosanitary Measures established pursuant to Article 12 of the SPS Agreement.

3. A Party shall, upon request, enter into negotiations with the aim of achieving bilateral recognition arrangements of the equivalence of specified sanitary or phytosanitary measures.

6. Competent Authorities and Contact Points

1. Each Party shall provide each other Party with a description of its competent authorities and their division of responsibilities.

2. Each Party shall provide each other Party with a contact point to facilitate distribution of requests or notifications made in accordance with this Chapter.

3. Each Party shall ensure the information provided under Paragraphs 1 and 2 is kept up to date.

7. Notification

1. Each Party acknowledges the value of exchanging information on its sanitary or phytosanitary measures.

2. Each Party agrees to provide timely and appropriate information directly to the contact points of the relevant Parties where a:

(a) change in animal or plant health status may affect existing trade;

(b) significant sanitary or phytosanitary non-compliance associated with an export consignment is identified by the importing Party; and

(c) provisional sanitary or phytosanitary measure against or affecting the exports of another Party is considered necessary to protect human, animal or plant life or health within the importing Party.

3. The exporting Party should, to the extent possible, endeavour to provide information to the importing Party if the exporting Party identifies that an export consignment which may be associated with a significant SPS risk has been exported.

8. Co-operation

1. Each Party shall explore opportunities for further co- operation, collaboration and information exchange with the other Parties on sanitary and phytosanitary matters of mutual interest consistent with the objectives of this Chapter.

2. In relation to Paragraph 1, each Party shall endeavour to co-ordinate with regional or multilateral work programmes with the objective of avoiding unnecessary duplication and to maximise the benefits from the application of resources.

3. Each Party agrees to further explore how it can strengthen co-operation on the provision of technical assistance especially in relation to trade facilitation.

4. Any two Parties may, by mutual agreement, co-operate on adaptation to regional conditions in accordance with the SPS Agreement and relevant international standards, guidelines and recommendations, in order to facilitate trade between the Parties.

9. Consultations

Where a Party considers that a sanitary or phytosanitary measure affecting trade between it and another Party warrants further discussion, it may, through the contact points, request a detailed explanation of the sanitary or phytosanitary measure and if necessary, request to hold consultations in an attempt to resolve any concerns on specific issues arising from the application of the sanitary or phytosanitary measure. The other Party shall respond promptly to any requests for such explanations, and if so requested, shall enter into consultations, within 30 days from the date of the request. The Parties to the consultations shall make every effort to reach a mutually satisfactory resolution through consultations within 60 days from the date of the request, or a timeline mutually agreed upon by the consulting Parties. Should the consultations fail to achieve resolution, the matter shall be forwarded to the FTA Joint Committee.

10. Meetings Among the Parties on Sanitary and Phytosanitary Matters

1. The Parties hereby establish a Sub-Committee on Sanitary and Phytosanitary Matters (the "SPS Sub-Committee"), consisting of representatives from the relevant government agencies of each Party. The SPS Sub-Committee shall meet within one year of the entry into force of this Agreement and thereafter as mutually determined by the Parties.

2. The SPS Sub-Committee shall review the progress made by the Parties in implementing their commitments under this Chapter and may set up subsidiary working groups, as agreed between or among the relevant Parties, to consider specified issues relating to this Chapter.

3. | Competent authorities of any two Parties may meet to make decisions bilaterally implementing the commitments under this Chapter. Each Party shall provide to the SPS Sub- Committee updates on the status of their work.

4. Subject to Paragraph 1, meetings under this Article shall occur as and when mutually determined by the relevant Parties and all decisions and/or records made shall be by mutual agreement of the relevant Parties. Meetings may occur in person, by teleconference, by video conference, or through any other means as mutually determined by the Parties.

11. Non-Application of Chapter 20 (Consultations and Dispute Settlement)

Chapter 20 (Consultations and Dispute Settlement) shall not apply to any matter arising under this Chapter.

Chapter 6. STANDARDS, TECHNICAL REGULATIONS AND CONFORMITY ASSESSMENT PROCEDURES

1. Objectives

The objectives of this Chapter are to facilitate trade in goods among the Parties by:

(a) ensuring that standards, technical regulations and conformity assessment procedures do not create unnecessary obstacles to trade;

(b) promoting mutual understanding of each Party's standards, technical regulations and conformity assessment procedures;

(c) strengthening information exchange and co-operation among the Parties in relation to the preparation, adoption and application of standards, technical regulations and conformity assessment procedures;

(d) strengthening co-operation among the Parties in the work of international bodies related to standardisation and conformity assessments; and

(e) providing a framework to implement supporting mechanisms to realise these objectives.

2. Scope

1. For the mutual benefit of the Parties, this Chapter applies to all standards, technical regulations and conformity assessment procedures of the Parties that may affect trade in goods between the Parties except:

(a) purchasing specifications prepared by governmental bodies for the production or consumption requirements of such bodies; and

(b) sanitary or phytosanitary measures as defined in Chapter 5 (Sanitary and Phytosanitary Measures).

2. Nothing in this Chapter shall limit the right of a Party to prepare, adopt and apply standards, technical regulations and conformity assessment procedures only to the extent necessary to fulfil a legitimate objective. Such legitimate objectives are, inter alia, national security requirements; the prevention of deceptive practices; protection of human health or safety; animal or plant life or health; or the environment.

3. Definitions

For the purposes of this Chapter, the definitions set out in Annex 1 to the Agreement on Technical Barriers to Trade (TBT Agreement) in Annex 1A to the WTO Agreement shall apply.

4. Affirmation of the TBT Agreement

1. Each Party affirms its rights and obligations with respect to each other Party under the TBT Agreement.

2. Each Party shall take such reasonable measures as may be available to it to ensure compliance, in the implementation of this Chapter, by local government and non- governmental bodies within its territory which are responsible for the preparation, adoption and application of standards, technical regulations and conformity assessment procedures.

5. Standards

1. With respect to the preparation, adoption and application of standards, each Party shall ensure that its standardising body or bodies accept and comply with Annex 3 to the TBT Agreement.

2. Each Party shall encourage the standardising body or bodies in its territory to co-operate with the standardising body or bodies of other Parties. Such co-operation shall include, but is not limited to:

(a) exchange of information on standards;

(b) exchange of information relating to standard setting procedures; and

(c) co-operation in the work of international standardising bodies in areas of mutual interest.

6. Technical Regulations

1. Where relevant international standards exist or their completion is imminent, each Party shall use them, or relevant parts of them, as a basis for their technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems.

2. Each Party shall give positive consideration to accepting as equivalent, technical regulations of another Party, even if these regulations differ from its own, provided it is satisfied that these regulations adequately fulfil the objectives of its own regulations.

3. Where a Party does not accept a technical regulation of another Party as equivalent to its own it shall, upon request of the other Party, explain the reasons for its decision.

7. Conformity Assessment Procedures

1. Each Party shall give positive consideration to accepting the results of conformity assessment procedures of other Parties, even where those procedures differ from its own, provided it is satisfied that those procedures offer an assurance of conformity with applicable technical regulations or standards equivalent to its own procedures.

2. Each Party shall seek to enhance the acceptance of the results of conformity assessment procedures conducted in the territories of other Parties with a view to increasing efficiency, avoiding duplication and ensuring cost effectiveness of the conformity assessments. In this regard, each Party may choose, depending on the situation of the Party and the specific sectors involved, a broad range of approaches. These may include:

(a) recognition by a Party of the results of conformity assessments performed in the territory of another Party;

(b) recognition of co-operative arrangements between accreditation bodies in the territories of the Parties;

(c) mutual recognition of conformity assessment procedures conducted by bodies located in the territory of each Party;

(d) accreditation of conformity assessment bodies in the territory of another Party;

(e) use of existing regional and international multilateral recognition agreements and arrangements;

(f) designating conformity assessment bodies located in the territory of another Party to perform conformity assessment; and

(g) suppliers' declaration of conformity.

3. Each Party shall exchange information with other Parties on its experience in the development and application of the approaches in Paragraph 2(a) to (g) and other appropriate approaches with a view to facilitating the acceptance of the results of conformity assessment procedures.

4. A Party shall, upon request of another Party, explain its reasons for not accepting the results of any conformity assessment procedure performed in the territory of that other Party.

8. Co-operation

1. The Parties shall intensify their joint efforts in the field of standards, technical regulations and conformity assessment procedures with a view to facilitating access to each other's markets.

2. Each Party shall, upon request of another Party, give positive consideration to proposals to supplement existing co-operation on standards, technical regulations and conformity assessment procedures. Such co-operation, which shall be on mutually determined terms and conditions, may include:

(a) advice or technical assistance relating to the development and application of standards, technical regulations and conformity assessment procedures;

(b) co-operation between conformity assessment bodies, both governmental and non-governmental, in the territories of each of the Parties such as:

(i) use of accreditation to qualify conformity assessment bodies; and

(ii) enhancing infrastructure in calibration, testing, inspection, certification and accreditation to meet relevant international standards, recommendations and guidelines;

(c) co-operation in areas of mutual interest in the work of relevant regional and international bodies relating to the development and application of standards and conformity assessment procedures such as enhancing participation in the existing frameworks for mutual recognition developed by relevant regional and international bodies; and

(d) enhancing co-operation in the development and improvement of technical regulations and conformity assessment procedures such as:

(i) co-operation in the development and promotion of good regulatory practice;

(ii) transparency, including ways to promote improved access to information on standards, technical regulations and conformity assessment procedures; and

(iii) management of risks relating to health, safety, the environment and deceptive practices.

3. Upon request of another Party, a Party shall give positive consideration to a sector-specific proposal that the requesting Party makes for further co-operation under this Chapter.

9. Technical Consultations

1. A Party (the "requesting Party") may request technical consultations with another Party (the "requested Party") on issues relating to the implementation of this Chapter. The request for technical consultations shall be made in writing.

2. The requested Party shall enter into technical consultations with the requesting Party, with a view to reaching a mutually satisfactory solution, within 60 days of receipt of the written request from the requesting Party, unless otherwise mutually determined by the Parties concerned. Technical consultations may be conducted via any means agreed by the Parties concerned.

10. Agreements or Arrangements

1. Parties shall seek to identify trade-facilitating initiatives regarding standards, technical regulations and conformity assessment procedures that are appropriate for particular issues or sectors.

2. Such trade-facilitating initiatives may include agreements or arrangements on regulatory issues, such as alignment of standards, convergence or equivalence of technical regulations and conformity assessment procedures, and compliance issues.

3. Parties to an existing agreement or arrangement shall give consideration to extending such an agreement or arrangement to another Party upon request of that Party. Such consideration may be subject to appropriate confidence building processes to ensure equivalency of relevant standards, technical regulations and/or conformity assessment procedures.

4. Where a Party declines a request of another Party to consider extending the application of an existing agreement or arrangement it shall, upon request of that Party, explain the reasons for its decision.

11. Transparency

1. Each Party affirms its commitment to ensuring that information regarding proposed new or amended standards, technical regulations and conformity assessment procedures is made available in accordance with the relevant requirements of the TBT Agreement.

2. Each Party shall ensure that the information relating to standards, technical regulations and conformity assessment procedures is published. Such information should be made available in printed form and, where possible, in electronic form.

12. Contact Points

1. Each Party shall designate a contact point or contact points who shall, for that Party, have responsibility for co- ordinating the implementation of this Chapter.

2. Each Party shall provide each of the other Parties with the name of the designated contact point or contact points and the contact details of the relevant official in that organisation, including telephone, facsimile, email and any other relevant details.

3. Each Party shall notify each of the other Parties promptly of any change of their contact points or any amendments to the details of the relevant officials.

4. Each Party shall ensure that its contact point or contact points facilitate the exchange of information between the Parties on standards, technical regulations and conformity assessment procedures, in response to all reasonable requests for such information from a Party.

13. Sub-Committee on Standards, Technical Regulations and Conformity Assessment Procedures

1. The Parties hereby establish a Sub-Committee on Standards, Technical Regulations and Conformity Assessment Procedures (the "STRACAP Sub-Committee"), consisting of representatives of the Parties, to promote and monitor the implementation and administration of this Chapter.

2. The STRACAP Sub-Committee shall meet as mutually determined by the Parties. Meetings may be conducted in person, or by any other means as mutually determined by the Parties.

3. The STRACAP Sub-Committee shall determine its terms of reference in accordance with this Chapter.

4. The STRACAP Sub-Committee shall determine its work programme in response to priorities as identified by the Parties.

Chapter 7. SAFEGUARD MEASURES

1. Scope

This Chapter applies to safeguard measures adopted or maintained by a Party affecting trade in goods among the Parties during the transitional safeguard period

2. Definitions

For the purposes of this Chapter:

(a) domestic industry means, with respect to an imported good, the producers as a whole of the like or directly competitive goods operating within a Party, or those whose collective output of the like or directly competitive goods constitutes a major proportion of the total domestic production of those goods;

(b) global safeguard measure means a measure applied under Article XIX of GATT 1994 and the Agreement on Safeguards in Annex 1A to the WTO Agreement (Safeguards Agreement) or Article 5 of the Agreement on Agriculture in Annex 1A to the WTO Agreement (Agreement on Agriculture);

(c) provisional measure means a provisional safeguard measure described in Article 7 (Provisional Safeguard Measures);

(d) safeguard measure means a transitional safeguard measure described in Article 6 (Scope and Duration of Transitional Safeguard Measures);

(e) serious injury means a significant overall impairment in the position of a domestic industry;

(f) threat of serious injury means serious injury that, on the basis of facts and not merely on allegation, conjecture, or remote possibility, is clearly imminent; and

(g) transitional safeguard period means, in relation to a particular good, the period from the entry into force of this Agreement until three years after the customs duty on that good is to be eliminated, or reduced to its final commitment, in accordance with that Party's schedule of tariff commitments in Annex 1 (Schedules of Tariff Commitments).

3. Imposition of a Safeguard Measure

If, as a result of the reduction or elimination of a customs duty under this Agreement, an originating good of another Party or Parties is being imported into the territory of a Party during the transitional safeguard period for that good in such increased quantities, in absolute terms or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to a domestic industry that produces like or directly competitive goods, that Party may:

(a) suspend the further reduction of any rate of customs duty provided for under this Agreement on the good; or

(b) increase the rate of customs duty on the good toa level not exceeding the lesser of:

(i) the most-favoured-nation applied rate of duty on the good in effect at the time the action is taken; or

(ii) the most-favoured-nation applied rate of duty on the good in effect on the day immediately preceding the date of entry into force of this Agreement.

4. Investigation

1. A Party shall take a safeguard measure only following an investigation by that Party's competent authorities in accordance with the same procedures as those provided for in Article 3 and Article 4.2 of the Safeguards Agreement; and to this end, Article 3 and Article 4.2 of the Safeguards Agreement shall be incorporated into and shall form part of this Agreement, mutatis mutandis.

2. Each Party shall ensure that its competent authorities complete any such investigation expeditiously and, in any event, within one year following the date of its initiation.

5. Notification

1. A Party shall immediately notify the other Parties, in writing, on:

(a) initiating an investigation under Article 4 (Investigation);

(b) making a finding of serious injury or threat thereof caused by increased imports of an originating good of another Party or Parties resulting from the reduction or elimination of a customs duty on that originating good;

(c) taking a decision to apply or extend a safeguard measure;

(d) taking a decision to progressively liberalise an existing safeguard measure; or

(e) applying a provisional measure.

2. A Party shall provide promptly to the other Parties a copy of the public version of the report of its competent authorities required under Article 4 (Investigation).

3. In making a notification pursuant to Paragraph 1(c), the Party applying or extending a safeguard measure shall provide the other Parties with evidence of serious injury or threat of serious injury caused by increased imports of an originating good of another Party or Parties as a result of the reduction or elimination of a customs duty pursuant to this Agreement. Such notification shall include:

(a) a precise description of the originating good subject to the proposed safeguard measure including its heading or subheading under the HS Code, on which the schedules of tariff commitments in Annex 1 (Schedules of Tariff Commitments) are based;

(b) a precise description of the proposed safeguard measure; and

(c) the proposed date of the safeguard measure's introduction, its expected duration, and a timetable for progressive liberalisation of the measure, if applicable. In the case of an extension of a measure, evidence that the domestic industry concerned is adjusting shall also be provided.

Upon request, the Party applying or extending a safeguard measure shall provide additional information as another Party or Parties may consider necessary.

4. A Party proposing to apply or extend a safeguard measure shall provide adequate opportunity for prior consultations with those Parties which would be affected by the safeguard measure with a view to reviewing the information provided under Paragraphs 2 and 3 arising from the investigation referred to in Article 4 (Investigation), exchanging views on the safeguard measure and reaching an agreement on compensation as set forth in Article 8 (Compensation).

5. Where a Party applies a provisional measure referred to in Article 7 (Provisional Safeguard Measures), on request of another Party or Parties, consultations shall be initiated immediately after such application.

6. The provisions on notification in this Chapter shall not require a Party to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

6. Scope and Duration of Transitional Safeguard Measures

1. A Party may not maintain a safeguard measure:

(a) except to the extent, and for such time, as may be necessary to prevent or remedy serious injury and to facilitate adjustment;

(b) for a period exceeding two years, except that the period may be extended by up to one year if the competent authorities of that Party determine, in conformity with the procedures referred to in Article 4 (Investigation), that the safeguard measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and that there is evidence that the industry is adjusting; or

(c) for a period exceeding three years, including any extension.

2. A safeguard measure shall not be applied against an originating good of a Party which is an ASEAN Member State, as long as its share of imports of the good concerned in the importing Party does not exceed three per cent of the total imports from the other Parties, provided that those Parties with less than three per cent import share collectively account for not more than nine per cent of total imports of the good concerned from the other Parties.

3. Where the expected duration of the safeguard measure is over one year, the importing Party shall ensure that the safeguard measure is progressively liberalised at regular intervals during the period of application.

4. When a Party terminates a safeguard measure on a good, the rate of customs duty for that good shall be no higher than the rate that, according to the Party's schedule of tariff commitments in Annex 1 (Schedules of Tariff Commitments), would have been in effect as if the safeguard measure had never been applied.

5. Regardless of its duration or whether it has been subject to extension, a safeguard measure on a good shall terminate following the end of the transitional safeguard period for such good.

6. No safeguard measure shall be applied again to the import of a particular originating good which has been subject to such a safeguard measure, for a period of time equal to the duration of the previous safeguard measure, or two years, whichever is longer.

7. A Party shall not apply a safeguard measure to an originating good imported up to the limit of quota quantities granted under tariff rate quotas applied in accordance with its schedule of tariff commitments in Annex 1 (Schedules of Tariff Commitments).

7. Provisional Safeguard Measures

1. In critical circumstances, where delay would cause damage which would be difficult to repair, a Party may take a provisional measure, pursuant to a preliminary determination that there is clear evidence that increased imports of an originating good from another Party or Parties have caused or are threatening to cause serious injury to a domestic industry.

2. The duration of such a provisional measure shall not exceed 200 days, during which time the relevant requirements of Article 2 (Definitions), Article 3 (Imposition of a Safeguard Measure), Article 4 (Investigation), Article 5 (Notification) and Article 6 (Scope and Duration of Transitional Safeguard Measures) shall be met. The duration of any provisional measure shall be counted as part of the initial period and any extension as referred to in Article 6 (Scope and Duration of Transitional Safeguard Measures).

3. The customs duty imposed as a result of the provisional measure shall be refunded if the subsequent investigation referred to in Article 4 (Investigation) does not determine that increased imports of the originating good have caused or threatened to cause serious injury to a domestic industry.

8. Compensation

1. The Party proposing to apply a safeguard measure shall, in consultation with the exporting Party or Parties who would be affected by such a measure, provide to that Party or Parties mutually agreed adequate means of trade compensation in the form of substantially equivalent level of concessions or other obligations to that existing under this Agreement between the Party applying the safeguard measure and the exporting Party or Parties who would be affected by such a measure.

2. In seeking compensation under Paragraph 1 for a safeguard measure, if the Parties mutually agree, they may hold consultations in the Committee on Trade in Goods established pursuant to Article 19 (Committee on Trade in Goods) of Chapter 2 (Trade in Goods) to determine the substantially equivalent level of concessions to that existing under this Agreement between the Party taking the safeguard measure and the exporting Party or Parties who would be affected by such a measure prior to any suspension of equivalent concessions. Any proceedings arising from such consultations shall be completed within 30 days from the date on which the safeguard measure was applied.

3. If no agreement on the compensation is reached within the time frame specified in Paragraph 2, the Party or Parties against whose originating good the measure is applied may suspend the application of substantially equivalent concessions to the trade of the Party applying the safeguard measure. The Party or Parties may suspend the concessions only for the minimum period necessary to achieve the substantially equivalent effects and only while the safeguard measure is maintained. The right of suspension provided for in this Paragraph shall not be exercised for the first two years that a safeguard measure is in effect, provided that the safeguard measure has been applied as a result of an absolute increase in imports and that such a safeguard measure conforms to this Chapter.

4. A Party shall notify the other Parties in writing at least 30 days before suspending concessions under Paragraph 3.

5. The obligation to provide compensation under Paragraph 1 and the right to suspend substantially equivalent concessions under Paragraph 3 shall terminate on the termination of the safeguard measure.

9. Relationship to the WTO Agreement

1. Each Party retains its rights and obligations under Article XIX of GATT 1994, the Safeguards Agreement and Article 5 of the Agreement on Agriculture. This Agreement does not confer any additional rights or obligations on the Parties with regard to global safeguard measures.

2. A Party shall not apply a safeguard measure or provisional measure, as provided in Article 6 (Scope and Duration of Transitional Safeguard Measures) or Article 7 (Provisional Safeguard Measures) on a good that is subject to a measure that the Party has applied pursuant to Article XIX of GATT 1994 and the Safeguards Agreement, the Agreement on Agriculture or any other relevant provisions in the WTO Agreement, nor shall a Party continue to maintain a safeguard measure or provisional measure on a good that becomes subject to a measure that the Party applies pursuant to Article XIX of GATT 1994 and the Safeguards Agreement, the Agreement on Agriculture or any other relevant provisions in the WTO Agreement.

3. A Party considering the imposition of a global safeguard measure on an originating good of another Party or Parties shall initiate consultations with that Party or Parties as far in advance of taking such measure as practicable.

Chapter 8. TRADE IN SERVICES

1. Definitions

For the purposes of this Chapter:

(a) aircraft repair and maintenance services means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and does not include so-called line maintenance;

(b) commercial presence means any type of business or professional establishment, including through:

(i) the constitution, acquisition or maintenance of a juridical person; or

(ii) the creation or maintenance of a branch ora representative office,

within the territory of a Party for the purpose of supplying a service;

(c) computer reservation system services means services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;

(d) juridical person means any entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or government-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

(e) juridical person of a Party means a juridical person which is either:

(i) constituted or otherwise organised under the law of that Party, and is engaged in substantive business operations in the territory of that Party or any other Party; or

(ii) in the case of supply of a service through commercial presence, owned or controlled by:

(A) natural persons of that Party; or

(B) juridical persons of that Party identified under Subparagraph (e)(i);

(f) for Thailand and Viet Nam, a juridical person is:

(i) owned by persons of a Party if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Party;

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

(iii) affiliated with another person when it controls, or is controlled by, that other person, or when it and the other person

are both controlled by the same person;

(g) measure means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;

(h) measures by a Party affecting trade in services includes measures in respect of:

(i) the purchase or use of, or payment for, a service;

(ii) the access to and use of, in connection with the supply of a service, services which are required by those Parties to be offered to the public generally; and

(iii) the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of the other Party;

(i) monopoly supplier of a service means any person, public or private, which in the relevant market of the territory of a Party is authorised or established formally or in effect by that Party as the sole supplier of that service;

(j) natural person of a Party means a natural person who resides in the territory of that Party or elsewhere and who under the law of that Party:

(i) is a national of that Party; or

(ii) has the right of permanent residence (1) in that Party, in the case of a Party which accords substantially the same treatment to its permanent residents as it does to its nationals in respect of measures affecting trade in services, provided that no Party is obligated to accord to such permanent residents treatment more favourable than would be accorded by that Party to such permanent residents;

(k) person means a natural person or a juridical person;

(l) sector of a service means:

(i) with reference to a specific commitment, one or more, or all, subsectors of that service, as specified in a Party's Schedule in Annex 2 (Schedules of Specific Commitments for Services) or Schedule in Annex 3 (Schedules of Reservations and Non-Conforming Measures for Investment and Services); and

(ii) otherwise, the whole of that service sector, including all of its subsectors;

(m) selling and marketing of air transport services means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions;

(n) services includes any service in any sector except services supplied in the exercise of governmental authority;

(o) service consumer means any person that receives or uses a service;

(p) service of another Party means a service which is supplied:

(i) from or in the territory of that other Party, or in the case of maritime transport, by a vessel registered under the laws and regulations of that other Party, or by a person of that other Party which supplies the service through the operation of a vessel or its use in whole or in part; or

(ii) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of that other Party;

(q) service supplier means a person that supplies a service; (2) (3)

(r) supply of a service includes the production, distribution, marketing, sale and delivery of a service;

(s) 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;

(t) trade in services means the supply of a service:

(i) from the territory of one Party into the territory of any other Party;

(ii) in the territory of one Party to the service consumer of any other Party;

(iii) by a service supplier of one Party, through commercial presence in the territory of any other Party;

(iv) by a service supplier of one Party, through presence of natural persons of a Party in the territory of any other Party; and

(u) traffic rights means the rights for scheduled and non-scheduled services to operate or carry passengers, cargo and mail for remuneration or hire from, to, within, or over the territory of a Party, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged and their conditions, and criteria for designation of airlines, including such criteria as number, ownership and control.

(1) Where a Party has made a reservation with respect to permanent residents in its schedules under this Agreement, that reservation shall not prejudice the Parties' rights and obligations in GATS.

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

(3) The Parties confirm their shared understanding that "service supplier" in this Chapter has the same meaning that it has under Subparagraph (g) of Article XXVIII of GATS.

2. Scope

1. This Chapter shall apply to measures by a Party affecting trade in services.

2. For the purposes of this Chapter, "measures by a Party" means measures taken by:

(a) central, regional or local governments and authorities of that Party; and

(b) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities of that Party.

In fulfilling its obligations and commitments under this Chapter, each Party shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory.

3. This Chapter shall not apply to:

(a) government procurement;

(b) subsidies or grants including government supported loans, guarantees and insurance, provided by a Party or to any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic services, service consumers or service suppliers;

(c) services supplied in the exercise of governmental authority;

(d) cabotage in maritime transport services; and

(e) air transport services, measures affecting traffic rights however granted, or measures affecting services directly related to the exercise of traffic rights, other than measures affecting: (4)

(i) aircraft repair and maintenance services;

(ii) the selling and marketing of air transport services;

(iii) computer reservation system services; 4 Notwithstanding Subparagraphs (iv) to (vi), this Chapter shall apply to measures affecting specialty air services, ground handling services, and airport operation services only for a Party that opts to make commitments in relation to such services in accordance with Article 3 (Scheduling of Commitments).

(iv) specialty air services;

(v) ground handling services; and

(vi) airport operation services.

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

5. For greater certainty, Annex 8A (Financial Services), Annex 8B (Telecommunications), Annex 8C (Professional Services) and Annex 8D (Education Services Co-operation) are an integral part of this Chapter.

3. Scheduling of Commitments

1. Each Party shall make commitments under Article 4 (National Treatment) and Article 5 (Market Access) in accordance with either Article 11 (Schedules of Specific Commitments) or Article 12 (Schedules of Non-Conforming Measures).

2. A Party making commitments in accordance with Article 11 (Schedules of Specific Commitments) shall make commitments under the applicable paragraphs in Article 4 (National Treatment), Article 5 (Market Access) and Article 9 (Most-Favoured-Nation Treatment). A Party making commitments in accordance with Article 11 (Schedules of Specific Commitments) may also make commitments under Article 6 (Additional Commitments).

3. A Party making commitments in accordance with Article 12 (Schedules of Non-Conforming Measures) shall make commitments under the applicable paragraphs in Article 4 (National Treatment), Article 5 (Market Access), Article 9 (Most-Favoured Nation Treatment) and Article 10 (Local Presence). A Party making commitments in accordance with Article 12 (Schedules of Non-Conforming Measures) may also make commitments under Article 6 (Additional Commitments).

4. National Treatment

1. A Party making commitments in accordance with Article 11 (Schedules of Specific Commitments) shall, in the sectors inscribed in its Schedule in Annex 2 (Schedules of Specific Commitments for Services) and subject to any conditions and qualifications set out therein, accord to services and service suppliers of any other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords, in like circumstances, (5) to its own services and service suppliers. (6)

2. A Party making commitments in accordance with Article 12 (Schedules of Non-Conforming Measures) shall accord to services and service suppliers of any other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords, in like circumstances, to its own services and service suppliers, subject to its non-conforming measures as provided in Article 12 (Schedules of Non-Conforming Measures). (7)

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

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

(5) For greater certainty, whether treatment is accorded in "like circumstances" under Article 4 (National Treatment) or Article 9 (Most-Favoured-Nation Treatment) depends on the totality of the circumstances, including whether services and service suppliers are like, and whether the relevant treatment distinguishes between services or service suppliers on the basis of legitimate public welfare objectives.

(6) Specific commitments assumed under this Article shall not be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

(7) Nothing in this Article shall be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

5. Market Access

1. With respect to market access through the modes of supply identified in Article 1(t) (Definitions), a Party making commitments in accordance with Article 11 (Schedules of Specific Commitments) shall accord services and service suppliers

of any other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Annex 2 (Schedules of Specific Commitments for Services). (8)

2. The measures which a Party shall not adopt or maintain either on the basis of a regional subdivision or on the basis of its entire territory, either in sectors where market access commitments are undertaken and in accordance with its specific commitments, as provided in Article 11 (Schedules of Specific Commitments), or subject to its non-conforming measures, as provided in the Article 12 (Schedules of Non- Conforming Measures), are defined as:

(a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;

(b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(c) limitations on the total number of service operations or on the total quantity of services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test; (9)

(d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;

(e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and

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

(8) If a Party undertakes a market-access commitment in relation to the supply of a services through the mode of supply referred to in Article 1(t)i) (Definitions) and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in of Article 1(t)(iii) (Definitions), it is hereby committed to allow related transfers of capital into its territory.

(9) Subparagraph (c) does not cover measures of a Party which limit inputs for the supply of services.

6. Additional Commitments

1. The Parties may negotiate commitments with respect to measures affecting trade in services including those regarding qualifications, standards or licensing matters not subject to scheduling, under:

(a) Article 4 (National Treatment), Article 5 (Market Access) or Article 9 (Most-Favoured-Nation Treatment) for those Parties making commitments in accordance with Article 11 (Schedules of Specific Commitments); or

(b) Article 4 (National Treatment), Article 5 (Market Access), Article 9 (Most-Favoured-Nation Treatment) or Article 10 (Local Presence) for those Parties making commitments in accordance with Article 12 (Schedules of Non-Conforming Measures).

2. A Party making additional commitments under Paragraph 1(a) shall inscribe such commitments in its Schedule in Annex 2 (Schedules of Specific Commitments for Services).

3. A Party making additional commitments under Paragraph 1(b) shall inscribe such commitments in List C of its Schedule in Annex 3 (Schedules of Reservations and Non- Conforming Measures for Investment and Services).

7. Review of Commitments

The Parties shall review the commitments on trade in services, as necessary, but no later than the next general review of this Agreement under Article 10 (Review) of Chapter 21 (Final Provisions), with a view to further improving commitments under this Chapter so as to progressively liberalise trade in services among the Parties.

8. Work Programme

1. Within one year of the date of entry into force of the Second Protocol, the Parties shall commence negotiations on an

article that requires:

(a) Parties making commitments in accordance with Article 11 (Schedule of Specific Commitments) ("transitioning Party" for the purposes of this Article) to submit a proposed Schedule of Non-Conforming Measures that accords with Article 12 (Schedules of Non-Conforming Measures) ("Proposed Schedule" for the purposes of this Article); and

(b) that the commitments contained in a transitioning Party's Proposed Schedule provide an equivalent or greater level of liberalisation, and not result in a decrease in the level of commitments, as compared to the transitioning Party's commitments made in accordance with Article 11 (Schedules of Specific Commitments).

2. The article referred to in Paragraph 1 shall set out a fixed time frame, to be agreed by the Parties, for:

(a) the submission of a transitioning Party's Proposed Schedule; and

(b) the conclusion of negotiations on, and adoption of, a transitioning Party's Proposed Schedule,

and shall take into account any transition to Schedules of Non-Conforming Measures occurring pursuant to other international agreements that all Parties to this Agreement are party to.

3. The Parties shall endeavour to conclude the negotiations referred to in Paragraph 1 within two years of the date of entry into force of the Second Protocol.

4. Upon the conclusion of the negotiations referred to in Paragraph 1, the Parties shall amend this Chapter in accordance with Article 6 (Amendments) of Chapter 21 (Final Provisions) to incorporate the article referred to in Paragraph 1.

9. Most-Favoured-Nation Treatment

1. A Party making commitments in accordance with Article 11 (Schedules of Specific Commitments) that makes commitments on Most-Favoured-Nation Treatment shall, in respect of the sectors and subsectors inscribed in its Schedule in Annex 2 (Schedules of Specific Commitments for Services) that are identified with an "MFN" and subject to any conditions and qualifications set out therein, accord to services and service suppliers of another Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords, in like circumstances, to services and service suppliers of any other Party or of any non-Party.

2. A Party making commitments in accordance with Article 12 (Schedules of Non-Conforming Measures) shall, subject to its non-conforming measures set out in its Schedule in Annex 3 (Schedules of Reservations and Non-Conforming Measures for Investment and Services), accord to services and service suppliers of another Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords, in like circumstances, to services and service suppliers of any other Party or of any non-Party.

3. Notwithstanding Paragraphs 1 and 2, each Party reserves the right to adopt or maintain any measure that accords differential treatment to services and service suppliers of any other Party or of any non-Party under any bilateral or multilateral international agreement in force at, or signed prior to, the date of entry into force of the Second Protocol.

4. Notwithstanding Paragraphs 1 and 2, each Party which is an ASEAN Member State reserves the right to adopt or maintain any measure that accords differential treatment to services and service suppliers of any other Party which is an ASEAN Member State taken under an agreement on the liberalisation of trade in goods or services or investment as part of a wider process of economic integration among the ASEAN Member States.

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

6. Notwithstanding Paragraphs 1 and 2, Least Developed Country Parties are not obliged to make commitments under this Article. These Parties may, however, do so on a voluntary basis.

10. Local Presence

A Party making commitments in accordance with Article 12 (Schedules of Non-Conforming Measures) shall not require a service supplier of another Party to establish or maintain a representative office, a branch, or any form of juridical person, or to be resident, in its territory as a condition for the supply of a service as described in Article 1(t)(i), (iii) or (iv) (Definitions), subject to its non-conforming measures as provided in Article 12 (Schedules of Non-Conforming Measures).

11. Schedules of Specific Commitments

1. A Party making commitments in accordance with this Article shall set out in its Schedule in Annex 2 (Schedules of Specific Commitments for Services), the specific commitments it undertakes under Article 4 (National Treatment), Article 5 (Market Access), Article 6 (Additional Commitments) and Article 9 (Most-Favoured-Nation Treatment). With respect to sectors where such commitments are undertaken, each schedule in Annex 2 (Schedules of Specific Commitments for Services) shall specify:

(a) terms, limitations and conditions on market access;

(b) conditions and qualifications on national treatment;

(c) undertakings relating to additional commitments;

(d) the sectors that are committed for Most-Favoured-Nation Treatment in accordance with Article 9.1 (Most-Favoured-Nation Treatment);

(e) where appropriate, the time frame for implementation of such commitments; and

(f) the date of entry into force of such commitments.

2. Measures inconsistent with both Article 4 (National Treatment) and Article 5 (Market Access) shall be inscribed in the column relating to Article 5 (Market Access). In this case, the inscription will be considered to provide a condition or qualification to Article 4 (National Treatment) as well.

3. Each Party making commitments in accordance with this Article shall identify in its Schedule in Annex 2 (Schedules of Specific Commitments for Services) sectors or subsectors for future liberalisation with "FL". In these sectors and subsectors, any applicable terms, limitations, conditions and qualifications, referred to in Paragraph 1(a) to (c) shall be limited to existing measures of that Party.

4. lf a Party amends a measure referred to in Paragraph 3 in a manner that reduces or eliminates the inconsistency of that measure with Article 4 (National Treatment), Article 5 (Market Access) or Article 9 (Most-Favoured-Nation Treatment), as it existed immediately before the amendment, that Party shall not subsequently amend that measure in a manner that increases the measure's inconsistency with Article 4 (National Treatment), Article 5 (Market Access) or Article 9 (Most-Favoured-Nation Treatment).

5. Least Developed Country Parties are not required to identify sectors or subsectors for future liberalisation under Paragraph 4. These Parties, however, may do so on a voluntary basis.

12. Schedules of Non-Conforming Measures

1. For a Party making commitments in accordance with this Article, Article 4 (National Treatment), Article 5 (Market Access), Article 9 (Most-Favoured-Nation Treatment) and Article 10 (Local Presence) shall not apply to:

(a) any existing non-conforming measure that is maintained by that Party at:

(i) the central level of government, as set out by that Party in List A of its Schedule in Annex 3 (Schedules of Reservations and Non-Conforming Measures for Investment and Services);

(ii) a regional level of government, as set out by that Party in List A of its Schedule in Annex 3 (Schedules of Reservations and Non-Conforming Measures for Investment and Services); or

(iii) a local level of government;

(b) the continuation or prompt renewal of any non- conforming measure referred to in Subparagraph (a); and

(c) an amendment to any non-conforming measure referred to in Subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 4 (National Treatment), Article 5 (Market Access), Article 9 (Most-Favoured-Nation Treatment) or Article 10 (Local Presence).

2. Article 4 (National Treatment), Article 5 (Market Access), Article 9 (Most-Favoured-Nation Treatment) and Article 10 (Local Presence) shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities set out in List B of its Schedule in Annex 3 (Schedules of Reservations and Non-Conforming Measures for Investment and Services).

13. Modification of Schedules

1. A Party may modify or withdraw any commitment in its schedule of specific commitments in Annex 2 (Schedules of Specific Commitments for Services) or Annex 4 (Schedules of Specific Commitments on the Movement of Natural Persons), at any time after three years have elapsed from the date on which this Agreement enters into force, in accordance with the procedures set out in Article XXI of GATS, mutatis mutandis, and the Procedures for the Implementation of Article XXI of GATS set out in WTO document S/L/80 of 29 October 1999 (the GATS Article XXI Procedures), mutatis mutandis, as amended from time to time.

2. For the avoidance of doubt, references in Article XXI of GATS and the GATS Article XXI Procedures to the "Secretariat" and the "Council for Trade in Services" shall each be read as references to the FTA Joint Committee.

14. Domestic Regulation

1. Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

2. Each Party shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, on request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.

3. Nothing in Paragraph 2 shall be construed to require a Party to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.

4. If the results of the negotiations related to Paragraph 4 of Article VI of GATS enter into effect, the Parties shall review the results of such negotiations and shall amend this Article as appropriate, after consultation among the Parties to bring the results of such negotiations into effect under this Chapter.

5. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements and procedures, do not constitute unnecessary barriers to trade in services, while recognising the right to regulate and to introduce new regulations on the supply of services in order to meet its policy objectives, each Party shall endeavour to ensure that any such measures that it adopts or maintains are:

(a) based on objective and transparent criteria, such as competence and the ability to supply the service;

(b) not more burdensome than necessary to ensure the quality of the service; and

(c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

6. In determining whether a Party is in conformity with its obligations under Paragraph 5(a), international standards of relevant international organisations (10) applied by that Party shall be taken into account.

7. Where a Party requires authorisation for the supply of a service it shall ensure that its competent authorities:

(a) ensure that any authorisation fees charged for the completion of relevant application procedures are reasonable, transparent, and do not in themselves restrict the supply of a service. For the purposes of this Subparagraph, authorisation fees do not include fees for the use of natural resources, payment for auction, tendering, or other non-discriminatory means of awarding concessions, or mandated contributions to universal services provision;

(b) within a reasonable period of time after the submission of an application considered complete under its laws and regulations, inform the applicant of the decision concerning the application;

(c) to the extent practicable, establish an indicative time frame for processing of an application;

(d) on request of the applicant, provide, without undue delay, information concerning the status of the application under consideration;

(e) in the case of an incomplete application and on request of the applicant, identify, where practicable, all the additional information that is required to complete the application, and provide the opportunity to remedy deficiencies within a reasonable time frame;

(f) if an application is terminated or denied, to the extent possible and without undue delay, inform the applicant in writing

the reasons for such action. The applicant will have the possibility of resubmitting, at its discretion, a new application;

(g) to the extent permissible under its laws and regulations, do not require physical presence in the territory of a Party for the submission of an application for a licence or qualification;

(h) endeavour to accept applications in electronic format under the equivalent conditions of authenticity as paper submissions, in accordance with its laws and regulations; and

(i) where they deem appropriate, accept copies of documents authenticated in accordance with its laws and regulations, in place of original documents.

8. Each Party shall provide adequate procedures to verify competence of professionals of another Party. If licensing or qualification requirements include the completion of an examination, each Party shall, to the extent practicable, ensure that:

(a) the examination is scheduled at reasonable intervals; and

(b) areasonable period of time is provided to enable interested persons to submit an application.

9. Each Party shall, subject to its laws and regulations, permit service suppliers of the other Parties to use without undue restrictions, the business names under which they trade in the territory of that other Party.

Application Time Frames

10. If a Party requires authorisation for the supply of a service, it shall endeavour to ensure that its competent authorities, to the extent practicable and subject to its laws and regulations, permit submission of an application at any time throughout the year. (11) If a specific time period for applying exists, the Party shall ensure that the competent authorities allow a reasonable period for the submission of an application. (12)

11. Paragraphs 1 to 10 shall not apply to a sector or measure to the extent that such sector or measure is not subject to Article 4 (National Treatment) or Article 5 (Market Access) by reason of a Party's commitments made in accordance with either Article 11 (Schedules of Specific Commitments) or Article 12 (Schedules of Non-Conforming Measures).

(10) "Relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of all the Parties.

(11) Competent authorities are not required to start considering applications outside of their official working hours and working days.

(12) Notwithstanding this Paragraph, Least Developed Country Parties are not obliged to apply this Paragraph for two years after the date of entry into force of the Second Protocol.

15. Transparency

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

Publication

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

(a) all relevant measures of general application affecting trade in services; and

(b) all international agreements pertaining to, or affecting, trade in services to which a Party is a signatory.

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

4. Where publication referred to in Paragraphs 2 and 3 is not practicable, such information (13) shall be made otherwise publicly available.

5. To the extent provided for under its legal framework, each Party shall endeavour to provide a reasonable opportunity for comments by interested persons of the Parties on measures referred to in Paragraph 2(a) before adoption.

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

(a) identify the office or official responsible for the relevant matter; and

(b) assist as necessary in facilitating communications with the requesting Party with respect to that matter.

7. Each Party shall respond promptly to all requests by any other Party for specific information on:

(a) any measures referred to in Paragraph 2(a) or international agreements referred to in Paragraph 2(b); and

(b) any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services covered by the Party's commitments under this Chapter, whether or not the other Party has been previously notified of the new or changed law, regulation or administrative guideline.

(13) For greater certainty, such information may be published in each Party's chosen language.

16. Development and Application of Regulations

Administrative Processes

1. With a view to administering in a consistent, impartial and reasonable manner its laws, regulations, procedures and administrative rulings of general application affecting trade in services, each Party shall ensure that its administrative agencies, in applying such laws, regulations, procedures and administrative rulings to particular services or service suppliers of another Party in specific cases through administrative processes, including adjudication, rule-making, licensing, determination and approval processes:

(a) to the extent provided under its legal framework, and where possible, provide service suppliers of the other Party that are directly affected by an administrative process with reasonable notice that the process is taking place;

(b) to the extent provided under its legal framework, endeavour to afford such service suppliers with reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the process and the public interest permit; and

(c) follow procedures that are in accordance with its laws.

Review and Appeal

2. Each Party shall maintain judicial, arbitral or administrative tribunals or procedures for the purpose of the prompt review, (14) and, where warranted, correction of final administrative actions resulting from the processes covered by Paragraph 1. Where such procedures or tribunals are not independent of the agency entrusted with the administrative action concerned, each Party shall ensure that the tribunals or procedures provide for an objective and impartial review.

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

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

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

4. Each Party shall ensure, subject to appeal or further review as provided in its laws, that any decision referred to in Paragraph 3(b) shall be implemented in accordance with its laws.

(14) For avoidance of doubt, "review" includes merits review only where provided for under the Party's laws.

17. Disclosure of Confidential Information

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

18. Monopolies and Exclusive Service Suppliers

1. Each Party shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Party's obligations under Article 4 (National Treatment) and Article 5 (Market Access).

2. Where a Party's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that Party's specific commitments, the Party shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.

3. If a Party has a reason to believe that a monopoly supplier of a service of any other Party is acting in a manner inconsistent with Paragraph 1 or 2, it may request the Party establishing, maintaining or authorising such supplier to provide specific information concerning the relevant operations.

4. This Article shall also apply to cases of exclusive service suppliers, where a Party, formally or in effect:

(a) authorises or establishes a small number of service suppliers; and

(b) substantially prevents competition among those suppliers in its territory.

19. Business Practices

1. The Parties recognise that certain business practices of service suppliers, other than those falling under Article 18 (Monopolies and Exclusive Service Suppliers), may restrain competition and thereby restrict trade in services.

2. Each Party shall, at the request of any other Party, enter into consultations with a view to eliminating practices referred to in Paragraph 1. The requested Party shall accord full and sympathetic consideration to such a request and shall co-operate through the supply of publicly available non-confidential information available to the requesting Party. The requested Party may also provide other information available to the requesting Party, subject to its laws and to the conclusion of a satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Party.

20. Recognition

1. For the purpose of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing or certification of service suppliers, and subject to the requirements of Paragraph 4, a Party may recognise the education or experience obtained, requirements met, or licences or certifications granted in a particular country. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

2. A Party that is a party to an agreement or arrangement of the type referred to in Paragraph 1, whether existing or future, shall afford adequate opportunity for the other Parties, upon request, to negotiate their accession to such an agreement or arrangement, or to negotiate comparable ones with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for any other Party to demonstrate that education, experience, licences, or certifications obtained or requirements met in that other Party's territory should be recognised.

3. Nothing in Article 9 (Most-Favoured-Nation Treatment) shall be construed to require any Party to accord such recognition to the education or experience obtained, requirements met, or licences or certifications granted in another Party.

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

5. Where appropriate, recognition should be based on multilaterally agreed criteria. In appropriate cases, Parties shall work in co-operation with relevant inter-governmental and non-governmental organisations towards the establishment and adoption of common international standards and criteria for recognition and common international standards for the practice of relevant services trades and professions.

6. As set out in Annex 8C (Professional Services), each Party shall endeavour to facilitate trade in professional services, including through encouraging relevant bodies in its territory to enter into negotiations for agreements or arrangements on recognition.

21. Payments and Transfers

1. Except under the circumstances envisaged in Article 4 (Measures to Safeguard the Balance of Payments) of Chapter 18 (General Provisions and Exceptions), a Party shall not apply restrictions on international transfers or payments for current transactions relating to its commitments.

2. Nothing in this Chapter shall affect the rights and obligations of a Party as a member of the IMF under the IMF Articles of Agreement, as may be amended, including the use of exchange actions which are in conformity with the IMF Articles of Agreement as may be amended, provided that the Party shall not impose restrictions on any capital transactions inconsistently with its commitments under this Chapter regarding such transactions, except under Article 4 (Measures to Safeguard the Balance of Payments) of Chapter 18 (General Provisions and Exceptions) or on request of the IMF.

22. Subsidies

1. Notwithstanding Article 2.3(b) (Scope), the Parties shall review the issue of disciplines on subsidies related to trade in services in light of any disciplines agreed under Article XV of GATS with a view to their incorporation into this Chapter.

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

3. No Party shall have recourse to dispute settlement under Chapter 20 (Consultations and Dispute Settlement) for any request made or consultations held under this Article, or any other dispute arising under this Article.

23. Safeguard Measures

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

2. In the event that the implementation of the commitments made in this Agreement causes a substantial adverse impact to a service sector of a Party before the conclusion of the multilateral negotiations referred to in Paragraph 1, the affected Party may request consultations with the other Party or Parties. The requested Party or Parties shall enter into consultations with the requesting Party on the commitments that the requested Party or Parties consider may have caused the substantial adverse impact and on the possibility of the requesting Party adopting any measure to alleviate such impact. The requesting Party shall notify all the other Parties of its request for consultations under this Paragraph.

3. Any measures taken pursuant to Paragraph 2 shall be mutually agreed by the Parties concerned.

4. The consulting Parties shall notify the results of the consultations to all other Parties as soon as practicable and by no later than the next meeting of the Committee on Trade in Services (the "Services Committee") established pursuant to Article 28 (Committee on Trade in Services) following the conclusion of consultations.

24. Increasing Participation for Newer ASEAN Member States

In order to increase the benefits of this Chapter for the newer ASEAN Member States, and in accordance with the objectives of and the Preamble to this Agreement and the objectives of Chapter 12 (Economic Co-operation), the Parties recognise the importance of according special and differential treatment to the newer ASEAN Member States and facilitating their participation in this Chapter through negotiated specific commitments relating to:

(a) strengthened domestic services capacity and its efficiency and competitiveness, inter alia, through access to technology on a commercial basis;

(b) improved access to distribution channels and information networks;

(c) commitments in sectors of export interest to newer ASEAN Member States; and

(d) recognising that commitments by each newer ASEAN Member State may be made in accordance with its individual stage of development.

25. Denial of Benefits

1. A Party may deny the benefits of this Chapter:

(a) to the supply of any service, if it establishes that the service is supplied from or in the territory of a non-Party;

(b) to a service supplier, that is a juridical person, if it establishes that it is not a service supplier of another Party;

(c) in the case of the supply of a maritime transport service, if it establishes that the service is supplied:

(i) by a vessel registered under the laws and regulations of a non-Party; and

(ii) by a person of a non-Party which operates or uses the vessel in whole or in part.

2. A Party may deny the benefit of this Chapter to a service supplier of another Party, if the service supplier is a juridical person owned or controlled by persons of a non-Party, and the denying Party adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the juridical person or that would be violated or circumvented if the benefits of this Chapter were accorded to the juridical person.

26. Treatment and Protection of Commercial Presence

1. Chapter 11 (Investment) shall not apply to measures adopted or maintained by a Party to the extent that they are covered by this Chapter.

2. Notwithstanding Paragraph 1, Article 5 (Senior Management and Board of Directors), (15) Article 7 (Treatment of Investment), Article 8 (Compensation for Losses), Article 9 (Transfers), Article 10 (Expropriation and Compensation), Article 11 (Subrogation), and Section B (Investment Disputes between a Party and an Investor) of Chapter 11 (Investment), shall apply, mutatis mutandis, to any measure affecting the supply of a service by a service supplier of a Party through commercial presence in the territory of any other Party, but only to the extent that any such measure relates to a covered investment within the meaning of Chapter 11 (Investment), and an obligation under Chapter 11 (Investment).

(15) Article 5 (Senior Management and Board of Directors) of Chapter 11 (Investment) shall apply to measures affecting the supply of a service only for a Party making commitments in accordance with Article 12 (Schedules of Non-Conforming Measures).

27. Co-operation

1. The Parties shall strengthen co-operation efforts in sectors, including sectors which are not covered by current co-operation arrangements. The Parties shall discuss and agree on the sectors for co-operation and develop co-operation programmes in these sectors in order to improve their domestic services capacity and their efficiency and competitiveness.

2. The Parties shall strengthen co-operation on the treatment and protection of commercial presence, including initiating discussions to better understand the implications of cross-applying prohibition of performance requirements in Chapter 11 (Investment) to this Chapter. The Parties shall explore the possibility of capacity building initiatives in this area where relevant.

3. The Parties shall strengthen co-operation on domestic regulations pertaining to trade in services by initiating discussions with a view to enhance the ease of doing business in the region. The Parties shall consider relevant developments at other multilateral platforms, such as the World Trade Organisation's Joint Initiative on Services Domestic Regulation, including provisions in the areas of submission of applications and independence.

4. The Parties shall strengthen co-operation in education services, as set out in Annex 8D (Education Services Co-operation).

28. Committee on Trade In Services

1. The Parties hereby establish a Services Committee, consisting of representatives of the Parties.

2. The Services Committee's functions shall be:

(a) to conduct reviews of commitments in accordance with Article 7 (Review of Commitments);

(b) if the multilateral negotiations referred to in Article 23 (Safeguard Measures) have not concluded within three years from entry into force of this Agreement, to enter into discussion on the question of emergency safeguard measures based on the principle of non-discrimination for the purpose of considering appropriate amendments to this Chapter;

(c) to enter into discussions on the application of most-favoured-nation treatment to trade in services for the purpose of considering appropriate amendments to this Chapter, in conjunction with the first review of commitments under Article 7

(Review of Commitments);

(d) to review the implementation of this Chapter;

(e) to consider any other matters identified by the Parties; and

(f) to report to the FTA Joint Committee as required.

3. The Services Committee shall conclude the discussions referred to in Paragraph 2(a) to (c) within five years of entry into force of this Agreement, unless the Parties agree otherwise.

4. The Services Committee shall meet as mutually determined by the Parties as required under this Article and Article 7 (Review of Commitments). Meetings may be conducted in person, or by any other means as mutually determined by the Parties.

ANNEX 8A. FINANCIAL SERVICES

1. Scope

1. This Annex shall apply to measures by a Party affecting the supply of financial services. Reference to the supply of a financial service in this Annex shall mean the supply of a service as defined in Article 1(t) (Definitions) of Chapter 8 (Trade in Services).

2. For the purposes of Article 1(s) (Definitions) of Chapter 8 (Trade in Services) and Article 2.2(c) (Scope) of Chapter 11 (Investment), "services supplied in the exercise of governmental authority" means the following:

(a) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies; (1)

(b) activities forming part of a statutory system of social security or public retirement plans; or

(c) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the government.

If a Party allows any of the activities referred to in Subparagraph (b) or (c) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, "services" shall include such activities.

3. Article 1(s) (Definitions) of Chapter 8 (Trade in Services) and the definition set out in Article 2.2(c) (Scope) of Chapter 11 (Investment) shall not apply to services covered by this Annex.

4. Article 10 (Local Presence) of Chapter 8 (Trade in Services) shall not apply to services covered by this Annex.

5. In the event of any inconsistency between this Annex and any other provision in this Agreement, this Annex shall prevail to the extent of the inconsistency.

(1) Activities referred to in Subparagraph (a) include any regulatory and enforcement activities conducted in pursuit of monetary or exchange rate policies.

2. Definitions

For the Purposes of this Annex:

(a) financial institution means any financial intermediary or other juridical person that is authorised to do business and regulated or supervised as a financial institution, under the laws and regulations of the Party in whose territory it is located;

(b) financial service means any service of a financial nature offered by a financial service supplier of a Party. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services include the following activities: Insurance and insurance-related services (i) direct insurance (including co-insurance):

(A) life; and

(B) non-life;

(ii) reinsurance and retrocession;

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

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

Banking and other financial services (excluding insurance)

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

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

(vii) financial leasing;

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

(ix) guarantees and commitments;

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

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

(B) foreign exchange;

(C) derivative products including futures and options;

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

(E) transferable securities; and

(F) other negotiable instruments and financial assets, including bullion;

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

(xii) money broking;

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

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

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

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

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

(d) new financial service means any financial service which is not supplied in the territory of a Party but is supplied and regulated in the territory of any other Party. This may include a service related to current and new products, or the manner in which a product is delivered;

(e) public entity means:

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

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

(f) self-regulatory organisation:

(i) in the case of Australia and New Zealand, means any non-governmental body, including any securities or futures exchange or market, clearing or payment settlement agency, or other organisation or association that exercises its own or delegated regulatory or supervisory authority over financial service suppliers or financial institutions; and

(ii) in the case of ASEAN Member States, means any non-governmental body, including any securities or futures exchange or market, clearing or payment settlement agency, other organisation or association that is recognised by legislation as a self-regulatory organisation and exercises regulatory or supervisory authority over financial service suppliers or financial institutions pursuant to legislation or delegation from central, regional or local governments or authorities.

3. Prudential Measures

Notwithstanding any other provision of this Agreement, a Party shall not be prevented from adopting or maintaining measures for prudential reasons, (2) including for the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement.

(2) The Parties understand that "prudential reasons" includes the maintenance of the safety, soundness, integrity or financial responsibility of individual financial institutions or financial service suppliers, as well as the safety and financial and operational integrity of payment and clearing systems.

4. Treatment of Certain Information

Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

5. Recognition

1. A Party may recognise prudential measures of any international standard-setting body, another Party or a non-Party in determining how the Party's measures relating to financial services shall be applied. (3) Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the international standard-setting body, another Party or a non-Party concerned, or may be accorded autonomously.

2. A Party that is a party to an agreement or arrangement referred to in Paragraph 1, whether future or existing, shall afford adequate opportunity for other interested Parties to negotiate their accession to such agreements or arrangements, or to negotiate comparable ones with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation, and, if appropriate, procedures concerning the sharing of information between the parties to the agreement or arrangement.

3. Where a Party accords recognition autonomously, it shall afford adequate opportunity for any other Party to demonstrate that the circumstances referred to in Paragraph 2 exist.

(3) For greater certainty, nothing in Article 9 (Most-Favoured-Nation Treatment) of Chapter 8 (Trade in Services) shall be construed to require a Party to accord such recognition to prudential measures of any other Party.

6. Transparency

1. The Parties recognise that transparent measures governing the activities of financial service suppliers are important in facilitating their ability to gain access to and operate in each others markets. Each Party commits to promote regulatory transparency in financial services.

2. Each Party shall ensure that all measures of general application to which this Annex applies are administered in a reasonable, objective and impartial manner.

3. Each Party shall ensure that measures of general application adopted or maintained by a Party are promptly published or otherwise made publicly available. (4)

4. To the extent practicable, each Party shall:

(a) publish or make available to interested persons (5) in advance any regulation of general application relating to this Annex that it proposes to adopt, and the purpose of such regulation; and

(b) provide interested persons and other Parties with a reasonable opportunity to comment on such proposed regulation.

5. To the extent practicable, each Party should allow a reasonable period of time between the date of publication of any final regulation of general application and the date when it enters into effect.

6. Each Party shall take such reasonable measures as may be available to it to ensure that the rules of general application adopted or maintained by a self-regulatory organisation. (6) of the Party are promptly published or otherwise made publicly available. (7)

7. Each Party shall maintain or establish appropriate mechanisms for responding to enquiries from interested persons of another Party regarding measures of general application covered by this Annex.

8. If a Party requires authorisation for the supply of a financial service, it shall endeavour to ensure, in accordance with its relevant laws and regulations, that its regulatory authorities:

(a) make publicly available the information necessary for financial service suppliers to comply with the requirements and procedures for obtaining, maintaining, amending and renewing such authorisation. Where it exists, that information shall include:

(i) fees;

(ii) contact information of the regulatory authorities;

(iii) indicative timeframes for the processing of an application;

(iv) other relevant requirements and procedures, if any;

(b) permit, to the extent practicable, the submission of an application at any time throughout the year. (8) If a specific time period for applying exists, the Party shall ensure that the regulatory authorities allow a reasonable period for the submission of an application;

(c) taking into account their competing priorities and resource constraints, endeavour to accept applications in electronic format;

(d) accept copies of documents that are authenticated in accordance with the Partyâs laws and regulations, in place of original documents, unless the regulatory authorities require original documents to protect the integrity of the authorisation process; and

(e) on request of an applicant in writing, inform the applicant of the status of its application. If the regulatory authority requires additional information from the applicant, it shall notify the applicant without undue delay.

9. Each Party shall endeavour to ensure, in accordance with its relevant laws and regulations, that the authorisation fees (9) charged by its regulatory authorities are reasonable, transparent and do not in themselves restrict the supply of the relevant service.

10. A Party's regulatory authority shall make an administrative decision on a complete application of a financial service supplier of another Party relating to the supply of a financial service within 180 days, and shall notify the applicant of the decision without undue delay. An application shall not be considered complete until all relevant proceedings are conducted and all necessary information is received. Where it is not practicable for such a decision to be made within 180 days, the regulatory authority shall notify the applicant without undue delay and shall endeavour to make the decision within a reasonable period of time thereafter.

11. Each Party shall endeavour to ensure, in accordance with its relevant laws and regulations, that once an authorisation is granted, that authorisation shall have effect without undue delay, subject to the applicable terms and conditions.

(4) For greater certainty, each Party may publish such information in its chosen language.

(5) For the purposes of this Article, the Parties confirm their shared understanding that "interested persons" are persons whose direct financial

interest could potentially be affected by the adoption of the regulations of general application.

(6) This Paragraph only applies to a Party when that Party has established a self-regulatory organisation.

(7) For greater certainty, each Party may publish such information in its chosen language.

(8) Regulatory authorities are not required to start considering applications outside of their official working hours and working days.

(9) Authorisation fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

7. Financial Services Exceptions

1. For greater certainty, nothing in this Annex shall be construed to prevent a Party from adopting or enforcing measures necessary to secure compliance with laws or regulations that are not inconsistent with this Annex, including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Parties or between Parties and non-Parties where like conditions prevail, or a disguised restriction on investment in financial institutions or trade in financial services.

2. For greater certainty, in accordance with Article 1.2(a) (Scope) of this Annex, Chapter 8 (Trade in Services) and Chapter 11 (Investment) shall not apply to activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies within the territory of each Party.

3. Nothing in Chapter 8 (Trade in Services) and Chapter 11 (Investment) shall apply to non-discriminatory measures of general application taken by any public entity in pursuit of related credit policies. This paragraph shall not affect a Party's obligations under Article 6 (Prohibition of Performance Requirements) of Chapter 11 (Investment) with respect to measures covered by Chapter 11 (Investment), under Article 9 (Transfers) of Chapter 11 (Investment) or Article 21 (Payments and Transfers) of Chapter 8 (Trade in Services).

4. Notwithstanding Article 9 (Transfers) of Chapter 11 (Investment) and Article 21 (Payments and Transfers) of Chapter 8 (Trade in Services), a Party may prevent or limit transfers by a financial institution or financial service supplier to, or for the benefit of, an affiliate of or person related to such institution or supplier, through the equitable, non- discriminatory and good faith application of measures relating to maintenance of the safety, soundness, integrity, or financial responsibility of financial institutions or financial service suppliers. This Paragraph does not prejudice any other provision of this Agreement that permits a Party to restrict transfers.

8. Transfers of Information and Processing of Information

1. A Party shall not take measures that prevent:

(a) transfers of information, including transfers of data by electronic means, necessary for the conduct of the ordinary business of a financial service supplier;

(b) the processing of information necessary for the conduct of the ordinary business of a financial service supplier; or

(c) transfers of equipment necessary for the conduct of the ordinary business of a financial service supplier, subject to importation rules consistent with international agreements.

2. Nothing in Paragraph 1:

(a) restricts the right of a Party to protect personal data, personal privacy and the confidentiality of individual records and accounts including in accordance with its laws and regulations so long as such right shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement;

(b) prevents a regulatory authority of a Party for regulatory or prudential reasons from requiring a financial service supplier in its territory to comply with domestic regulation in relation to data management and storage and system maintenance, as

well as to retain within its territory copies of records; or

(c) shall be construed to require a Party to allow the cross-border supply or the consumption abroad of services in relation to which it has not made commitments, including to allow non-resident suppliers of financial services to supply, as a principal, through an intermediary or as an intermediary, the provision and transfer of financial information and financial data processing referred to in Article 2(b)(xv) (Definitions).

9. Dispute Settlement

1. Chapter 20 (Consultations and Dispute Settlement) shall apply as modified by this Article to the settlement of disputes arising under this Chapter.

2. Arbitrators who are members of arbitral tribunals established pursuant to Chapter 20 (Consultations and Dispute Settlement) for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute.

3. If a Party claims that a dispute arises under this Chapter, Article 11 (Establishment and Re-convening of Arbitral Tribunals) of Chapter 20 (Consultations and Dispute Settlement) shall apply, except that:

(a) if the Parties to the dispute agree, each arbitrator shall meet the qualifications in Paragraph 4; and

(b) in any other case:

(i) each Party to the dispute shall select arbitrators that meet the qualifications set out in either Paragraph 4 or Article 11(9) (Establishment and Re-convening of Arbitral Tribunals) of Chapter 20 (Consultations and Dispute Settlement); and

(ii) if the responding Party invokes Article 3 (Prudential Measures) or Article 7 (Financial Services Exceptions), the chair of the arbitral tribunal shall meet the qualifications set out in Paragraph 4, unless the Parties to the dispute otherwise agree.

4. In addition to the requirements set out in Article 11.9(b) to (e) (Establishment and Re-convening of Arbitral Tribunals) of Chapter 20 (Consultations and Dispute Settlement), arbitrators in disputes arising under this Chapter shall have expertise or experience in financial services law or practice, which may include the regulation of financial institutions.

5. A Party may request the establishment of an arbitral tribunal pursuant to Article 12.2(c) (Investment Disputes in Financial Services) to consider whether and to what extent Article 3 (Prudential Measures) or Article 7 (Financial Services Exceptions) is a valid defence to a claim without having to request consultations under Article 6 (Consultations) of Chapter 20 (Consultations and Dispute Settlement). The arbitral tribunal shall endeavour to present its interim report pursuant to the timeframe in Article 13 (Arbitral Tribunal Procedures) of Chapter 20 (Consultations and Dispute Settlement).

6. If a Party seeks to suspend benefits in the financial services sector, an arbitral tribunal that reconvenes to make a determination on the proposed suspension of benefits, in accordance with Paragraph 7 and Article 17 (Compensation and Suspension of Concessions or other Obligations) of Chapter 20 (Consultations and Dispute Settlement), shall seek the views of financial services experts, as necessary.

7. In considering what concessions or other obligations to suspend in accordance with Article 17.6 (Compensation and Suspension of Concessions or other Obligations) of Chapter 20 (Consultations and Dispute Settlement):

(a) (i) if the measure affects the financial services sector and any other sector or sectors, the Complaining Party may suspend its concessions or other obligations in the financial services sector that have an effect equivalent to the effect of the measure in the financial services sector; and

(ii) if the measure only affects a sector or sectors other than the financial services sector, the Complaining Party shall not suspend concessions or other obligations in the financial services sector; and (10)

(b) the Complaining Party shall apply the following principles and procedures:

(i) the Complaining Party should first seek to suspend concessions or other obligations in the same sector or sectors where the arbitral tribunal has determined nullification or impairment to exist;

(ii) If the Complaining Party considers that it is not practicable or effective to suspend concessions or other obligations in the same sector or sectors, and _ that the circumstances are serious enough, it may suspend concessions or other obligations in a different sector or sectors, including the financial services sector. In the notification referred to in Article 17.3 of Chapter 20 (Consultations and Dispute Settlement), the Complaining Party shall also indicate the reasons on which its decision to suspend concessions or other obligations in a different sector or sectors is based; and

(iii) in applying the principles set out in Subparagraph (b)(i) and (ii), the Complaining Party shall take into account:

(A) the trade in the good, the supply of the service or other subject matter in which the arbitral tribunal has found the nullification or impairment, and the importance of that trade to the Complaining Party;

(B) that goods, financial services covered under this Annex and services other than such financial services covered under Chapter 8 (Trade in Services), are each distinct subject matters; and

(C) the broader economic elements related to the oniullification or impairment and the broader economic consequences of the suspension of concessions or other obligations.

(10) Subparagraph (a) shall apply to all Parties except Viet Nam and New Zealand. Subparagraph (b) shall only apply in the event Viet Nam or New Zealand is a Complaining Party or Responding Party, in which case it shall apply to all Parties involved.

10. Self-Regulatory Organisations

If a Party requires a financial institution of another Party to be a member of, participate in, or have access to a self-regulatory organisation to provide a financial service in its territory, that Party shall ensure that the self-regulatory organisation observes that Party's obligations under Article 4 (National Treatment) of Chapter 8 (Trade in Services).

11. Payment and Clearing Systems

Under terms and conditions that accord national treatment, each Party shall grant financial institutions of another Party established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This Article is not intended to confer access to the Partyâs lender of last resort facilities. (11)

(11) For greater certainty, a Party need not grant access under this Article to a financial institution of another Party established in its territory if such access or treatment is not granted to its own like financial institutions.

12. Investment Disputes In Financial Services (12)

1. If an investor of a Party submits a claim to arbitration under Section B of Chapter 11 (Investment) challenging a measure relating to the regulation or supervision of financial institutions, markets or instruments, the expertise or experience of any particular candidate with respect to financial services law or practice shall be taken into account in the appointment of arbitrators to the tribunal.

2. If an investor of a Party submits a claim to arbitration under Section B of Chapter 11 (Investment), and the disputing Party invokes Article 3 (Prudential Measures) or Article 7 (Financial Services Exceptions) as a defence, the following shall apply.

(a) The disputing Party shall, no later than the date the arbitral tribunal constituted under Chapter 11 (Investment) ("ISDS Tribunal") fixes for the disputing Party to submit its counter-memorial, or in the case of an amendment to the notice of arbitration, the date the ISDS Tribunal fixes for the disputing Party to submit its response to the amendment, submit in writing to the authorities responsible for financial services of the non-disputing Party, as set out in Article 16 (Contact Points), a request for a joint determination by the authorities of the disputing Party and the non- disputing Party on the issue of whether and to what extent Article 3 (Prudential Measures) or Article 7 (Financial Services Exceptions) is a valid defence to the claim. The disputing Party shall promptly provide the ISDS Tribunal, if constituted, and the Parties that are not a party to the investment dispute, a copy of the request. The arbitration may proceed with respect to the claim only as provided in Paragraph 4. (13)

(b) lf, within 14 days of the date of the receipt of a copy of the request for a joint determination, another Party provides a written notice to the disputing Party and the non-disputing Party indicating its substantial interest in the matter subject to the request, that other Party's authorities responsible for financial services may participate in discussions regarding the matter. The joint determination shall be made by the authorities responsible for financial services of the disputing Party and the non-disputing Party.

(c) The authorities of the disputing Party and the non-disputing Party shall attempt in good faith to make the joint determination specified in Subparagraph (a). Any such determination shall be transmitted promptly to the disputing parties, the Services Committee and, if constituted, to the ISDS Tribunal. The determination shall be binding on the ISDS Tribunal

and any decision or award issued by the ISDS Tribunal must be consistent with that determination.

(d) If the authorities referred to in Subparagraphs (a) and (c) have not made a determination within 150 days of the date of receipt of the disputing Party's written request for a determination under Subparagraph (a), the disputing Party or the non-disputing Party may request the establishment of an arbitral tribunal under Chapter 20 (Consultations and Dispute Settlement) ("Chapter 20 Tribunal") to consider whether and to what extent Article 3 (Prudential Measures) or Article 7 (Financial Services Exceptions) is a valid defence to the claim. The Chapter 20 Tribunal shall be constituted in accordance with Article 11 (Establishment and Re-convening of Arbitral Tribunals) of Chapter 20 (Consultations and Dispute Settlement). (14) Further to Article 13.15 and Article 13.16 (Arbitral Tribunal Procedures) of Chapter 20 (Consultations and Dispute Settlement), the Chapter 20 Tribunal shall transmit its final report to the disputing parties.

(13) For the purposes of this Article, "joint determination" means a determination by the authorities responsible for financial services of the disputing Party and the non-disputing Party set out in Article 16 (Contact Points). The joint determination shall be made by the authorities responsible for financial services of the disputing Party and the non-disputing Party.

3. The final report of a Chapter 20 Tribunal referred to in Paragraph 2(d) shall be binding on the ISDS Tribunal, and any decision or award issued by the ISDS Tribunal must be consistent with the final report of the Chapter 20 Tribunal.

4. If no request for the establishment of a Chapter 20 Tribunal pursuant to Paragraph 2(d) has been made within 10 days of the expiration of the 150-day period referred to in Paragraph 2(d), the ISDS Tribunal may proceed with respect to the claim.

(12) This Article shall only apply to measures affecting the supply of financial services through commercial presence in the territory of any one of other Parties in relation to an alleged breach of the obligations referred to in Article 26.2 (Treatment and Protection of Commercial Presence) of Chapter 8 (Trade in Services).

(14) For greater certainty, the Chapter 20 Tribunal referred to may only determine whether and to what extent Article 3 (Prudential Measures) or Article 7 (Financial Services Exceptions) is a valid defence to the claim.

(a) The ISDS Tribunal shall draw no inference regarding the application of Article 3 (Prudential Measures) or Article 7 (Financial Services Exceptions) from the fact that the authorities have not made a determination as described in Paragraph 2(a), (c) and (d).

(b) The non-disputing Party may make oral and written submissions to the ISDS Tribunal regarding the issue of whether and to what extent Article 3 (Prudential Measures) or Article 7 (Financial Services Exceptions) is a valid defence to the claim. Unless it makes such a submission, the non-disputing Party shall be presumed, for the purposes of the arbitration, to take a position on Article 3 (Prudential Measures) or Article 7 (Financial Services Exceptions) that is not inconsistent with that of the disputing Party.

5. For the purposes of this Article, the definitions of the following terms set out in Article 19 (Scope and Definitions) of Chapter 11 (Investment) are incorporated, mutatis mutandis: "disputing investor", "disputing parties", "disputing Party" and "non-disputing Party".

13. New Financial Services

1. Each host Party shall endeavour to permit financial institutions of another Party established in the territory of the host Party to supply a new financial service in the territory of the host Party that the host Party would permit its own financial institutions, in like circumstances, to supply without adopting a law or modifying an existing law. (15)

2. Where an application is approved, the supply of the new financial service is subject to relevant licensing, institutional or juridical form, or other requirements of the host Party.

(15) For greater certainty, a Party may issue a new regulation or other subordinate measure in permitting the supply of the new financial service.

14. Electronic Payment Systems

1. Recognising the rapid growth of electronic payments, the Parties shall to the extent practicable support the development

of efficient, safe and secure cross-border electronic payments by:

(a) fostering the adoption and use of internationally accepted standards for electronic payments;

(b) promoting interoperability and the inter-connection of electronic payment infrastructures; and

(c) encouraging innovation and competition in electronic payments services.

2. To this end and in accordance with their respective laws and regulations, each Party shall to the extent practicable endeavour:

(a) to make publicly available, in a timely manner, regulations on electronic payments, including in relation to regulatory approval, licensing requirements, procedures and technical standards;

(b) to finalise decisions on regulatory or licensing approvals in a timely manner;

(c) not to arbitrarily or unjustifiably discriminate between financial institutions and other payment service providers in relation to access to services and infrastructure necessary for the operation of electronic payment systems;

(d) to take into account, for relevant electronic payment systems, international standards for electronic payment messaging for electronic data exchange between financial institutions and service suppliers to enable greater interoperability between electronic payment systems;

(e) to facilitate the use of open platforms and architecture such as tools and protocols provided for through Application Programming Interfaces ("APIs") and encourage financial institutions and payment service providers to safely and securely make APIs for their products and services available to third parties, where possible, to facilitate greater interoperability, innovation and competition in electronic payments; and

(f) to facilitate innovation and competition, and recognise the importance of enabling the introduction of new financial and_ electronic payment products and services in a timely manner, such as through adopting regulatory and industry sandboxes.

3. In view of Paragraph 1, the Parties recognise the importance of upholding safety, efficiency, trust and security in electronic payment systems through regulations, and that to the extent practicable the adoption and enforcement of regulations and policies should be proportionate to the risks undertaken by the payment service providers.

15. Consultations

1. A Party may request consultations with another Party regarding any matter arising under this Agreement that affects financial services. The other Party shall consider such a request.

2. Consultations under this Article shall include the relevant representatives of the contact points specified in Article 16 (Contact Points).

16. Contact Points

1. The authorities for each Party responsible for financial services ("contact points") are:

(a) for Australia, the Department of the Treasury and the Department of Foreign Affairs and Trade and, as necessary, officials from the relevant regulatory authorities, including the Australian Prudential Regulation Authority, the Reserve Bank of Australia and the Australian Securities and Investment Commission;

(b) for Brunei Darussalam, the Ministry of Finance and Economy and the Brunei Darussalam Central Bank;

(c) for Cambodia, the Ministry of Economy and Finance, Securities and Exchange Regulator of Cambodia, the Insurance Regulator of Cambodia, the National Bank of Cambodia and the Ministry of Commerce;

(d) for Indonesia, the Ministry of Trade, the Ministry of Finance, the Indonesia Financial Services Authority (OJK) and Bank Indonesia;

(e) for Lao PDR, the Bank of the Lao PDR, the Ministry of Finance and the Lao Securities Commission Office;

(f) for Malaysia, the Bank Negara Malaysia and the Securities Commission Malaysia;

(g) for Myanmar, the Ministry of Planning and Finance, the Central Bank of Myanmar, the Securities and Exchange Commission of Myanmar and the Ministry of Commerce;

(h) for New Zealand, the Ministry of Foreign Affairs and Trade, in co-ordination with financial services regulators;

(i) for the Philippines, the Department of Finance, the Bangko Sentral ng Pilipinas, the Securities and Exchange Commission and the Insurance Commission;

(j) for Singapore, the Monetary Authority of Singapore;

(k) for Thailand, the Ministry of Finance, the Bank of Thailand, the Securities and Exchange Commission and the Office of Insurance Commission; and

(l) for Viet Nam, the Ministry of Industry and Trade, the State Bank of Viet Nam and the Ministry of Finance.

ANNEX 8C. PROFESSIONAL SERVICES

Objectives

1. The objectives of this Annex are to:

(a) encourage the development of systems for the recognition of professional qualifications, licensing or registration of professionals;

(b) encourage collaboration between accreditation, regulatory and professional bodies of two or more Parties to share knowledge and expertise in advancing the development of best practice in the accreditation and regulation of professions; and

(c) encourage professions to engage in advancing the liberalisation of international trade in professional services.

Principles for the Regulation of Professional Services

2. The Parties recognise that professional services play an essential role in facilitating trade and investment across both goods and services sectors and in promoting economic growth and business confidence.

3. Subject to each Party's services-related commitments in Annex 2 (Schedules of Specific Commitments for Services) or Annex 3 (Schedules of Reservations and Non-Conforming Measures for Investment and Services) and where there is mutual interest to do so, each Party shall encourage its relevant bodies to consider exploring the possibility of providing a framework that may include one or more of the following elements, subject to its laws and regulations:

(a) permits professionals of another Party visiting the host Party on a temporary basis for business purposes to provide professional services on the basis of their right to provide those services in their home territory;

(b) provides for, where relevant, the application of local ethical, conduct and disciplinary standards to professionals of another Party in a manner that is no more burdensome for professionals of another Party than the requirements imposed on professionals of the host Party in that professional services sub-sector;

(c) has sufficient flexibility, where professional indemnity insurance available to local professionals cannot be accessed by professionals of other Parties in the host Party, to provide a right for professionals of other Parties to either use their home-country professional indemnity insurance or disclose to clients their status as a professional of another Party and the extent of their professional indemnity insurance or that they lack such insurance;

(d) allows for all modes of providing professional services to be accommodated, including:

(i) on atemporary fly-in, fly-out basis;

(ii) on a cross-border basis through the use of telecommunications technology;

(iii) by establishing a commercial presence; and

(iv) through a combination of fly-in, fly-out and one or both of the other modes listed in Sub- subparagraphs (ii) and (iii);

(e) permits professionals of another Party or Parties and of the host Party to work together in the delivery of professional services; and

(f) permits professional services firms of another Party or other Parties, subject to the host Partyâs laws and regulations on the use of firm names, to use a firm name of their choice.

4. Each Party may consider, if feasible, implementing without the need for further written examination, procedures for the

temporary, limited or project-specific licensing of professional service suppliers of another Party or other Parties. Such a regime should not operate to prevent a professional of another Party from gaining a local licence once that professional satisfies the applicable local licensing requirements.

Recognition of Professional Qualifications, Licensing and Registration

5. If access to or pursuit of a profession that is regulated by a relevant body of a host Party is contingent on possession of specific professional qualifications or experience, that host Party shall encourage its relevant bodies to administer relevant systems in a manner that is as transparent and streamlined as possible, and that is not disproportionately complex or burdensome on professional service suppliers of other Parties seeking access to or pursuit of that profession in its jurisdiction.

6. Each Party shall encourage its relevant bodies to negotiate with the relevant bodies of another Party or other Parties on any form of arrangements for the mutual recognition of professional qualifications, licensing or registration in professional services sectors of mutual interest.

7. Each Party shall consult with its relevant bodies to identify professional services where two or more Parties are mutually interested in establishing dialogue on issues that relate to the recognition of professional qualifications, licensing or registration.

8. Each Party shall encourage its relevant bodies to take into account existing international agreements that relate to professional services in the development of mutual recognition or similar arrangements on the recognition of professional qualifications, licensing or registration.

9. Nothing in this Annex shall prevent a Party from requiring that natural persons seeking to supply a professional service possess the necessary qualifications or professional experience specified in the jurisdiction of the Party where the service is supplied.

Professional Services Working Group

10. The Parties hereby establish a Professional Services Working Group (the "Working Group") composed of representatives of each Party to advance the objectives of this Annex.

11. The Working Group shall, as appropriate, support the Parties' relevant professional and regulatory bodies in pursuing the objectives of this Annex. This support may include providing points of contact, facilitating meetings and providing information regarding regulation of professional services in each Party's territory.

12. The Working Group may consider, particularly with a view to facilitating the adoption of mutual recognition agreements by relevant bodies with limited resources, the development of guidelines for mutual recognition agreements.

13. The Working Group shall endeavour to meet within 12 months of the date of entry into force of the Second Protocol, and thereafter as agreed by the Working Group. For a meeting to be held, at least two Parties must participate. It is not necessary for representatives of all Parties to participate in order to hold a meeting.

14. The Working Group shall report to the FTA Joint Committee on its progress and on the future direction of its work.

15. Decisions of the Working Group shall have effect only in relation to those Parties that participated in the meeting at which the decision was taken, except if:

(a) otherwise agreed by all Parties; or

(b) a Party that did not participate in the meeting requests to be covered by the decision and all Parties originally covered by the decision agree.

Chapter 9. MOVEMENT OF NATURAL PERSONS

1. Objectives

The objectives of this Chapter are to:

(a) provide for rights and obligations in relation to the movement of natural persons between the Parties for business purposes;

(b) facilitate the movement of natural persons engaged in the conduct of trade and investment between the Parties;

(c) establish streamlined and transparent procedures for applications for immigration formalities for the temporary entry of natural persons to whom this Chapter applies; and

(d) protect the integrity of the Parties' borders and protect the domestic labour force and permanent employment in the territories of the Parties.

2. Scope

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

(a) business visitors;

(b) installers and servicers;

(c) executives of a business headquartered in a Party establishing a branch or subsidiary, or other commercial presence of that business in another Party;

(d) intra-corporate transferees; or

(e) contractual service suppliers.

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

3. Nothing in this Agreement shall prevent a Party from applying measures to regulate the entry of natural persons of another Party into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that those measures are not applied in a manner as to nullify or impair the benefits accruing to any Party under this Chapter.

4. The sole fact that a Party requires natural persons of another Party to obtain an immigration formality shall not be regarded as nullifying or impairing the benefits accruing to any Party under this Chapter.

3. Definitions

For the purposes of this Chapter:

(a) granting Party means a Party who receives an application for temporary entry from a natural person of another Party who is covered by Article 2.1 (Scope);

(b) immigration formality means a visa, permit, pass or other document or electronic authority granting a natural person of one Party the right to enter, reside or work or establish commercial presence in the territory of the granting Party;

(c) natural person of a Party means a natural person of a Party as defined in Article 1(j) (Definitions) of Chapter 8 (Trade in Services); and

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

4. Grant of Temporary Entry

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

(a) follow prescribed application procedures for the immigration formality sought; and

(b) meet all relevant eligibility requirements for temporary entry into, or extension of temporary stay in, the granting Party.

2. Any fees imposed in respect of the processing of an immigration formality shall be reasonable and in accordance with each Party's laws and regulations.

3. A Party may deny temporary entry or extension of temporary stay to natural persons of another Party who do not comply

with Paragraph 1(a) or (b).

4. The sole fact that a Party grants temporary entry to a natural person of another Party pursuant to this Chapter shall not be construed to exempt that natural person from meeting any applicable licensing or other requirements, including any mandatory codes of conduct, to practise a profession or otherwise engage in business activities.

5. Schedules of Specific Commitments on the Movement of Natural Persons

Each Party shall set out in its Schedule in Annex 4 (Schedules of Specific Commitments on the Movement of Natural Persons) its commitments for the temporary entry and temporary stay in its territory of natural persons of another Party covered by Article 2.1 (Scope). These Schedules shall specify the conditions and limitations governing those commitments, including the length of stay, for each category of natural persons included therein.

6. Processing of Applications

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

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

(a) the receipt of the application;

(b) the status of the application; and

(c) the decision concerning the application including, if approved, the period of stay and other conditions.

3. To the extent permissible under its laws and regulations, each Party shall endeavour to accept applications for immigration formalities in electronic format under the equivalent conditions of authenticity as paper submissions.

4. Where appropriate, each Party shall accept copies of documents authenticated in accordance with its laws and regulations in place of original documents, to the extent its laws and regulations permit.

7. Transparency

1. Each Party shall:

(a) publish or otherwise make publicly available explanatory material on all relevant immigration formalities which pertain to or affect the operation of this Chapter;

(b) no later than six months after the date of entry into force of this Agreement publish, such as on its immigration website, or otherwise make publicly available in its territory and to persons in the territory of the other Parties, the requirements for temporary entry under this Chapter, including explanatory material and relevant forms and documents that will enable natural persons of other Parties to become acquainted with those requirements;

(c) upon modifying or amending any immigration measure that affects the temporary entry of natural persons of another Party, ensure that the information published or otherwise made publicly available pursuant to Subparagraph (b) is updated as soon as possible within 90 days of the modification or amendment; and

(d) establish or maintain mechanisms to respond to enquiries from interested persons regarding its laws and regulations affecting the temporary entry and temporary stay of natural persons.

2. Each Party shall endeavour to publish, to the extent practicable, the information referred to in Paragraph 1 in the English language.

8. Application of Chapter 20 (Consultations and Dispute Settlement)

1. The Parties shall endeavour to settle any differences arising out of the implementation of this Chapter through consultations.

2. No Party shall have recourse to Chapter 20 (Consultations and Dispute Settlement) regarding a refusal to grant temporary entry under this Chapter unless:

(a) the matter involves a pattern of practice on the part of the granting Party; and

(b) the natural persons affected have exhausted all available domestic remedies regarding the particular matter.

9. Relation to other Chapters

1. Nothing in this Agreement shall be construed to impose any obligation on a Party regarding its immigration measures, except for this Chapter, Chapter 1 (Establishment of a Free Trade Area, Objectives and General Definitions), Chapter 19 (Institutional Provisions), Chapter 20 (Consultations and Dispute Settlement) and Chapter 21 (Final Provisions).

2. Nothing in this Chapter shall be construed to impose obligations or commitments with respect to other Chapters of this Agreement.

Chapter 10. ELECTRONIC COMMERCE

Section A. General Provisions

1. Definitions

For the purposes of this Chapter:

(a) computing facilities means computer servers and storage devices for processing or storing information for commercial use;

(b) covered person means:

(i) a "covered investment" as defined in Article 1(a) (Definitions) of Chapter 11 (Investment);

(ii) an “investor of a Party” as defined in Article 1(d) (Definitions) of Chapter 11 (Investment) but does not include an investor in a financial institution or an investor in a financial service supplier; (1) or

(iii) a service supplier of a Party as defined in Article 1 (Definitions) of Chapter 8 (Trade in Services),

but does not include a "financial institution", a "public entity", or a "financial service supplier", as defined in Article 1 (Definitions) of Annex 8A (Financial Services),

(c) electronic authentication means the process of verifying or testing an electronic statement or claim, in order to establish a level of confidence in the statement's or claim's reliability;

(d) electronic invoicing means the automated creation, exchange and processing of requests for payments between suppliers and buyers using a structured digital format;

(e) unsolicited commercial electronic message means an electronic message which is sent for commercial or marketing purposes to an electronic address, without the consent of the recipient or despite the explicit rejection of the recipient; (2) and

(f) trade administration documents means forms issued or controlled by a Party which must be completed by or for an importer or exporter in relation to the import or export of goods.

(1) For greater certainty, an investor in a financial institution or an investor in a financial service supplier may still be a "covered person" in relation to other investments that are not in a financial institution or in a financial service supplier.

(2) A Party may apply the definition to unsolicited commercial electronic messages delivered through one or more modes of delivery, including Short Message Service (SMS) or e-mail. Notwithstanding this footnote, Parties should endeavour to adopt or maintain measures consistent with Article 11 (Unsolicited Commercial Electronic Messages) that apply to other modes of delivery of unsolicited commercial electronic messages

2. Principles and Objectives

1. The Parties recognise the economic growth and opportunities provided by electronic commerce, the importance of frameworks that promote consumer confidence in electronic commerce and the importance of facilitating the development

and use of electronic commerce.

2. In supporting the development and promotion of electronic commerce, each Party recognises the importance of providing an enabling legal and regulatory environment, providing a conducive and competitive business environment and protecting the public interest.

3. The legal and regulatory frameworks in each Party that support electronic commerce shall take into account model laws, conventions, principles or guidelines of relevant international organisations or bodies.

4. The Parties recognise the importance of the principle of technological neutrality and the benefits of alignment in policy and regulatory approaches among the Parties as far as possible, to facilitate cross-border electronic commerce.

5. The objectives of this Chapter are to:

(a) promote electronic commerce among the Parties and the wider use of electronic commerce globally;

(b) contribute to creating an environment of trust and confidence in the use of electronic commerce; and

(c) enhance co-operation among the Parties regarding the development of electronic commerce.

3. Scope (3)

1. This Chapter shall apply to measures adopted or maintained by a Party that affect electronic commerce.

2. This Chapter shall not apply to government procurement.

3. This Chapter shall not apply to information held or processed by or on behalf of a Party, or measures related to such information, including measures related to its collection, except for Article 15 (Open Government Data).

4. Article 17 (Location of Computing Facilities) and Article 18 (Cross-Border Transfer of Information by Electronic Means) shall not apply to aspects of a Party's measures that do not conform with an obligation in Chapter 8 (Trade in Services) or Chapter 11 (Investment) to the extent that such measures are adopted or maintained in accordance with:

(a) Article 12 (Schedules of Non-Conforming Measures) of Chapter 8 (Trade in Services) or Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment);

(b) any terms, limitations, qualifications and conditions specified in a Party's commitments, or are with respect to a sector that is not subject to a Party's commitments, made in accordance with Article 9 (Most-Favoured-Nation Treatment) or Article 11 (Schedules of Specific Commitments) of Chapter 8 (Trade in Services); or

(c) any exception that is applicable to the obligations in Chapter 8 (Trade in Services) or Chapter 11 (Investment).

5. For greater certainty, measures affecting the supply of a service delivered electronically are subject to the obligations contained in the relevant provisions of:

(a) Chapter 8 (Trade in Services); and

(b) Chapter 11 (Investment), including Annex 2 (Schedules of Specific Commitments for Services), Annex 3 (Schedules of Reservations and Non-Conforming Measures for Investment and Services), as well as any exceptions that are applicable to those obligations.

(3) For greater certainty, the Parties affirm that the obligations under this Chapter are without prejudice to any Partyâ's position in the WTO.

4. Co-operation

1. Each Party shall, where appropriate, co-operate to:

(a) work together to assist MSMEs to overcome obstacles in the use of electronic commerce;

(b) identify areas for targeted co-operation between the Parties which will help Parties implement or enhance their electronic commerce legal frameworks, such as research and training activities, capacity building and the provision of technical assistance;

(c) share information, experiences and best practices in addressing challenges related to the development and use of

electronic commerce;

(d) encourage co-operative activities to promote electronic commerce including those that would improve the effectiveness and efficiency of electronic commerce;

(e) encourage business sectors to develop methods or practices that enhance accountability and consumer confidence to foster the use of electronic commerce; and

(f) actively participate in regional and multilateral fora to promote the development of electronic commerce.

2. The Parties shall endeavour to undertake forms of co-operation that build on and do not duplicate existing co-operation initiatives pursued in international fora.

Section B. Trade Facilitation

5. Paperless Trading

1. Each Party shall:

(a) work towards implementing initiatives which provide for the use of paperless trading, taking into account the methods agreed by international organisations including the World Customs Organization; (4)

(b) endeavour to accept trade administration documents submitted electronically as the legal equivalent of the paper version of such trade administration documents; and

(c) endeavour to make trade administration documents available to the public in electronic form.

2. The Parties shall co-operate in international fora to enhance acceptance of electronic versions of trade administration documents.

(4) Cambodia, Lao PDR and Myanmar shall not be obliged to apply Subparagraph (a) before 1 January 2027.

6. Electronic Authentication and Electronic Signature

1. Except in circumstances otherwise provided for under its laws and regulations, a Party shall not deny the legal validity of a signature solely on the basis that the signature is in electronic form. (5)

2. Taking into account international norms for electronic authentication, each Party shall:

(a) permit participants in electronic transactions to determine appropriate electronic authentication technologies and implementation models for their electronic transactions;

(b) not limit the recognition of electronic authentication technologies and implementation models for electronic transactions; and

(c) permit participants in electronic transactions to have the opportunity to prove that their electronic transactions comply with its laws and regulations with respect to electronic authentication.

3. Notwithstanding Paragraph 2, each Party may require that, for a particular category of electronic transactions, the method of electronic authentication meets certain performance standards or is certified by an authority accredited in accordance with its laws and regulations.

4. The Parties shall encourage the use of interoperable electronic authentication.

(5) Cambodia, Lao PDR and Myanmar shall not be obliged to apply Paragraph 1 before 1 January 2027.

7. Electronic Invoicing

1. The Parties recognise the importance of electronic invoicing which increases the efficiency, accuracy and reliability of transactions.

2. The Parties recognise the benefits of interoperable electronic invoicing systems. When developing measures related to electronic invoicing, a Party shall endeavour to take into account international standards, where applicable, and in accordance with its readiness in terms of capacity, regulations and infrastructure.

3. The Parties agree to co-operate and collaborate on initiatives which promote, encourage, support or facilitate the adoption of electronic invoicing.

Section C. Creating a Conducive Environment for Electronic Commerce

8. Digital Trade Standards and Conformity Assessment

1. The Parties recognise the important role of relevant international standards in reducing barriers to trade and fostering a well-functioning digital economy, including their potential to decrease trade compliance costs and increase interoperability, reliability and efficiency.

2. Each Party shall, where appropriate, encourage the adoption of international standards that support digital trade.

3. The Parties shall endeavour to explore collaborative initiatives, share best practices and exchange information on standards, technical regulations and conformity assessment procedures in areas of mutual interest with a view to facilitating electronic commerce and digital trade.

9. Online Consumer Protection

1. The Parties recognise the importance of adopting and maintaining transparent and effective consumer protection measures for electronic commerce as well as other measures conducive to the development of consumer confidence.

2. Each Party shall adopt or maintain laws or regulations to provide protection for consumers using electronic commerce against fraudulent and misleading practices that cause harm or potential harm to such consumers. (6)

3. The Parties recognise the importance of co-operation between their respective competent authorities in charge of consumer protection on activities related to electronic commerce in order to enhance consumer protection.

4. Each Party shall publish information on the consumer protection it provides to users of electronic commerce, including how:

(a) consumers can pursue remedies; and

(b) business can comply with any legal requirements.

5. Each Party shall endeavour to promote awareness of, and access to, consumer redress mechanisms, including mechanisms for cross-border transactions.

6. The Parties recognise the benefits of alternative dispute resolution to facilitate the resolution of claims over electronic commerce transactions. To this end, the Parties shall endeavour to, where appropriate, share best practices and collaborate on alternative dispute resolution.

(6) Cambodia, Lao PDR and Myanmar shall not be obliged to apply Paragraph 2 before 1 January 2027.

10. Online Personal Information Protection

1. Each Party shall adopt or maintain a legal framework which ensures the protection of personal information of the users of electronic commerce. (7) (8)

2. In the development of its legal framework for the protection of personal information, each Party shall take into account international standards, principles, guidelines and criteria of relevant international organisations or bodies.

3. Each Party shall publish information on the personal information protection it provides to users of electronic commerce, including how:

(a) individuals can pursue remedies; and

(b) business can comply with any legal requirements.

4. Recognising that the Parties may take different legal approaches to protecting personal information, each Party shall encourage the development and adoption of mechanisms to promote compatibility and where appropriate, interoperability, between different legal frameworks for protecting personal information. The Parties also recognise that, in accordance with their respective laws and regulations, there are other existing mechanisms, including contractual provisions, for the transfer of personal information across their territories to ensure the protection of personal information.

5. The Parties shall encourage juridical persons to publish, including on the internet, their policies and procedures related to the protection of personal information.

6. The Parties shall co-operate, to the extent possible, for the protection of personal information transferred from a Party.

(7) Cambodia, Lao PDR and Myanmar shall not be obliged to apply Paragraph 1 before 1 January 2027.

(8) For greater certainty, a Party may comply with the obligation under Paragraph 1 by adopting or maintaining measures such as comprehensive privacy or personal information protection laws and regulations, sector-specific laws and regulations covering the protection of personal information, or laws and regulations that provide for the enforcement of contractual obligations assumed by juridical persons relating to the protection of personal information.

11. Unsolicited Commercial Electronic Messages

1. The Parties recognise the importance of promoting confidence and trust in electronic commerce, including through transparent and effective measures that limit unsolicited commercial electronic messages. Each Party shall adopt or maintain measures regarding unsolicited commercial electronic messages that:

(a) require suppliers of unsolicited commercial electronic messages to facilitate the ability of recipients to stop receiving such messages;

(b) require the consent, as specified according to its laws and regulations, of recipients to receive commercial electronic messages; or

(c) otherwise provide for the minimisation of unsolicited commercial electronic messages.

2. Each Party shall endeavour to ensure that commercial electronic messages are clearly identifiable as such, clearly disclose on whose behalf they are sent, and to the extent provided for in a Party's laws and regulations, contain the necessary information to enable recipients to request cessation free of charge and at any time.

3. Each Party shall provide recourse against suppliers of unsolicited commercial electronic messages who do not comply with its measures implemented pursuant to Paragraph 1. (9)

4. The Parties shall endeavour to co-operate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.

(9) Cambodia, Lao PDR and Myanmar shall not be obliged to apply Paragraph 3 before 41 January 2027. Brunei Darussalam shall not be obliged to apply Paragraph 3 before 1 January 2025.

12. Domestic Regulatory Framework

1. Each Party shall adopt or maintain a legal framework governing electronic transactions, taking into account the UNCITRAL Model Law on Electronic Commerce 1996, the United Nations Convention on the Use of Electronic Communications in International Contracts done at New York on 23 November 2005, or other applicable international conventions and model laws relating to electronic commerce. (10)

2. Each Party shall endeavour to avoid any unnecessary regulatory burden on electronic transactions and take into account input by interested persons (11) in the development of its legal framework for electronic transactions.

(10) Cambodia shall not be obliged to apply Paragraph 1 before 1 January 2027.

(11) For the purposes of Paragraph 2, a Party may limit âinterested personsâ to those persons provided for in, and in accordance with, its laws and regulations.

13. Customs Duties

1. Each Party shall maintain its current practice of not imposing customs duties on electronic transmissions between the Parties.

2. The practice referred to in Paragraph 1 is in accordance with the WTO Ministerial Decision adopted on 17 June 2022 in relation to the Work Programme on Electronic Commerce (WT/MIN(22)/32).

3. Each Party may adjust its practice referred to in Paragraph 1 with respect to any further outcomes in the WTO Ministerial Decisions on customs duties on electronic transmissions within the framework of the Work Programme on Electronic Commerce.

4. The Parties shall review this Article in the light of any further WTO Ministerial Decisions in relation to the Work Programme on Electronic Commerce.

5. For greater certainty, Paragraph 1 shall not preclude a Party from imposing taxes, fees or other charges on electronic transmissions, provided that such taxes, fees or charges are imposed in a manner consistent with this Agreement.

14. Transparency

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

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

15. Open Government Data (12)

1. The Parties recognise that facilitating public access to and use of government information and data may foster economic and social development, competitiveness and innovation.

2. To the extent that a Party makes government information and data available to the public, it shall endeavour, to the extent practicable, to ensure that the information is made available in an open or machine-readable format.

3. The Parties shall endeavour to co-operate in matters that facilitate and expand public access to and use of government information and data, including exchanging information and experiences on practices and policies, with a view to encouraging the development of electronic commerce and creating business opportunities, especially for MSMEs.

4. For greater certainty, this Article is without prejudice to each Party's laws and regulations, including on intellectual property and personal data protection.

(12) Cambodia, Lao PDR and Myanmar shall not be obliged to apply this Article for a period of five years after the date of entry into force of the Second Protocol.

16. Cyber Security

The Parties recognise the importance of:

(a) building the capabilities of their respective competent authorities responsible for computer security incident responses, including through the exchange of best practices; and

(b) using existing collaboration mechanisms to co-operate on matters related to cyber security.

Section D. Promoting Cross-Border Electronic Commerce

17. Location of Computing Facilities

1. The Parties recognise that each Party may have its own measures regarding the use or location of computing facilities, including requirements that seek to ensure the security and confidentiality of communications.

2. No Party shall require a covered person to use or locate computing facilities in that Party's territory as a condition for conducting business in that Party's territory. (13)

3. Nothing in this Article shall prevent a Party from adopting or maintaining:

(a) any measure inconsistent with Paragraph 2 that it considers necessary to achieve a legitimate public policy objective, (14) provided that the measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; or

(b) any measure that it considers necessary for the protection of its essential security interests. Such measures shall not be disputed by other Parties.

(13) Cambodia, Lao PDR and Myanmar shall not be obliged to apply Paragraph 2 before 1 January 2027, with an extension until 1 January 2030 if necessary. Viet Nam shall not be obliged to apply Paragraph 2 before 1 January 2027.

(14) For the purposes of Subparagraph (a), the Parties affirm that the necessity behind the implementation of such legitimate public policy shall be decided by the implementing Party.

18. Cross-border Transfer of Information by Electronic Means

1. The Parties recognise that each Party may have its own regulatory requirements concerning the transfer of information by electronic means.

2. A Party shall not prevent cross-border transfer of information by electronic means where such activity is for the conduct of the business of a covered person. (15)

3. Nothing in this Article shall prevent a Party from adopting or maintaining:

(a) any measure inconsistent with Paragraph 2 that it considers necessary to achieve a legitimate public policy objective, (16) provided that the measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; or

(b) any measure that it considers necessary for the protection of its essential security interests. Such measures shall not be disputed by other Parties.

(15) Cambodia, Lao PDR and Myanmar shall not be obliged to apply Paragraph 2 before 1 January 2027, with an extension until 1 January 2030 if necessary. Viet Nam shall not be obliged to apply Paragraph 2 before 1 January 2027.

(16) For the purposes of Subparagraph (a), the Parties affirm that the necessity behind the implementation of such legitimate public policy shall be decided by the implementing Party.

Section E. Other Provisions

19. Digital Inclusion for Electronic Commerce

1. The Parties recognise the importance of digital inclusion and that all people and businesses including MSMEs can participate in, contribute to, and benefit from electronic commerce and digital trade. To this end, the Parties recognise the importance of expanding and facilitating electronic commerce and digital trade opportunities by addressing barriers to, and encouraging participation in, electronic commerce and digital trade. The Parties also recognise that this may require tailored approaches, developed in consultation with any individuals and groups that disproportionately face such barriers and other relevant stakeholders.

2. To promote digital inclusion, the Parties shall endeavour to co-operate on matters relating to digital inclusion. This may include:

(a) identifying and addressing barriers to accessing electronic commerce and digital trade opportunities;

(b) developing programmes to promote participation of all groups in electronic commerce and digital trade;

(c) sharing experiences and best practices, including exchange of experts, with respect to digital inclusion; and

(d) co-operation in other areas as jointly agreed by the Parties.

20. Settlement of Disputes

1. Unless otherwise provided in this Chapter, Chapter 20 (Consultations and Dispute Settlement) shall apply to this Chapter, subject to the following:

(a) Chapter 20 (Consultations and Dispute Settlement) shall not apply to Article 17 (Location of Computing Facilities) and Article 18 (Cross-border Transfer of Information by Electronic Means) until three years after the date of entry into force of the Second Protocol; and

(b) in relation to Cambodia, Lao PDR and Myanmar, Chapter 20 (Consultations and Dispute Settlement) shall not apply to any matter arising under this Chapter.

2. Notwithstanding Paragraph 1(b), Chapter 20 (Consultations and Dispute Settlement) may apply in relation to Cambodia, Lao PDR and Myanmar after a review of the application of Chapter 20 (Consultations and Dispute Settlement) to this Chapter for Cambodia, Lao PDR and Myanmar, which shall commence within 10 years of the date of entry into force of the Second Protocol for that Party. In the course of that review, which shall be completed within three years from the date of its commencement, Cambodia, Lao PDR and Myanmar shall give due consideration to applying Chapter 20 (Consultations and Dispute Settlement) to either the whole or parts of this Chapter.

3. In the event of any difference between the Parties regarding the operation, interpretation, or application of Article 17 (Location of Computing Facilities) or Article 18 (Cross- border Transfer of Information by Electronic Means), the Parties concerned shall first engage in consultations in good faith and make every effort to reach a mutually satisfactory solution.

4. In the event of any difference between Cambodia, Lao PDR or Myanmar, or between Cambodia, Lao PDR or Myanmar and another Party, regarding the operation, interpretation, or application of this Chapter while Chapter 20 (Consultations and Dispute Settlement) does not apply in relation to Cambodia, Lao PDR and Myanmar, the Parties concerned shall first engage in consultations in good faith and make every effort to reach a mutually satisfactory solution.

5. In the event that the consultations referred to in Paragraph 3 or 4 fail to resolve the difference, any Party engaged in the consultations may refer the matter to the FTA Joint Committee.

Chapter 11. INVESTMENT

Section A.

1. Definitions

For the purposes of this Chapter:

(a) covered investment means, with respect to a Party, an investment in its territory of an investor of another Party, in existence as of the date of entry into force of this Agreement or established, acquired or expanded thereafter, and which, where applicable, has been admitted (1) by the host Party, subject to its relevant laws, regulations and policies;

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

(b) freely usable currency means a freely usable currency as determined by the IMF in accordance with the IMF Articles of Agreement and any amendments thereto;

(c) investment (2) means every kind of asset owned or controlled by an investor, directly or indirectly, and that has the

characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gains or profits, or the assumption of risk. Forms that an investment may take include:

(2) The term "investment" does not include an order or judgment entered in a judicial or administrative action.

(i) movable and immovable property and other property rights such as mortgages, liens or pledges; (3)

(3) For greater certainty, market share, market access, expected gains and opportunities for profit-making are not, by themselves, investments.

(ii) shares, stocks and other forms of equity participation in a juridical person including rights derived therefrom;

(iii) bonds, debentures, loans (4) and other debt instruments of a juridical person and rights derived therefrom;

(4) A loan issued by a Party to another Party is not an investment.

(iv) intellectual property rights and goodwill which are recognised pursuant to the laws and regulations of the host Party;

(v) claims to money or to any contractual performance related to a business and having financial value; (5)

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

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

(vii) business concessions required to conduct economic activity and having financial value conferred by law or under a contract, including any concession to search for, cultivate, extract or exploit natural resources.

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

(d) investor of a Party means a natural person of a Party or a juridical person of a Party that seeks to make, (6) is making, or has made an investment in the territory of another Party;

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

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

(f) juridical person of a Party means a juridical person constituted or organised under the law of that Party;

(g) measure means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form;

(h) measures by a Party includes measures taken by:

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

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

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

(j) return means an amount yielded by or derived from an investment, including profits, dividends, interest, capital gains, royalties and all other lawful income.

2. Scope

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

(a) investors of any other Party; and

(b) covered investments.

2. This Chapter shall not apply to:

(a) government procurement;

(b) subsidies or grants provided by a Party;

(c) services supplied in the exercise of a governmental authority by the relevant body or authority of a Party. For the purposes of this Chapter, a service supplied in the exercise of governmental authority means any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers;

(d) measures adopted or maintained by a Party to the extent that they are covered by Chapter 8 (Trade in Services); and

(e) measures adopted or maintained by a Party to the extent that they are covered by Chapter 9 (Movement of Natural Persons).

3. Notwithstanding Paragraph 2(d), Article 5 (Senior Management and Board of Directors), (7) Article 7 (Treatment of Investment), Article 8 (Compensation for Losses), Article 9 (Transfers), Article 10 (Expropriation and Compensation), Article 11 (Subrogation), and Section B (Investment Disputes between a Party and an Investor), shall apply, mutatis mutandis, to any measure affecting the supply of a service by a service supplier of a Party through commercial presence in the territory of any other Party within the meaning of Chapter 8 (Trade in Services), but only to the extent that any such measure relates to a covered investment and an obligation under this Chapter.

(7) Article 5 (Senior Management and Board of Directors) shall apply to measures affecting the supply of a service only for a Party making commitments in accordance with Article 12 (Schedules of Non-Conforming Measures) of Chapter 8 (Trade in Services).

3. National Treatment (8)

1. Each Party shall accord to investors of another Party, and to covered investments, in relation to establishment, acquisition, expansion, management, conduct, operation, liquidation, sale, transfer or other disposition of investments, treatment no less favourable than that it accords, in like circumstances, to its own investors and their investments. (9)

2. For greater certainty, the treatment to be accorded by a Party under Paragraph 1 means, with respect to a government other than at the central level, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that government to investors, and to the investments of investors, of the Party of which it forms a part.

(8) For greater certainty, whether the treatment is accorded in "like circumstances" under this Article depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives.

(9) Notwithstanding Article 21 (Claim by an Investor of a Party), or anything else to the contrary in this Chapter, a disputing investor under Article 21 (Claim by an Investor of a Party) may not submit to conciliation or arbitration a claim under that Article that a disputing Party has breached an obligation under Article 3 (National Treatment) where the alleged breach arises within 30 months of the date of entry into force of the Second Protocol.

4. Most-Favoured-Nation Treatment (10) (11)

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

2. Each Party shall accord to covered investments treatment no less favourable than it accords, in like circumstances, to

investments in its territory of investors of any other Party or non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

3. For greater certainty, the treatment referred to in Paragraphs 1 and 2 does not encompass any international dispute resolution procedures or mechanisms under other existing or future international agreements.

(10) For greater certainty, whether the treatment is accorded in "like circumstances" under this Article depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives.

(11) This Article shall not apply to Lao PDR, Myanmar and Viet Nam. The treatment under this Article shall not be accorded to investors of Lao PDR, Myanmar and Viet Nam, and to covered investments of such investors.

5. Senior Management and Board of Directors

1. No Party shall require that a juridical person of that Party that is a covered investment appoint to a senior management position a natural person of any particular nationality.

2. A Party may require that a majority of the board of directors, or any committee thereof, of a juridical person of that Party that is a covered investment, be of a particular nationality or resident in the territory of that Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

6. Prohibition of Performance Requirements

1. No Party shall impose or enforce, as a condition for establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory of an investor of any other Party, any of the following requirements: (12)

(a) to export a given level or percentage of goods;

(b) to achieve a given level or percentage of domestic content;

(c) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;

(d) to relate the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with investments of that investor;

(e) to restrict sales of goods in its territory that such investments produce by relating such sales to the volume or value of its exports or foreign exchange earnings;

(f) to transfer a particular technology, a production process, or other proprietary knowledge to a person in its territory;

(g) to supply exclusively from the territory of the Party the goods that such investments produce to a specific regional market or to the world market; or

(h) to adopt a given rate or amount of royalty under a license contract, in regard to any licence contract in existence at the time the requirement is imposed or enforced, or any future licence contract freely entered into between the investor and a person in its territory, provided that the requirement is imposed or enforced in a manner that constitutes direct interference with that licence contract by an exercise of non-judicial governmental authority of a Party. (13) For greater certainty, this Subparagraph does not apply when the licence contract is concluded between the investor and a Party.

Notwithstanding this Article, Subparagraphs (f) and (h) shall not apply to Cambodia, Lao PDR and Myanmar.

2. No Party shall condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory of an investor of any other Party on compliance with any of the following requirements:

(a) to achieve a given level or percentage of domestic content;

(b) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its

territory;

(c) to relate the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with investments of that investor; or

(d) to restrict sales of goods in its territory that such investments produce by relating such sales to the volume or value of its exports or foreign exchange earnings.

3. (a) Nothing in Paragraph 2 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of any other Party, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

(b) Paragraph 1(f) and (h) shall not apply:

(i) if a Party authorises use of an intellectual property right in accordance with Article 31 or Article 31bis of the TRIPS Agreement, (14) or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement; or

(ii) if the requirement is imposed or enforced by a court, administrative tribunal, or competition authority to remedy a practice determined after judicial or administrative process to be anti-competitive under the Party's competition laws and regulations. (15)

(c) Paragraph 1(h) shall not apply if the requirement is imposed or enforced by a tribunal or competent authority as equitable remuneration under the Party's copyright laws and regulations.

(d) Paragraphs 1(a) to (c), 2(a) and (b) shall not apply to qualification requirements for goods with respect to export promotion and foreign aid programmes.

(e) Paragraph 2(a) and (b) shall not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

4. For greater certainty, Paragraphs 1 and 2 shall not apply to any requirement other than those set out in those Paragraphs.

(12) For greater certainty, each Party may maintain existing measures or adopt new or more restrictive measures that do not conform with obligations under this Article, as set out in List A and List B of its Schedule in Annex 3 (Schedules of Reservations and Non- Conforming Measures for Investment and Services).

(13) For the purposes of this Subparagraph, a âlicence contractâ means any contract conceming the licensing of technology, a production process, or other proprietary knowledge.

(14) This includes any amendment to the TRIPS Agreement implementing paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2) adopted at Doha on 14 November 2001.

(15) The Parties recognise that a patent does not necessarily confer market power.

7. Treatment of Investment (16)

1. Each Party shall accord to covered investments fair and equitable treatment and full protection and security in accordance with the customary international law minimum standard of treatment of aliens.

2. For greater certainty:

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

(b) full protection and security requires each Party to take such measures as may be reasonably necessary to ensure the physical protection and security of the covered investment; and

(c) the concepts of fair and equitable treatment and full protection and security do not require treatment to be accorded to covered investments in addition to or beyond that which is required under the customary international law minimum standard of treatment of aliens, and do not create additional substantive rights.

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

(16) This Article shall be interpreted in accordance with Annex 11A (Customary International Law).

8. Compensation for Losses

Each Party shall accord to investors of another Party, and to covered investments, with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict, civil strife or state of emergency, treatment no less favourable than that it accords, in like circumstances, to:

(a) its own investors and their investments; and

(b) investors of any other Party or non-Party, and their investments.

9. Transfers

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

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

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

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

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

(e) payments made pursuant to Article 8 (Compensation for Losses) and Article 10 (Expropriation and Compensation);

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

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

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

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

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

(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; (17)

(g) social security, public retirement, superannuation, compulsory savings schemes or other arrangements to provide pension or similar retirement benefits;

(h) severance entitlements of employees; and

(i) requirements to register and satisfy other formalities imposed by the central bank and other relevant authorities of that

Party.

4. Nothing in this Chapter shall affect the rights and obligations of each Party as a member of the IMF under the IMF Articles of Agreement as may be amended, including the use of exchange actions which are in conformity with the IMF Articles of Agreement as may be amended, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its obligations under this Chapter regarding such transactions, except under Article 4 (Measures to Safeguard the Balance of Payments) of Chapter 18 (General Provisions and Exceptions) or on request of the IMF.

(17) For greater certainty, this also includes the adoption or enforcement of any taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes including any taxation measure that differentiates between persons based on their place of residence or incorporation.

10. Expropriation and Compensation (18)

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

(a) for a public purpose; (19)

(b) in a non-discriminatory manner;

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

(d) in accordance with due process of law.

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

(a) be paid without delay; (20)

(b) be equivalent to the fair market value of the expropriated investment at the time when or immediately before the expropriation was publicly announced, (21) or when the expropriation occurred, whichever is applicable;

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

(d) be effectively realisable and freely transferable between the territories of the Parties.

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

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

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

6. Notwithstanding Paragraphs 1 to 4, in the case where Singapore or Viet Nam is the expropriating Party, any measure of expropriation relating to land, which shall be as defined in the existing laws and regulations of the expropriating Party on the date of entry into force of this Agreement, shall be for a purpose and upon payment of compensation made in accordance with the aforesaid laws and regulations. Such compensation shall be subject to any subsequent amendments to the aforesaid laws and regulations relating to the amount of compensation where such amendments follow the general trends in the market value of land.

(18) This Article shall be interpreted in accordance with Annex 11B (Expropriation and Compensation).

(19) For the avoidance of doubt, where Malaysia is the expropriating Party, any measure of expropriation relating to land shall be for the purposes as set out in Malaysia's laws and regulations relating to land acquisition.

(20) The Parties understand that there may be legal and administrative processes that need to be observed before payment can be made.

(21) In the case of the Philippines, the time when or immediately before the expropriation was publicly announced refers to the date of filing of the Petition for Expropriation.

11. Subrogation

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

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

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

4. In the exercise of a subrogated or transferred right or claim, a Party or an agency of a Party exercising such right or claim shall disclose the coverage of the claims arrangement with its investors of the relevant Party.

12. Denial of Benefits (22)

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

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

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

2. A Party may deny the benefits of this Chapter to an investor of another Party that is a juridical person of that other Party and to investments of that investor if persons of a non- Party own or control the juridical person and the denying Party adopts or maintains measures with respect to the non-Party or a person of the non-Party that prohibit transactions with the juridical person or that would be violated or circumvented if the benefits of this Chapter were accorded to the juridical person or to its investments.

3. A Party may deny the benefits of this Chapter to an investor of another Party or of a non-Party and to investments of that investor where such an investor has made an investment in breach of the provisions of the denying Party's laws and regulations that implement the Financial Action Task Force Recommendations.

4. A Party may deny the benefits of this Chapter to an investor of another Party that is a juridical person of that other Party and to investments of that investor if persons of a non- Party own or control the juridical person and the denying Party does not maintain diplomatic relations with the non-Party.

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

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

(a) "owned" by natural persons or juridical persons of a Party or a non-Party if more than 50 per cent of the equity interest in it is beneficially owned by such persons; and

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

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

(22) A Party's right to deny the benefits of this Chapter as provided for in this Article may be exercised at any time.

13. Reservations and Non-Conforming Measures

1. Article 3 (National Treatment), Article 4 (Most-Favoured- Nation Treatment), Article 5 (Senior Management and Board of Directors) and Article 6 (Prohibition of Performance Requirements) shall not apply to:

(a) any existing non-conforming measure that is maintained by a Party at:

(i) the central level of government, as set out by that Party in List A of its Schedule in Annex 3 (Schedules of Reservations and Non-Conforming Measures for Investment and Services);

(ii) a regional level of government, as set out by that Party in List A of its Schedule in Annex 3 (Schedules of Reservations and Non- Conforming Measures for Investment and Services); or

(iii) a local level of government;

(b) the continuation or prompt renewal of any non- conforming measure referred to in Subparagraph (a); or

(c) an amendment to any non-conforming measure referred to in Subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure:

(i) for Cambodia, Indonesia, Lao PDR, Myanmar and the Philippines, as it existed at the date of entry into force of the Second Protocol; and

(ii) for Australia, Brunei Darussalam, Malaysia, New Zealand, Singapore, Thailand and Viet Nam, as it existed immediately before the amendment,

with Article 3 (National Treatment), Article 4 (Most- Favoured-Nation Treatment), Article 5 (Senior Management and Board of Directors) and Article 6 (Prohibition of Performance Requirements).

2. Article 3 (National Treatment), Article 4 (Most-Favoured- Nation Treatment), Article 5 (Senior Management and Board of Directors) and Article 6 (Prohibition of Performance Requirements) shall not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities, as set out by that Party in List B of its Schedule in Annex 3 (Schedules of Reservations and Non-Conforming Measures for Investment and Services).

3. Notwithstanding Paragraph 1(c)(ii), for five years after the date of entry into force of the Second Protocol, Article 3 (National Treatment), Article 4 (Most-Favoured-Nation Treatment), Article 5 (Senior Management and Board of Directors) and Article 6 (Prohibition of Performance Requirements), shall not apply to an amendment to any non- conforming measure referred to in Paragraph 1(a) to the extent that the amendment does not decrease the conformity of the measure as it existed at the date of entry into force of the Second Protocol with Article 3 (National Treatment), Article 4 (Most-Favoured-Nation Treatment), Article 5 (Senior Management and Board of Directors) and Article 6 (Prohibition of Performance Requirements).

4. No Party shall, under any measure adopted after the date of entry into force of the Second Protocol and covered by List B of its Schedule in Annex 3 (Schedules of Reservations and Non-Conforming Measures for Investment and Services), require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment that exists at the time the measure becomes effective, unless otherwise specified in the initial approval by the relevant authorities.

5. Article 3 (National Treatment) and Article 4 (Most- Favoured-Nation Treatment) shall not apply to any measure that falls within Article 5 of the TRIPS Agreement, and any measure that is covered by an exception to, or derogation from, the obligations imposed by Article 4 (National Treatment) of Chapter 14 (Intellectual Property), or imposed by Article 3 or 4 of the TRIPS Agreement.

14. Transparency

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

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

3. Where publication referred to in Paragraphs 1 and 2 is not practicable, such information (23) shall be made otherwise publicly available.

4. To the extent provided for under its legal framework, each Party shall endeavour to provide a reasonable opportunity for comments by interested persons on measures referred to in Paragraph 1 before adoption.

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

(a) identify the office or official responsible for the relevant matter; and

(b) assist as necessary in facilitating communications with the requesting Party with respect to that matter.

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

(a) any measures or international agreements referred to in Paragraph 1; and

(b) any new, or any changes to existing, measures or administrative guidelines which significantly affect investors or covered investments, whether or not the other Party has been previously notified of the new or changed measures or administrative guidelines.

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

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

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

(a) to the extent provided under its legal framework and where possible, persons of another Party that are directly affected by a proceeding are provided reasonable notice when a proceeding is initiated;

(b) to the extent provided under its legal framework, it endeavours to afford such personsâ with reasonable opportunity to present their positions prior to any final administrative action, when time, the nature of the proceeding, and the public interest permit; and

(c) its procedures are in accordance with its laws and regulations.

10. Each Party shall maintain judicial or administrative tribunals or procedures for the purposes of the prompt review 24 and, where warranted, correction of final administrative actions regarding matters covered by this Chapter. Where such procedures or tribunals are not independent of the agency entrusted with the administrative action concerned, each Party shall ensure that the tribunals or procedures provide for an objective and impartial review.

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

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

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

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

(23) For greater certainty, such information may be published in each Party's chosen language.

(24) For avoidance of doubt, the form of "review" shall be as provided for under the Party's law.

15. Special Formalities and Disclosure of Information

1. Nothing in Article 3 (National Treatment) shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, including a requirement that covered investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not substantially impair the protections afforded by a Party to investors of another Party and covered investments pursuant to this Chapter.

2. Notwithstanding Article 3 (National Treatment), a Party may require an investor of another Party, or a covered investment, to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect to the extent possible any confidential information which has been provided from any disclosure that would prejudice legitimate commercial interests of the investor or the covered investment. Nothing in this Paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

16. Special and Differential Treatment for the Newer ASEAN Member States

In order to increase the benefits of this Chapter for the newer ASEAN Member States, and in accordance with the objectives of and the preamble to this Agreement and objectives of Chapter 12 (Economic Co-operation), the Parties recognise the importance of according special and differential treatment to the newer ASEAN Member States under this Chapter through:

(a) technical assistance to strengthen their capacity in relation to investment policies and promotion, including in areas such as human resource development;

(b) access to information on the investment policies of other Parties, business information, relevant databases and contact points for investment promotion agencies;

(c) commitments in areas of interest to the newer ASEAN Member States; and

(d) recognising that commitments by each newer ASEAN Member State may be made in accordance with its individual stage of development.

17. Work Programme

1. The Parties shall, no later than 18 months after the date of entry into force of the Second Protocol, commence a review of Section B (Investment Disputes between a Party and an Investor). The Parties shall conclude the review within 12 months from the date of commencement of the discussions, unless the Parties agree otherwise.

2. In parallel to the review in Paragraph 1, the Parties shall also enter into discussions on introducing two additional elements to Article 6.1 (Prohibition of Performance Requirements), as follows:

(a) to purchase, use or accord a preference to, in its territory, technology of the Party or of a person of the Party; and

(b) toprevent the purchase or use of, or the according of a preference to, in its territory, a particular technology.

Without prejudice to other Least Developed Counlry Parties, these discussions will consider flexibilities for Lao PDR and Myanmar. The Parties shall conclude these discussions within 36 months from the date of commencement of the discussions, unless the Parties agree otherwise.

3. The discussions in Paragraphs 1 and 2 are without prejudice to the respective positions of the Parties, and the outcomes of the discussions are subject to agreement by all the Parties. These discussions shall be overseen by the Committee on Investment (the "Investment Committee") established pursuant to Article 18 (Committee on Investment).

18. Committee on Investment

1. The Parties hereby establish an Investment Committee consisting of representatives of the Parties.

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

determined by the Parties.

3. The Investment Committee's functions shall be:

(a) to oversee the discussions referred to in Article 17.1 and 17.2 (Work Programme);

(b) to review the implementation of this Chapter;

(c) to consider any other matters related to this Chapter identified by the Parties; and

(d) toreport to the FTA Joint Committee as required.

Section B. Investment Disputes between a Party and an Investor

19. Scope and Definitions

1. This Section shall apply to disputes between a Party and an investor of another Party concerning an alleged breach of an obligation of the former under Section A which causes loss or damage to the covered investment of the investor.

2. This Section shall not apply to investment disputes which have occurred prior to the entry into force of this Agreement.

3. A natural person possessing the nationality or citizenship of a Party may not pursue a claim against that Party under this Section.

4. For the purpose of this Section:

(a) Appointing Authority means:

(i) in the case of arbitration under Article 22.1(b) or (c) (Submission of a Claim), the Secretary-General of ICSID;

(ii) in the case of arbitration under Article 22.1(d) or (e) (Submission of a Claim), the Secretary-General of the Permanent Court of Arbitration; or

(iii) any person as agreed between the disputing parties;

(b) disputing Party means a Party against which a claim is made under this Section;

(c) disputing party means a disputing investor or a disputing Party;

(d) disputing parties means a disputing investor and a disputing Party;

(e) disputing investor means an investor of a Party that makes a claim against another Party on its own behalf under this Section, and where relevant includes an investor of a Party that makes a claim on behalf of a juridical person of the disputing Party that the investor owns or controls;

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

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

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

(i) non-disputing Party means the Party of the disputing investor;

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

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

20. Consultations

1. In the event of an investment dispute referred to in Article 19.1 (Scope and Definitions), the disputing parties shall as far as possible resolve the dispute through consultations, with a view towards reaching an amicable settlement. Such consultations, which may include the use of non-binding, third party procedures, shall be initiated by a written request for

consultations delivered by the disputing investor to the disputing Party.

2. With the objective of resolving an investment dispute through consultations, a disputing investor shall provide the disputing Party, prior to the commencement of consultations, with information regarding the legal and factual basis for the investment dispute.

21. Claim by an Investor of a Party

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

(a) that the disputing Party has breached an obligation arising under Article 3 (National Treatment), Article 7 (Treatment of Investment), Article 8 (Compensation for Losses), Article 9 (Transfers) and Article 10 (Expropriation and Compensation) relating to the management, conduct, operation or sale or other disposition of a covered investment; and

(b) that the disputing investor or the covered investment has incurred loss or damage by reason of, or arising out of, that breach.

22. Submission of a Claim

1. A disputing investor may submit a claim referred to in Article 21 (Claim by an Investor of a Party) at the choice of the disputing investor:

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

(b) under the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings, (25) provided that both the disputing Party and the non- disputing Party are parties to the ICSID Convention; or

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

(d) under the UNCITRAL Arbitration Rules; or

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

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

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

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

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

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

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

(b) the disputing investor's written consent for the Appointing Authority to appoint that arbitrator.

(28) In the case of the Philippines, the submission of a claim under the ICSID Convention and the /CSID 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.

23. Conditions and Limitations on Submission of a Claim

1. The submission of a dispute as provided for in Article 21 (Claim by an Investor of a Party) to conciliation or arbitration under Article 22.1(b) to (e) (Submission of a Claim) in accordance with this Section, shall be conditional upon:

(a) the submission of the investment dispute to such conciliation or arbitration taking place within three years of the time at

which the disputing investor became aware, or should reasonably have become aware, of a breach of an obligation referred to in Article 21(a) (Claim by an Investor of a Party) causing loss or damage to the disputing investor or a covered investment;

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

(c) the notice of arbitration being accompanied by the disputing investor's written waiver of its right to initiate or continue any proceedings before the courts or administrative tribunals of either Party, or other dispute settlement procedures, of any proceeding with respect to any measure alleged to constitute a breach referred to in Article 21 (Claim by an Investor of a Party).

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

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

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

24. Selection of Arbitrators

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

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

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

2. Arbitrators shall have expertise or experience in public international law, international trade or international investment rules, and be independent of, and not be affiliated with or take instructions from the disputing Party, the non-disputing Party or the disputing investor.

3. The Appointing Authority shall serve as appointing authority for arbitration under this Article.

4. If a tribunal has not been constituted within 75 days from the date that a claim is submitted to arbitration under this Section, the Appointing Authority, on the request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators not yet appointed.

5. The disputing parties may establish rules relating to expenses incurred by the tribunal, including arbitrator's remuneration.

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

25. Consolidation

Where two or more claims have been submitted separately to arbitration under Article 21 (Claim by an Investor of a Party) and the claims have a question of law or fact in common and arise out of the same or similar events or circumstances, all concerned disputing parties may agree to consolidate those claims in any manner they deem appropriate.

26. Conduct of the Arbitration

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

before proceeding to the merits.

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

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

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

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

6. Where an investor claims that the disputing Party has breached Article 10 (Expropriation and Compensation) by the adoption or enforcement of a taxation measure, the disputing Party and the non-disputing Party shall, upon request from the disputing Party, hold consultations with a view to determining whether the taxation measure in question has an effect equivalent to expropriation or nationalisation. Any tribunal that may be established pursuant to this Section shall accord serious consideration to the decision of both Parties under this Paragraph.

7. If both Parties fail either to initiate consultations referred to in Paragraph 6, or to determine whether such taxation measure has an effect equivalent to expropriation or nationalisation within the period of 180 days from the date of the receipt of request for consultations referred to in Article 20 (Consultations), the disputing investor shall not be prevented from submitting its claim to arbitration in accordance with this Section.

27. Transparency of Arbitral Proceedings

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

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

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

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

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

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

28. Governing Law

1. Subject to Paragraphs 2 and 3, when a claim is submitted under Article 21 (Claim by an Investor of a Party), the tribunal shall decide the issues in dispute in accordance with this Agreement, any other applicable agreements between the Parties, any relevant rules of international law applicable in the relations between the Parties, and, where applicable, any relevant law of the disputing Party.

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

fail to issue such a decision within 60 days, any interpretation submitted by a Party shall be forwarded to the disputing parties and the tribunal, which shall decide the issue on its own account.

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

29. Awards

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

(a) monetary damages and any applicable interest; and

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

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

3. A tribunal may not award punitive damages.

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

5. Subject to Paragraph 6 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay. (26)

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

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

(i) 120 days have 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 22.1(e) (Submission of a Claim):

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

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

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

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

ANNEX 11A. CUSTOMARY INTERNATIONAL LAW

The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Article 7 (Treatment of Investment) of Chapter 11 (Investment), including in relation to the customary international law minimum standard of treatment of aliens, results from a general and consistent practice of States that they follow from a sense of legal obligation.

ANNEX 11B. EXPROPRIATION AND COMPENSATION

The Parties confirm their shared understanding that:

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

2. Article 10 (Expropriation and Compensation) of Chapter 11 (Investment) addresses two situations:

(a) the first situation is direct expropriation, where a covered 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 Party 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 related actions by a Party, in a specific fact situation, constitutes an expropriation of the type referred to in Paragraph 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 related actions by a Party 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 government's 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. (2)

4. Non-discriminatory regulatory actions by a Party that are designed and applied to achieve legitimate public welfare objectives, such as the protection of public health, safety and the environment do not constitute expropriation of the type referred to in Paragraph 2(b).

(1) For the purposes of this Annex, "property interest" refers to such property interest as may be recognised under the laws and regulations of that Party.

(12) "Public purpose" shall be read with reference to Article 10.1(a) and 10.6 (Expropriation and Compensation) of Chapter 11 (Investment).

Chapter 12. ECONOMIC CO-OPERATION

1. Scope and Objectives

1. The Parties reaffirm the importance of ongoing economic co-operation initiatives between ASEAN, Australia and New Zealand, and agree to complement their existing economic partnership in areas where the Parties have mutual interests, taking into account the different levels of development of the Parties.

2. The Parties acknowledge the provisions to encourage and facilitate economic co-operation included in various Chapters of this Agreement.

3. Economic co-operation under this Chapter shall support implementation of this Agreement through economic co-operation activities which are trade or investment related as specified in the Work Programme.

2. Definitions

For the purposes of this Chapter:

(a) implementing Party or implementing Parties means, for each component of the Work Programme, the Party or Parties primarily responsible for the implementation of that component; and

(b) Work Programme means the programme of economic co-operation activities, organised into components, mutually determined by the Parties prior to the entry into force of this Agreement.

3. Resources

1. Recognising the development gaps among the ASEAN Member States and among the Parties, the Parties shall contribute appropriately to the implementation of the Work Programme.

2. In determining the appropriate level of contribution to the Work Programme, the Parties shall take into account:

(a) the different levels of development and capacity of Parties;

(b) any in-kind contributions able to be made to Work Programme components by Parties; and

(c) that the appropriate level of contribution enhances the relevance and sustainability of co-operation, strengthens partnerships between Parties and builds Parties' shared commitment to the effective implementation and oversight of Work Programme components.

4. Economic Co-operation Work Programme

1. Each Work Programme component shall:

(a) be trade or investment related and support this Agreement's implementation;

(b) be specified in the Work Programme;

(c) involve a minimum of two ASEAN Member States, Australia or New Zealand;

(d) address the mutual priorities of the participating Parties; and

(e) where possible, avoid duplicating existing economic co-operation activities.

2. The description of each Work Programme component shall specify the details necessary to provide clarity to the Parties regarding the scope and purpose of such component.

5. Focal Points for Implementation

1. Each Party shall designate a focal point for all matters relating to the implementation of the Work Programme and shall keep all Parties updated on its focal point's details.

2. The focal points shall be responsible for overseeing and reporting on the implementation of the Work Programme in accordance with Article 6 (Implementation and Evaluation of Work Programme Components) and Article 7 (Review of Work Programme), and for responding to inquiries from any Party regarding the Work Programme.

6. Implementation and Evaluation of Work Programme Components

1. Prior to the commencement of each Work Programme component, the implementing Party or implementing Parties, in consultation with relevant participating Parties, shall develop an implementation plan for that Work Programme component and provide that plan to each Party.

2. The implementing Party or implementing Parties for a Work Programme component may use existing mechanisms for the implementation of that component.

3. Until the completion of a Work Programme component, the implementing Party or implementing Parties shall regularly monitor and evaluate the relevant component and provide periodic reports to each Party including a final component completion report.

7. Review of Work Programme

At the direction of the FTA Joint Committee, the Work Programme shall be reviewed to assess its overall effectiveness and recommendations may be made. The FTA Joint Committee may make modifications to the Work Programme taking into account the review and available resources.

8. Non-Application of Chapter 20 (Consultations and Dispute Settlement)

Chapter 20 (Consultations and Dispute Settlement) shall not apply to any matter arising under this Chapter.

Chapter 13. TRADE AND SUSTAINABLE DEVELOPMENT

1. Basic Principles

1. The Parties recall the United Nations General Assembly Resolution 70/1 titled "Transforming our world: the 2030 Agenda

for Sustainable Development", adopted on 25 September 2015 (the "2030 Agenda for Sustainable Development") and its Sustainable Development Goals.

2. The Parties recall their commitment to the multilateral environmental and labour agreements to which they are individually a party, as well as the 2030 Agenda for Sustainable Development.

3. The Parties recognise trade and sustainable development as a new area for economic co-operation under this Agreement. The Parties recognise the importance of co-operation as a mechanism to strengthen the Parties' joint and individual efforts and capacities to protect the environment and to collaborate on labour and women's economic empowerment issues, as they strengthen their trade and investment relations.

4. The Parties recognise that sustainable development encompasses economic development, social development and environmental protection, all three being interdependent and mutually reinforcing, and affirm their desire to promote the development of international trade and investment in a way that contributes to the objectives of sustainable development.

5. The Parties respect the sovereign rights of each Party to develop, set, administer and enforce its laws, regulations and policies, in the area of trade and sustainable development.

6. The Parties share a common aspiration to promote high standards of environmental and labour protection commensurate with each Party's needs, capabilities and national circumstances, and according to each Party's laws and regulations; and to uphold these in the context of sustainable development.

7. The Parties recognise that it is inappropriate to use environmental or labour standards as a disguised means of trade protectionism. The Parties also recognise that it is inappropriate to weaken or reduce levels of protection in their environmental or labour standards to encourage trade or investment.

2. Co-operation

1. The Parties may engage in economic co-operation activities consistent with Article 1 (Basic Principles) in the area of trade and sustainable development.

2. Economic co-operation may be undertaken through ways and means considered appropriate by the FTA Joint Committee.

3. Economic co-operation may cover topics related to:

(a) the climate and environment;

(b) the green and blue economy;

(c) circular economy in manufacturing; (1)

(d) energy;

(e) labour;

(f) issues under the Sustainable Development Goals; and

(g) any other areas as mutually agreed by the Parties.

4. Economic co-operation under this Chapter is subject to the availability of funds and human and other resources, and to each Party's laws and regulations.

5. Where the implementation of this Chapter is inhibited by capacity constraints, the Parties may co-operate under Chapter 12 (Economic Co-operation) to assist ASEAN Member States with such implementation. Such co-operation is subject to the identification of trade and sustainable development policy-related needs; the availability of funds and human and other resources; and each Party's laws and regulations.

(1) For greater certainty, co-operation related to circular economy in manufacturing shall include capacity-building on the concepts of remanufacturing and repairing or altering of goods.

3. Contact Points

To ensure that technical co-operation under this Chapter occurs on an ongoing basis, each Party shall designate a contact

point or contact points for technical co-operation and information exchange under this Chapter. Each Party shall notify the other Parties of its contact point or contact points and of any change to its contact point or contact points.

4. Non-Application of Chapter 20 (Consultations and Dispute Settlement)

Chapter 20 (Consultations and Dispute Settlement) shall not apply to any matter arising under this Chapter.

Chapter 14. INTELLECTUAL PROPERTY

1. Objectives

Each Party confirms its commitment to reducing impediments to trade and investment by promoting deeper economic integration through effective and adequate creation, utilisation, protection and enforcement of intellectual property rights, taking into account the different levels of economic development and capacity and differences in national legal systems and the need to maintain an appropriate balance between the rights of intellectual property owners and the legitimate interests of users in subject matter protected by intellectual property rights.

2. Definitions

For the purposes of this Chapter:

(a) intellectual property rights means copyright and related rights; rights in trademarks, geographical indications, industrial designs, patents, and layout-designs (topographies) of integrated circuits; rights in plant varieties; and rights in undisclosed information; as referred to in the TRIPS Agreement; and

(b) WIPO means the World Intellectual Property Organization.

3. Affirmation of the TRIPS Agreement

Each Party affirms its rights and obligations with respect to each other Party under the TRIPS Agreement.

4. National Treatment

1. Each Party shall accord to the nationals of each other Party treatment no less favourable than it accords to its own nationals with regard to the protection (1) of intellectual property, subject to the exceptions provided in the TRIPS Agreement and in those multilateral agreements concluded under the auspices of WIPO.

2. Each Party may avail itself of the exceptions referred to under Paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of any other Party to designate an address for service of process in its territory, or to appoint an agent in its territory, only where such exceptions are:

(a) necessary to secure compliance with laws and regulations that are not inconsistent with this Chapter; and

(b) not applied in a manner that would constitute a disguised restriction on trade.

(1) For the purposes of this Paragraph, "protection" includes matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights, as well as those matters affecting the use of intellectual property rights specifically covered by this Chapter. Further, for the purposes of this Paragraph, "protection" also includes the prohibition on circumvention of effective technological measures specified in Article 5 (Copyright).

5. Copyright

1. Each Party shall:

(a) provide to authors of works (2) the exclusive right to authorise any communication to the public of their works by wire or wireless means;

(b) provide criminal procedures and penalties at least in cases where a person wilfully infringes copyright for commercial advantage or financial gain; and

(c) foster the establishment of appropriate bodies for the collective management of copyright and encourage such bodies to operate in a manner that is efficient, publicly transparent and accountable to their members.

2. Each Party shall endeavour to:

(a) provide to authors of sound recordings (3) the exclusive right to authorise any communication to the public of their sound recordings by wire or wireless means;

(b) provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures (4) that are used by copyright owners in connection with the exercise of their copyright rights and that restrict acts, in respect of their works, which are not authorised by the copyright owners concerned or permitted by law; and

(c) provide criminal procedures and penalties at least in cases where a person wilfully commits a significant infringement of copyright, that is not committed for commercial advantage or financial gain and which is not otherwise permitted by law,

but which has a substantial prejudicial impact on the owner of the copyright.

(2) For the purposes of this Chapter, "works" includes a cinematograph film.

(3) Where a Party is, or becomes, a member of the W/iPO Performances and Phonograms Treaty (WPPT), that Party's obligations under this Paragraph shall be subject to any commitments and reservations that Party has made under the WPPT.

(4) For the purposes of this Chapter, "effective technological measures" means any technology, device, or component that is used by copyright owners in connection with the exercise of their copyright rights and that restricts acts, in respect of their works or sound recordings, which are not authorised by the copyright owners concerned or permitted by law.

6. Government Use of Software

Each Party confirms its commitment to:

(a) maintain appropriate laws, regulations or policies that make provision for its central government agencies to continue to use only legitimate computer software in a manner authorised by law and consistent with this Chapter; and

(b) encourage its respective regional and local governments to maintain or adopt similar measures.

7. Trademarks and Geographical Indications

1. Each Party shall maintain a trademark classification system that is consistent with the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, as amended from time to time.

2. Each Party shall provide high quality trademark rights through the conduct of examination as to substance and formalities and through opposition and cancellation procedures.

3. Each Party shall protect trademarks where they predate, in its jurisdiction, geographical indications in accordance with its domestic law and the TRIPS Agreement.

4. Each Party recognises that geographical indications may be protected through a trademark system.

8. Genetic Resources, Traditional Knowledge and Folklore

Subject to each Party's international obligations, each Party may establish appropriate measures to protect genetic resources, traditional knowledge and folklore.

9. Co-operation

1. The Parties acknowledge the significant differences in capacity between some Parties in the area of intellectual property. Mindful of this, where a Party's implementation of this Chapter is inhibited by capacity constraints, each other Party shall, as appropriate, and upon request, endeavour to provide co-operation to that Party to assist in the implementation of this

Chapter.

2. At the request of a Party, any other Party may, to the extent possible and as appropriate, render assistance to the requesting Party in order to enhance the requesting Party's national framework for the acquisition, protection, enforcement, utilisation and creation of intellectual property, with a view to developing intellectual property systems that foster domestic innovation in the requesting Party.

3. The Parties agree to promote dialogue on intellectual property issues, including by:

(a) designating contact points in relevant government agencies, including contact points for the enforcement of intellectual property rights at the border;

(b) encouraging interaction between intellectual property experts in order to broaden understanding of each others' intellectual property systems; and

(c) exchanging information concerning the infringement of intellectual property rights, in accordance with domestic law.

4. The Parties shall endeavour to co-operate in order to promote the efficiency and transparency of intellectual property administration and registration systems, including by exchanging information regarding developments in such systems and by developing publicly accessible databases of registered rights.

5. The Parties shall endeavour to co-operate in order to promote education and awareness regarding the benefits of effective protection and enforcement of intellectual property rights.

6. Parties shall co-operate on border measures with a view to eliminating trade which infringes intellectual property rights. Parties who are members of the WTO shall also co-operate with each other to support the effective implementation of the requirements relating to border measures set out in Articles 51 to 60 of the TRIPS Agreement.

7. Recognising the importance of achieving the objectives of this Chapter, should any Party intend to accede to any of the following treaties, it can seek to co-operate with other Parties to support its accession to, and its implementation of, the following treaties:

(a) the Patent Cooperation Treaty 1970;

(b) the Strasbourg Agreement Concerning the International Patent Classification 1971,

(c) the Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure 1977;

(d) the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks 1989;

(e) the Patent Law Treaty 2000,

(f) the International Convention for the Protection of New Varieties of Plants 1991;

(g) the TRIPS Agreement;

(h) the Singapore Treaty on the Law of Trademarks 2006;

(i) the WIPO Copyright Treaty 1996; and

(j) the WIPO Performances and Phonograms Treaty 1996.

8. Each Party shall, on request and as it considers appropriate, endeavour to provide co-operation to support any Party's efforts to implement an inclusive system (5) of trademark registration.

9. All co-operation under this Article is subject to the availability of resources.

(5) An inclusive system of trademarks does not limit the scope of registrable trademarks and thus permits the registration of all trademarks that are capable of distinguishing a good or service, such as shapes, aspects of packaging, single and multi-colour marks, sounds and scents.

10. Transparency

1. Each Party shall ensure that its laws and regulations of general application that pertain to the availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property rights are made publicly available in at least

the national language of that Party or in the English language. Each Party shall also endeavour to provide that final judicial decisions and administrative rulings pertaining to the aforesaid matters are made publicly available in at least the national language of that Party or in the English language.

2. Each Party shall endeavour to make the information referred to in Paragraph 1, which is publicly available, made available in the English language and on the internet.

3. Each Party shall endeavour to make available on the internet databases of all pending and registered trademark rights in its jurisdiction.

11. Recognition of Transitional Periods Under the TRIPS Agreement

Nothing in this Chapter shall derogate from any transitional period for implementing a provision of the TRIPS Agreement that has been or may be agreed by the Council for TRIPS, established pursuant to Article IV of the WTO Agreement, either prior or subsequent to the entry into force of this Agreement.

12. Committee on Intellectual Property

1. Recognising the importance of achieving the objectives of this Chapter, the Parties hereby establish a Committee on Intellectual Property (the "IP Committee"), consisting of representatives of the Parties to monitor the implementation and administration of this Chapter.

2. The IP Committee shall meet annually or as mutually determined by the Parties. Meetings may be conducted in person, or by any other means as mutually determined by the Parties.

3. The IP Committee shall determine its terms of reference in accordance with this Chapter.

4. The IP Committee shall determine its work programme in response to priorities as identified by the Parties.

5. In the course of fulfilling its functions, the IP Committee may agree that existing or new mechanisms be utilised or developed in order to promote dialogue between the Parties on intellectual property issues, including by providing opportunities for stakeholders to engage with the Parties on such issues.

6. Each Party shall notify the IP Committee annually of its progress in meeting its commitments under Article 5 (Copyright), and developments regarding accession to treaties listed in Article 9.7 (Co-operation). These notifications shall be submitted at least 30 days prior to the first IP Committee meeting of the year.

Chapter 15. COMPETITION

1. Objectives

The objectives of this Chapter are to promote competition in markets, and enhance economic efficiency and consumer welfare, through the adoption and maintenance of laws and regulations to proscribe anti-competitive activities, and through regional co-operation on the development and implementation of competition laws and regulations among the Parties. The pursuit of these objectives will help the Parties to secure the benefits of this Agreement, including facilitating trade and investment among the Parties.

2. Basic Principles

1. Each Party shall implement this Chapter in a manner consistent with the objectives of this Chapter.

2. Acknowledging each Party's rights and obligations under this Chapter, the Parties recognise:

(a) the sovereign rights of each Party to develop, set, administer and enforce its competition laws, regulations and policies; and

(b) the significant differences that exist among the Parties in capacity and level of development in the area of competition law and policy.

3. Appropriate Measures Against Anti-Competitive Activities (1)

1. Each Party shall adopt or maintain competition laws and regulations to proscribe anti-competitive activities,(2) and shall

enforce those laws and regulations accordingly.

2. Each Party shall establish or maintain an authority or authorities to effectively implement its competition laws and regulations.

3. Each Party shall ensure independence in decision making by its authority or authorities in relation to the enforcement of its competition laws and regulations.

4. Each Party shall apply and enforce its competition laws and regulations in a manner that does not discriminate on the basis of nationality.

5. Each Party shall apply its competition laws and regulations to all entities engaged in commercial activities, regardless of their ownership. Any exclusion or exemption from the application of each Party's competition laws and regulations, shall be transparent and based on grounds of public policy or public interest.

6. Each Party shall make publicly available its competition laws and regulations, and any guidelines issued in relation to the administration of such laws and regulations, except for internal operating procedures.

7. Each Party shall make public the grounds for any final decision or order to impose a sanction or remedy under its competition laws and regulations, and any appeal therefrom, subject to:

(a) (i) its laws and regulations;

(ii) its need to safeguard confidential information; or

(iii) its need to safeguard information on grounds of public policy or public interest; and

(b) redactions from the final decision or order on any of the grounds referred to in Subparagraph (a)(i) to (iii).

8. Each Party shall ensure that before a sanction or remedy is imposed on any person or entity for breaching its competition laws or regulations, such person or entity is given the reasons, which should be in writing where possible, for the allegations that the Party's competition laws or regulations have been breached, and a fair opportunity to be heard and to present evidence.

9. Each Party shall, subject to any redactions necessary to safeguard confidential information, make the grounds for any final decision or order to impose a sanction or remedy under its competition laws and regulations, and any appeal therefrom, available to the person or entity subject to that sanction or remedy. (3)

10. Each Party shall ensure that any person or entity subject to the imposition of a sanction or remedy under its competition laws and regulations has access to an independent review of or appeal against that sanction or remedy.

11. Each Party recognises the importance of timeliness in the handling of competition cases.

(1) This Article is subject to: (a) Annex 15A (Application of Article 3 (Appropriate Measures against Anti-Competitive Activities) and Article 4 (Co-operation) to Brunei Darussalam); (b) Annex 15B (Application of Article 3 (Appropriate Measures against Anti-Competitive Activities) and Article 4 (Co-operation) to Cambodia); (c) Annex 15C (Application of Article 3 (Appropriate Measures against Anti-Competitive Activities) and Article 4 (Co-operation) to Lao PDR); and (d) Annex 15D (Application of Article 3 (Appropriate Measures against Anti-Competitive Activities) and Article 4 (Co-operation) to Myanmar).

(2) Examples of anti-competitive activities may include anti-competitive agreements, abuses of a dominant position, and anti-competitive mergers and acquisitions.

(3) This Paragraph shall not apply to a jury verdict in a criminal trial.

4. Co-operation (4)

The Parties recognise the importance of co-operation between oramong their respective competition authorities to promote effective competition law enforcement. To this end, the Parties may co-operate on issues relating to competition law enforcement, through their respective competition authorities, in a manner compatible with their respective laws, regulations and important interests, and within their respective available resources. The form of such co-operation may

include:

(a) notification by a Party to another Party of its competition law enforcement activities that it considers may substantially affect the important interests of the other Party, as promptly as reasonably possible;

(b) upon request, discussion between or among Parties to address any matter relating to competition law enforcement that substantially affects the important interests of the requesting Party;

(c) upon request, exchange of information between or among Parties to foster understanding or to facilitate effective competition law enforcement; and

(d) upon request, co-ordination of enforcement actions between or among Parties in relation to the same or related anti-competitive activities.

(4) This Article is subject to: (a) Annex 15A (Application of Article 3 (Appropriate Measures against Anti-Competitive Activities) and Article 4 (Co-operation) to Brunei Darussalam); (b) Annex 15B (Application of Article 3 (Appropriate Measures against Anti-Competitive Activities) and Article 4 (Co-operation) to Cambodia); (c) Annex 15C (Application of Article 3 (Appropriate Measures against Anti-Competitive Activities) and Article 4 (Co-operation) to Lao PDR); and (d) Annex 15D (Application of Article 3 (Appropriate Measures against Anti-Competitive Activities) and Article 4 (Co-operation) to Myanmar).

5. Confidentiality of Information

1. This Chapter shall not require the sharing of information by a Party which is contrary to that Party's laws, regulations, or important interests.

2. Where a Party requests confidential information under this Chapter, the requesting Party shall notify the requested Party of:

(a) the purpose of the request;

(b) the intended use of the requested information; and

(c) any laws or regulations of the requesting Party that may affect the confidentiality of information or require the use of the information for purposes not agreed upon by the requested Party.

3. The sharing of confidential information between any of the Parties and the use of such information shall be based on terms and conditions agreed by the Parties concerned.

4. If information shared under this Chapter is shared on a confidential basis, then, except to comply with its laws and regulations, the Party receiving the information shall:

(a) maintain the confidentiality of the information received;

(b) use the information received only for the purpose disclosed at the time of the request, unless otherwise authorised by the Party providing the information;

(c) not use the information received as evidence in criminal proceedings carried out by a court or a judge unless, on request of the Party receiving the information, such information is provided for such use in criminal proceedings through diplomatic channels or other channels established in accordance with the laws and regulations of the Parties concerned;

(d) not disclose the information received to any other authority, entity, or person not authorised by the Party providing the information; and

(e) comply with any other conditions required by the Party providing the information.

6. Technical Co-operation and Capacity Building

The Parties agree that it is in their common interest to work together, multilaterally or bilaterally, on technical co-operation activities to build necessary capacities to strengthen competition and consumer protection policy development, and competition and consumer protection law enforcement, taking into account the availability of resources of the Parties. Technical co-operation activities may include:

(a) sharing of relevant experiences and non-confidential information on the development and implementation of

competition and consumer protection law and policy;

(b) exchange of officials for training purposes;

(c) exchange of consultants and experts on competition and consumer protection law and policy;

(d) participation of officials as lecturers, consultants, or participants at training courses on competition and consumer protection law and policy;

(e) participation of officials in advocacy programmes; and

(f) any other form of technical co-operation as agreed upon by the Parties.

7. Consumer Protection

1. The Parties recognise the importance of consumer protection law and the enforcement of such law as well as co-operation among the Parties on matters related to consumer protection in order to achieve the objectives of this Chapter.

2. Each Party shall adopt or maintain laws or regulations to proscribe the use in trade of misleading practices, or false or misleading descriptions.

3. Each Party shall establish or maintain an authority or authorities to effectively implement its consumer protection laws and regulations.

4. The Parties recognise the importance of issuing public advisories or warnings against misleading practices or false or misleading descriptions in a manner compatible with their respective laws and regulations.

5. Each Party also recognises the importance of improving awareness of and access to consumer rights and consumer redress mechanisms, including the roles of consumer organisations and_ industry self-regulation in raising awareness of consumer rights. Each Party also recognises the importance of learning from international best practices.

6. The Parties may co-operate and co-ordinate on matters of mutual interest related to consumer protection. Such co-operation and co-ordination shall be carried out in a manner compatible with the Parties' respective laws and regulations and within their available resources.

7. The Parties may, through their respective authorities, exchange information in relation to the administration and enforcement of their consumer protection laws. Any exchange of information shall be compatible with their respective laws, regulations and important interests, within their available resources, and subject to the requirements and protections in Article 5 (Confidentiality of Information).

8. Consultations

In order to foster understanding between the Parties, or to address specific matters that arise under this Chapter, on request of a Party, a requested Party shall enter into consultations with the requesting Party. In its request, the requesting Party shall indicate, if relevant, how the matter that is the subject of the request affects its important interests, including trade or investment between the Parties concerned. The requested Party shall accord full and sympathetic consideration to the concerns of the requesting Party.

9. Contact Points

To ensure that technical co-operation under this Chapter occurs on an ongoing basis, the Parties shall designate contact points for technical co-operation and information exchange under this Chapter.

10. Non-Application of Chapter 20 (Consultations and Dispute Settlement)

Chapter 20 (Consultations and Dispute Settlement) shall not apply to any matter arising under this Chapter.

Chapter 16. MICRO, SMALL AND MEDIUM ENTERPRISES

1. Objectives

1. The Parties recognise that MSMEs contribute significantly to economic growth, employment and innovation, and

therefore seek to promote information sharing and co-operation to increase the ability of MSMEs to utilise and benefit from the opportunities created by this Agreement.

2. The Parties acknowledge that MSMEs are disproportionately affected by disasters and_ public emergencies. This Chapter seeks to promote co-operation among the Parties to facilitate the participation of MSMEs in international trade and in addressing trade-related issues.

3. The Parties acknowledge that various Chapters in this Agreement contain provisions that contribute to encouraging and facilitating the participation of MSMEs in this Agreement.

2. Information Sharing

1. Each Party shall promote the sharing of information related to this Agreement that is relevant to MSMEs, including through the establishment and maintenance of a publicly accessible information platform, and through information exchange to share knowledge, experiences and best practices among the Parties.

2. The information to be made publicly accessible referred to in Paragraph 1 will include:

(a) the full text of this Agreement;

(b) information on trade and investment-related laws and regulations that each Party considers relevant to MSMEs; and

(c) additional business-related information that each Party considers useful for MSMEs interested in benefitting from the opportunities provided by this Agreement.

3. Each Party shall make publicly accessible the information referred to in Paragraph 1, either on the AANZFTA website (1) or a website established by the Party.

4. Where, in accordance with Paragraph 3, a Party makes information publicly accessible, including through online means, that information may include links to any equivalent websites of the other Parties or a link to the AANZFTA website.

5. Each Party shall, regularly or on request of another Party, review the information referred to in Paragraph 2 and the links referred to in Paragraph 4 to ensure that the information provided is accurate and up-to-date.

6. Each Party shall work towards ensuring that information made publicly accessible pursuant to this Article is presented in a manner that is easy to use for MSMEs. Where possible, each Party shall endeavour to make the information referred to in Paragraph 2 available in the English language.

(1) The AANZFTA website may be accessed at https://aanzfta.asean.org.

3. Co-operation

1. The Parties shall strengthen their co-operation under this Chapter through sharing and exchanging information on best practices in relation to MSMEs. Such co-operation may include:

(a) encouraging efficient and effective implementation of facilitative and transparent trade rules and regulations;

(b) improving MSMEs' access to markets and participation in global value chains, including by promoting and facilitating partnerships among businesses;

(c) promoting the use of electronic commerce by MSMEs;

(d) exploring opportunities for exchanges. of experiences among Parties' entrepreneurial programmes;

(e) promoting the formalisation of MSMEs;

(f) encouraging innovation and use of technology including supporting digital transformation and innovative start-ups;

(g) promoting awareness, understanding and effective use of intellectual property systems among MSMEs;

(h) promoting good regulatory practices and building capacity in formulating and implementing regulations, policies and programmes that contribute to MSMEs' development;

(i) helping MSMEs develop capabilities in sustainability;

(j) encouraging a vibrant and conducive sustainability ecosystem for MSMEs in the region;

(k) providing information on promoting access to finance throughout MSMEs' various stages of growth;

(l) supporting MSMEs to capture opportunities in new and emerging areas including in the green economy;

(m) strengthening human capital and talent development capabilities of MSMEs;

(n) enhancing the capability and competitiveness of MSMEs; and

(0) enhancing MSMEs' knowledge of and capacity to utilise free trade agreements.

2. Co-operation activities undertaken under this Chapter are subject to the availability of resources and any terms and conditions agreed between the Parties.

4. Contact Points

Each Party shall, within 30 days of the date of entry into force of the Second Protocol for that Party, notify the other Parties of its contact point for this Chapter. Each Party shall promptly notify the other Parties of any change to its contact point.

5. Committee on MSMEs

1. The Parties hereby establish a Committee on MSMEs (the "MSMEs Committee"), consisting of government officials of the Parties.

2. The functions of the MSMEs Committee shall be to:

(a) identify ways to assist MSMEs of the Parties to take advantage of the commercial opportunities and benefits under this Agreement. This may include exchanging and sharing information on seminars, workshops or other activities such as export counselling undertaken by the Parties;

(b) consider any other matters pertaining to MSMEs as appropriate and as agreed by the Parties, including any issues raised by MSMEs regarding their ability to benefit from this Agreement; and

(c) report to the FTA Joint Committee as required and make recommendations to the FTA Joint Committee as appropriate.

3. The MSMEs Committee shall co-ordinate its work programme with other relevant bodies established under the Agreement and shall submit a report of any activities undertaken to the FTA Joint Committee as appropriate.

4. The MSMEs Committee may seek to collaborate with appropriate experts, international organisations and the private sector in carrying out its work programme and activities, including through consultation and dialogue with MSMEs as agreed by the Parties.

5. The MSMEs Committee shall meet within one year of the date of entry into force of the Second Protocol, and thereafter as determined by the Parties.

6. Non-Application of Dispute Settlement

Dispute settlement mechanisms in this Agreement shall not apply to any matter arising under this Chapter.

Chapter 17. GOVERNMENT PROCUREMENT

1. Objectives

The objectives of this Chapter are to recognise the importance of promoting the transparency of laws, regulations and procedures, facilitating participation by MSMEs, ensuring integrity, promoting environmentally sustainable procurement and the use of electronic means in procurement, and enhancing co-operation among the Parties, regarding government procurement.

2. Scope

1. This Chapter shall apply to the laws, regulations and procedures of a Party regarding government procurement implemented by its central government entities, as defined or notified by that Party for the purposes of this Chapter.

2. Nothing in this Chapter shall require a Least Developed Country Party to undertake any obligation regarding transparency and co-operation. A Least Developed Country Party may benefit from co-operation among the Parties.

3. General Principles

The Parties recognise the role of government procurement in furthering the economic integration of the region so as to promote growth and employment. Where government procurement is expressly open to international competition, each Party shall consider ways to promote and apply important principles of transparency, value for money, and accountability and due process in its government procurement procedures, where appropriate and consistent with that Party's laws, regulations and procedures.

4. Transparency

1. Each Party shall make publicly available any law, regulation or procedure regarding government procurement, including, to the extent possible and as appropriate, information on where tender opportunities and contract award notices are published.

2. Ifa Party maintains any law, regulation or procedure that provides preferential treatment for domestic goods, services or suppliers, including MSMEs, the Party shall endeavour to make such laws, regulations or procedures, including the criteria for eligibility, publicly available.

3. To the extent possible and as appropriate, each Party endeavours to make available and update the information referred to in Paragraphs 1 and 2 through electronic means.

4. Each Party shall specify in Annex 17A (Paper or Electronic Means Utilised by Parties for the Publication of Transparency Information) the paper or electronic means utilised by that Party to publish the information referred to in Paragraphs 1 and 2.

5. Each Party endeavours to make the information referred to in Paragraphs 1 and 2 available in the English language.

6. To the extent possible and if appropriate, where a request has been made by an unsuccessful supplier, a Party's procuring entity is encouraged to provide that unsuccessful supplier with an explanation of the reasons why the procuring entity did not select that supplier's tender, or an explanation of the advantages of the successful supplier's tender.

5. Use of Electronic Means

In respect of procurement conducted by entities within the scope of this Chapter, the Parties shall endeavour to use electronic means to the widest extent practicable for the publication of notices, tender documentation, information exchange and communication, and the submission of tenders.

6. Environmentally Sustainable Procurement

The Parties recognise that government procurement can contribute to environmental sustainability. Accordingly, the Parties shall endeavour to incorporate environmentally sustainable procurement policies and practices to the extent possible and as appropriate.

7. Ensuring Integrity In Procurement Practices

1. Each Party shall ensure that criminal or administrative laws, regulations, and procedures exist to address corruption in its government procurement. This may include rendering ineligible for participation in the Party's procurements, either indefinitely or for a stated period of time, suppliers that the Party has determined to have engaged in fraudulent or other illegal actions in relation to government procurement in the Party's territory.

2. Each Party shall have in place laws, regulations or procedures to manage any potential conflict of interest on the part of those engaged in or having influence over a government procurement.

8. Facilitation of Participation by MSMEs

The Parties recognise the important contribution that MSMEs can make to economic growth and employment, and the importance of facilitating the participation of MSMEs in government procurement.

9. Co-operation

1. The Parties shall endeavour to co-operate on matters relating to government procurement, with a view to achieving a better understanding of each Party's respective government procurement systems. Such co-operation may include:

(a) exchanging information on Parties' laws, regulations and procedures, and any modifications thereof;

(b) providing training, technical assistance or capacity building to Parties, and sharing information on these initiatives;

(c) sharing information on best practices, including those in relation to MSMEs;

(d) sharing information on electronic procurement systems; and

(e) sharing information on developing and expanding the use of electronic means in government procurement systems.

10. Review

The Parties may review this Chapter pursuant to Article 10 (Review) of Chapter 21 (Final Provisions) with a view to improving this Chapter to facilitate government procurement, as agreed by the Parties.

11. Contact Points

Each Party shall, within 30 days of the date of entry into force of the Second Protocol for that Party, designate one or more contact points to facilitate co-operation and information sharing under this Chapter and notify the other Parties of the relevant details of that contact point or those contact points. Each Party shall promptly notify the other Parties of any change regarding the relevant details of its contact point or contact points.

12. Non-Application of Dispute Settlement

Dispute settlement mechanisms in this Agreement shall not apply to any matter arising under this Chapter.

Chapter 18. GENERAL PROVISIONS AND EXCEPTIONS

1. General Exceptions

1. For the purposes of Chapter 2 (Trade in Goods), Chapter 3 (Rules of Origin), Chapter 4 (Customs Procedures and Trade Facilitation), Chapter 5 (Sanitary and Phytosanitary Measures), Chapter 6 (Standards, Technical Regulations and Conformity Assessment Procedures), Chapter 10 (Electronic Commerce) and Chapter 11 (Investment), Article XX of GATT 1994 shall be incorporated into and shall form part of this Agreement, mutatis mutandis.

2. For the purposes of Chapter 8 (Trade in Services), Chapter 9 (Movement of Natural Persons), Chapter 10 (Electronic Commerce) and Chapter 11 (Investment), Article XIV of GATS including its footnotes shall be incorporated into and shall form part of this Agreement, mutatis mutandis.

3. For the purposes of this Agreement, the Parties understand that measures referred to in Article XX(f) of GATT 1994 include measures necessary to protect national treasures or specific sites of historical or archaeological value, or measures necessary to support creative arts of national value. (1)

4. For the purposes of Chapter 8 (Trade in Services) and Chapter 11 (Investment), subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Parties where like conditions prevail, or a disguised restriction on trade in services or investment, nothing in these Chapters shall be construed to prevent the adoption or enforcement by a Party of measures necessary to protect national treasures or specific sites of historical or archaeological value, or measures necessary to support creative arts of national value. (2)

5. A Party shall hold consultations with a view to reaching agreement on any necessary adjustment required to maintain the overall balance of commitments undertaken by the Parties under Chapter 8 (Trade in Services) and Chapter 11 (Investment) if requested by a Party affected by the measures referred to in Paragraph 4.

(1) "Creative arts" include the performing arts - including theatre, dance and music - visual arts and craft, literature, film and video, language arts, creative on-line content, indigenous traditional practice and contemporary cultural expression, and digital interactive media and hybrid art

work, including those that use new technologies to transcend discrete art form divisions. The term encompasses those activities involved in the presentation, execution and interpretation of the arts, and the study and technical development of these art forms and activities.

(2) "Creative arts" include the performing arts - including theatre, dance and music - visual arts and craft, literature, film and video, language arts, creative on-line content, indigenous traditional practice and contemporary cultural expression, and digital interactive media and hybrid art work, including those that use new technologies to transcend discrete art form divisions. The term encompasses those activities involved in the presentation, execution and interpretation of the arts, and the study and technical development of these art forms and activities.

2. Security Exceptions

Nothing in this Agreement shall be construed to:

(a) require a Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests; or

(b) preclude a Party from applying measures that it considers necessary for:

(i) the fulfilment of its obligations under the United Nations Charter for the maintenance or restoration of international peace or security; or

(ii) the protection of its own essential security interests.

3. Taxation Measures

1. Except as provided in this Article, nothing in this Agreement shall apply to taxation measures.

2. This Agreement shall only grant rights or impose obligations with respect to taxation measures where:

(a) corresponding rights and obligations are also granted or imposed under the WTO Agreement;

(b) they are granted or imposed under Article 9 (Transfers) of Chapter 11 (Investment); or

(c) they are granted or imposed under Article 10 (Expropriation and Compensation) of Chapter 11 (Investment).

3. Where Paragraph 2(b) or (c) applies, Section B (Investment Disputes between a Party and an Investor) of Chapter 11 (Investment) shall also apply in respect of taxation measures.

4. lf there is a dispute described in Article 19.1 (Scope and Definitions) of Chapter 11 (Investment) that may relate to a taxation measure, the relevant Parties, including representatives of their tax administrations, shall hold consultations. Any tribunal established pursuant to Section B (Investment Disputes between a Party and an Investor) of Chapter 11 (Investment) shall accord serious consideration to a joint decision of the relevant Parties as to whether the measure in question is a taxation measure. For this purpose, Article 26.7 (Conduct of the Arbitration) of Chapter 11 (Investment) shall apply mutatis mutandis.

5. Nothing in this Agreement shall affect the rights and obligations of any Party under any tax convention relating to the avoidance of double taxation in force between any of the Parties. In the event of any inconsistency relating to a taxation measure between this Agreement and any such tax convention, the latter shall prevail. Any consultations between the relevant Parties about whether an inconsistency relates to a taxation measure shall be done by the competent tax authorities, as stipulated under the domestic laws and regulations of the relevant Parties. The request for such consultations shall be addressed through the contact points designated in accordance with Article 2 (Communications) of Chapter 19 (Institutional Provisions).

6. Nothing in this Agreement shall oblige a Party to extend to any other Party the benefit of any treatment, preference or privilege arising from any existing or future agreement relating to the avoidance of double taxation or from the provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Party is bound.

7. For the purposes of this Article, taxation measures do not include any import or customs duties.

4. Measures to Safeguard the Balance of Payments

1. Where a Party is in serious balance of payments and external financial difficulties or under threat thereof, it may:

(a) in the case of trade in goods, in accordance with GATT 1994 and the Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994 in Annex 1A to the WTO Agreement, adopt restrictive import measures;

(b) in the case of trade in services, adopt or maintain restrictions on trade in services on which it has undertaken commitments, including on payments or transfers for transactions related to such commitments.

2. In the case of investments, where a Party is in serious balance of payments and external financial difficulties or under threat thereof, or where, in exceptional circumstances, payments or transfers relating to capital movements cause or threaten to cause serious difficulties for macroeconomic management, it may adopt or maintain restrictions on payments or transfers related to covered investments as defined in Article 1 (Definitions) of Chapter 11 (Investment).

3. Restrictions adopted or maintained under Paragraph 1(b) or 2 shall:

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

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

(c) not exceed those necessary to deal with the circumstances described in Paragraph 1(b) or 2;

(d) be temporary and be phased out progressively as the situation specified in Paragraph 1(b) or 2 improves; and

(e) be applied on a non-discriminatory basis such that no Party is treated less favourably than any other Party or non-Party.

4. With respect to trade in services and investment, (a) it is recognised that particular pressures on the balance of payments of a Party in the process of economic development or economic transition may necessitate the use of restrictions to ensure, inter alia, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development or economic transition;

(b) in determining the incidence of such restrictions, a Party may give priority to economic sectors which are more essential to their economic or development programmes. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular sector.

5. Any restrictions adopted or maintained by a Party under Paragraph 1 or 2, or any changes therein, shall be notified promptly to the other Parties.

6. A Party adopting or maintaining any restrictions under Paragraph 1 or 2 shall:

(a) in the case of investment, respond to any other Party that requests consultations in relation to the restrictions adopted by it, if such consultations are not otherwise taking place outside this Agreement;

(b) in the case of trade in services, if consultations in relation to the restrictions adopted by it are not taking place at the WTO, a Party, if requested, shall promptly commence consultations with any interested Party.

5. Treaty of Waitangi

1. Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Parties or as a disguised restriction on trade in goods and services, nothing in this Agreement shall preclude the adoption by New Zealand of measures it deems necessary to accord more favourable treatment to Maori in respect of matters covered by this Agreement including in fulfilment of its obligations under the Treaty of Waitangi.

2. The Parties agree that the interpretation of the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it, shall not be subject to the dispute settlement provisions of this Agreement. Chapter 20 (Consultations and Dispute Settlement) shall otherwise apply to this Article. An arbitral tribunal established pursuant to Article 11 (Establishment and Re-convening of Aprbitral Tribunals) of Chapter 20 (Consultations and Dispute Settlement) may be requested to determine only whether any measure (referred to in Paragraph 1) is inconsistent with their rights under this Agreement.

6. Screening Regime and Dispute Settlement

A decision by a competent authority, including a foreign investment authority, of a Party (3) (4) on whether or not to approve or admit a foreign investment proposal, and the enforcement of any conditions or requirements that an approval or admission is subject to, shall not be subject to the dispute settlement provisions under Section B (Investment Disputes between a Party and an Investor) of Chapter 11(Investment) or Chapter 20 (Consultations and Dispute Settlement).

(3) For the purposes of this Article, "a competent authority, including a foreign investment authority" means, as of the date of entry into force of the Second Protocol: (a) for Australia, the Treasurer of the Commonwealth of Australia under Australia's Foreign Investment Framework including the Foreign Acquisitions and Takeovers Act 1975 (Commonwealth), and any amendments thereto; (b) For Brunei Darussalam, a competent authority includes an authority designated under any relevant law, regulation and policy, as may be amended; (c) for Cambodia, the competent authorities established under relevant laws, regulations and policies, including the Council for the Development of Cambodia designated under the Royal Kram No. NS/RKM/1021/014 dated 15 October 2021 promulgating Law on Investment of the Kingdom of Cambodia, Municipal-Provincial Investment Sub-Committees designated under the Sub-Decree No. 120 ANK/BK dated 20 June 2022 on the Establishment and Management of Capital-Provincial Investment Sub-Committees, as may be amended; (d) for Indonesia, competent authority including a foreign investment authority designated under the Law Number 25 Year 2007 on Investment, Law Number 8 Year 1995 on Capital Market, Law Number 21 Year 2011 on Financial Service Authority, Law Number 7 Year 1992 on Banking, Law Number 40 Year 2014 on Insurance, Law Number 11 Year 1992 on Pension Fund, Law Number 1 Year 2013 on Micro Finance Institution, Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation and other relevant laws, regulations, and policies, as may be amended; (e) for Lao PDR, the Ministry of Planning and Investment under the Law on Investment Promotion (No. 14/NA, dated 17 November 2016), the Ministry of Industry and Commerce under the Law on Enterprise (No. 46/NA, dated 26 December 2013), and other competent authorities under relevant laws, regulations and policies, and any amendments thereto; (f) for Malaysia, the Ministers performing functions and exercising powers under, but not limited to, the Promotion of Investmenis Act 1986 [Act 327], the Income Tax Act 1967 [Act 53], the Petroleum Development Act 1974 [Act 144], and the industrial Co-ordination Act 1975 [Act 156], and any amendments thereto; (g) for Myanmar, the Myanmar Investment Commission and Region/State Investment Committees under the Myanmar Investment Law, the Pyidaungsu Hiuttaw Law No. 40/2016 dated 18 October 2016 and the Myanmar Investment Rules, Notification No. 35/2017 dated 30 March 2017, and committees under the Myanmar Special Economic Zone Law, the Pyidaungsu Hlutiaw Law No. 1/2014 dated 23 January 2014 and the Industrial Zone Law, the Pyidaungsu Hiuttaw Law No.7/2020 dated 26 May 2020, and other relevant laws, regulations, and policies, and any amendments thereto; (h) for New Zealand, the decision-making Ministers authorised under New Zealand's overseas investment framework including the Overseas Investment Act 2005 and the Fisheries Act 1996, and any amendments thereto; (i) for Singapore, a competent authority includes an authority designated under any relevant law, regulation and policy, as may be amended; (j) for Thailand, the competent authorities responsible under its laws, regulations, and policies, as may be amended, for the sectors or activities where foreign investment is proposed or approved; and (k) for Viet Nam, the competent authority as defined in the Law on Investment and other relevant laws and regulations such as Law on Securities, Law on Credit Institutions, Law on Insurance Business, Law on Oil and Gas and policies, as may be amended. If a Party establishes a competent authority, including a foreign investment authority after the date of entry into force of the Second Protocol, this Article shall also apply to such competent authority.

(4) For the purposes of this Article, "a decision by a competent authority, including a foreign investment authority" means, for the Philippines, the decision by the Securities and Exchange Commission under Republic Act No. 11232, otherwise known as the Revised Corporation Code of the Philippines, the National Security Council under Executive Order No. 292, otherwise known as the Administrative Code of 1987, as amended; the Board of Investments under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, as amended; the Office of the President and Inter-Agency Investment Promotion Coordination Committee (IIPCC) under Republic Act No. 11647, otherwise known as an Act Promoting Foreign Investments, amending thereby Republic Act No. 7042, otherwise known as the Foreign Investments Act of 1991, as amended, and Republic Act No. 11659, otherwise known as an Act Amending Commonwealth Act No. 146, otherwise known as the Public Service Act, as amended; and the relevant agencies of the Philippine Govemment vested with jurisdiction and mandate to regulate specific sectors or activities under such other laws; and any amendments thereto.

Chapter 19. INSTITUTIONAL PROVISIONS

1. FTA Joint Committee

1. The Parties hereby establish a Free Trade Agreement Joint Committee (the FTA Joint Committee) consisting of representatives of the Parties.

2. The functions of the FTA Joint Committee shall be to:

(a) review the implementation and operation of this Agreement;

(b) consider and recommend to the Parties any amendments to this Agreement;

(c) supervise and co-ordinate the work of all subsidiary bodies established pursuant to this Agreement;

(d) adopt, where appropriate, decisions and recommendations of subsidiary bodies established pursuant to this Agreement;

(e) consider any other matter that may affect the operation of this Agreement or that is entrusted to the FTA Joint Committee by the Parties; and

(f) carry out any other functions as the Parties may agree.

3. In the fulfilment of its functions, the FTA Joint Committee may establish additional subsidiary bodies, including ad hoc bodies, and assign them with tasks on specific matters, or delegate its responsibilities to any subsidiary body established pursuant to this Agreement including:

(a) Committee on Trade in Goods established pursuant to Article 19 (Committee on Trade in Goods) of Chapter 2 (Trade in Goods):

(i) Sub-Committee on Rules of Origin established pursuant to Article 18 (Sub-Committee on Rules of Origin) of Chapter 3 (Rules of Origin);

(ii) Sub-Committee on Sanitary and Phytosanitary Matters established pursuant to Article 10 (Meetings Among the Parties on Sanitary and Phytosanitary Matters) of Chapter 5 (Sanitary and Phytosanitary Measures); and

(iii) Sub-Committee on Standards, Technical Regulations and Conformity Assessment Procedures established pursuant to Article 13. (Sub-Committee on Standards, Technical Regulations and Conformity Assessment Procedures) of Chapter 6 (Standards, Technical Regulations and Conformity Assessment Procedures);

(b) Committee on Trade in Services established pursuant to Article 28 (Committee on Trade in Services) of Chapter 8 (Trade in Services);

(c) Committee on Investment established pursuant to Article 18 (Committee on Investment) of Chapter 11 (Investment); and

(d) Committee on Intellectual Property established pursuant to Article 12 (Committee on Intellectual Property) of Chapter 14 (Intellectual Property).

4. The FTA Joint Committee shall establish its rules and procedures at its first meeting.

5. Unless the Parties agree otherwise, the FTA Joint Committee shall convene its first meeting within one year after this Agreement enters into force. Its subsequent meetings shall be convened at such frequency as the Parties may mutually determine, and as necessary to discharge its functions under this Agreement. The FTA Joint Committee shall convene alternately in ASEAN Member States, Australia and New Zealand, unless the Parties agree otherwise. Special meetings of the FTA Joint Committee may be convened, as agreed by the Parties, within 30 days upon the request of a Party.

6. The FTA Joint Committee shall regularly report to the consultations of the ASEAN Economic Ministers, the Trade Minister of Australia and the Trade Minister of New Zealand through the meetings of their Senior Economic Officials.

2. Communications

Each Party shall designate a contact point to facilitate communications among the Parties on any matter relating to this Agreement. All official communications in this regard shall be in the English language.

Chapter 20. CONSULTATIONS AND DISPUTE SETTLEMENT

Section A. Introductory Provisions

1. Objectives

The objective of this Chapter is to provide an effective, efficient and transparent process for consultations and settlement of disputes arising under this Agreement.

2. Definitions

For the purposes of this Chapter, the following definitions shall apply unless the context otherwise requires:

(a) Complaining Party means any Party or Parties that request consultations under Article 6 (Consultations);

(b) dispute arising under this Agreement means a complaint made by a Party concerning any measure affecting the operation, implementation or application of this Agreement whereby any benefit accruing to the Complaining Party directly or indirectly under this Agreement is being nullified or impaired, or the attainment of any objective of this Agreement is being impeded, as a result of the failure of the Responding Party to carry out its obligations (1) under this Agreement; (2)

(c) Parties to the dispute means the Complaining Party and the Responding Party;

(d) Responding Party means any Party to which the request for consultations is made under Article 6 (Consultations); and

(e) Third Party means any Party who has notified its substantial trade interest or substantial interest in the matter pursuant to Article 6.7 (Consultations) or Article 10.1 (Third Parties) respectively.

(1) A failure to carry out its obligations includes application by the Responding Party of any measure which is in conflict with the obligations under this Agreement.

(2) Non-violation complaints are not permitted under this Agreement.

3. Scope and Coverage

1. Except as otherwise provided in this Agreement, this Chapter shall apply to the avoidance or settlement of disputes arising under this Agreement. This Chapter shall not apply to the settlement of disputes arising under Chapter 5 (Sanitary and Phytosanitary Measures), Chapter 12 (Economic Co- operation), Chapter 13 (Trade and Sustainable Development), Chapter 15 (Competition), Chapter 16 (Micro, Small and Medium Enterprises) and Chapter 17 (Government Procurement).

2. This Chapter shall apply subject to such special and additional provisions on dispute settlement contained in other Chapters of this Agreement.

3. Subject to Article 5 (Choice of Forum), this Chapter is without prejudice to the rights of a Party to have recourse to dispute settlement procedures available under other agreements to which it is a party.

4. This Chapter may be invoked in respect of measures affecting the observance of this Agreement taken by central, regional or local governments or authorities within the territory of a Party.

4. General Provisions

1. This Agreement shall be interpreted in accordance with the customary rules of treaty interpretation of public international law.

2. All notifications, requests and replies made pursuant to this Chapter shall be in writing.

3. The Parties to the dispute are encouraged at every stage of a dispute to make every effort to reach a mutually agreed solution to the dispute. Where a mutually agreed solution is reached, the terms and conditions of the agreement shall be notified to the other Parties.

4. Unless otherwise specified, any time periods provided for in this Chapter may be modified by mutual agreement of the Parties to the dispute provided that any modification shall not prejudice the rights of the Third Parties pursuant to Article 10 (Third Parties).

5. Choice of Forum

1. Where a dispute concerning any matter arises under this Agreement and under another international agreement to which the Parties to the dispute are party, the Complaining Party may select the forum in which to address that matter and that forum shall be used to the exclusion of other possible fora in respect of that matter.

2. For the purposes of this Article, the Complaining Party shall be deemed to have selected the forum in which to settle the dispute when it has requested the establishment of an arbitral tribunal pursuant to Article 8 (Request for Establishment of Arbitral Tribunals) or requested the establishment of, or referred a matter to, a similar dispute settlement panel under another international agreement.

3. This Article does not apply where the Parties to the dispute agree in writing that this Article shall not apply to a particular dispute.

Section B. Consultation Provisions

6. Consultations

1. Any Party may request consultations with any other Party with respect to any dispute arising under this Agreement. A Responding Party shall accord due consideration to a request for consultations made by a Complaining Party and shall accord adequate opportunity for such consultations.

2. Any request for consultations shall give the reasons for the request, including identification of the measures at issue and an indication of the legal basis for the complaint.

3. A copy of all such requests shall be simultaneously provided to all Parties. The Responding Party shall immediately acknowledge receipt of the request by way of notification to all Parties, indicating the date on which the request was received.

4. The Responding Party shall, unless otherwise mutually agreed, reply to the request within seven days after the date of its receipt and shall enter into consultations within a period of no more than:

(a) 10 days after the date of receipt of the request in cases of urgency, including perishable goods; or

(b) 30 days after the date of receipt of the request for all other matters.

5. If the Responding Party does not enter into consultations within the periods specified in Paragraph 4, ora period otherwise mutually agreed, the Complaining Party may proceed directly to request the establishment of an arbitral tribunal pursuant to Article 8 (Request for Establishment of Arbitral Tribunals).

6. The Parties to the dispute shall make every effort to reach a mutually satisfactory solution through consultations. To this end, the Parties to the dispute shall:

(a) provide sufficient information to enable a_ full examination of the matter, including how the measures at issue might affect the implementation or application of this Agreement;

(b) treat any confidential or proprietary information exchanged in the course of consultations on the same basis as the Party providing the information; and

(c) endeavour to make available for the consultations personnel of its government agencies or other regulatory bodies who have responsibility for and/or expertise in the matter under consultation.

7. Whenever a Party other than the Parties to the dispute considers that it has a substantial trade interest in the consultations, such Party may notify the Parties to the dispute within seven days after the notification of the request for consultations, of its desire to be joined in the consultations. Such notification shall be simultaneously provided to all Parties. Such Party shall be joined in the consultations if the Parties to the dispute agree.

7. Good Offices, Conciliation, Mediation

1. The Parties to the dispute may at any time agree to good offices, conciliation or mediation. Procedures for good offices, conciliation or mediation may begin at any time and may be terminated at any time.

2. If the Parties to the dispute agree, procedures for good offices, conciliation or mediation may continue while the matter is being examined by an arbitral tribunal established or re-convened under this Chapter.

3. Proceedings involving good offices, conciliation and mediation and positions taken by the Parties to the dispute during these proceedings shall be confidential and without prejudice to the rights of any Parties to the dispute in any further or other proceedings.

Section C. Adjudication Provisions

8. Request for Establishment of Arbitral Tribunals

1. The Complaining Party may request the establishment of an arbitral tribunal to consider the matter if:

(a) the Responding Party does not enter into consultations in accordance with Article 6.4 (Consultations); or

(b) if the consultations fail to resolve a dispute within: (i) 20 days after the date of receipt of the request for consultations in cases of urgency including perishable goods;

(ii) 60 days after the date of receipt of the request for consultations regarding any other matter; or

(iii) such other period as the Parties to the dispute may agree.

2. A request made pursuant to Paragraph 1 shall identify the specific measures at issue and provide details of the factual and legal basis of the complaint (including the provisions of this Agreement to be addressed by the arbitral tribunal) sufficient to present the problem clearly.

3. A copy of all such requests shall be simultaneously provided to all Parties. The Responding Party shall immediately acknowledge receipt of the request by way of notification to all Parties, indicating the date on which the request was received.

4. Where a request is made pursuant to Paragraph 1, an arbitral tribunal shall be established in accordance with Article 11 (Establishment and Re-convening of Arbitral Tribunals).

9. Procedures for Multiple Complainants

1. Where more than one Party requests the establishment of an arbitral tribunal related to the same matter, a single arbitral tribunal may be established to examine these complaints if all of the Parties to the disputes agree. The Parties to the disputes should seek to establish a single arbitral tribunal whenever feasible.

2. The single arbitral tribunal shall organise its examination and present its findings in such a manner that the rights which the Parties to the dispute would have enjoyed had separate arbitral tribunals examined the complaints are in no way impaired.

3. If more than one arbitral tribunal is established to examine the complaints related to the same matter, the Parties to the disputes shall endeavour to ensure that the same persons serve as arbitrators for each arbitral tribunal. The arbitral tribunals shall consult to ensure, to the greatest extent possible, that the timetables for the arbitral tribunal processes are harmonised.

10. Third Parties

1. Any Party having a substantial interest in a matter before an arbitral tribunal may notify the Parties to the dispute of this interest no later than 10 days after the date of receipt by the Responding Party of the request for the establishment of the arbitral tribunal or the date of a request for a Compliance Review Tribunal pursuant to Article 16 (Compliance Review). Such notification shall be simultaneously provided to all Parties. Any Party notifying its substantial interest shall have the rights and obligations of a Third Party.

2. A Third Party shall receive the submissions of the Parties to the dispute to the first substantive meeting of the arbitral tribunal with the Parties to the dispute.

3. A Third Party shall have an opportunity to make at least one written submission to the arbitral tribunal and shall have an opportunity to be heard by the arbitral tribunal at its first substantive meeting with the Parties to the dispute. Any submissions or other documents submitted by Third Parties shall be simultaneously provided to the Parties to the dispute and other Third Parties.

4. The Parties to the dispute may agree to provide additional or supplemental rights to Third Parties regarding participation in arbitral tribunal proceedings. In providing additional or supplemental rights, the Parties to the dispute may impose conditions. Unless otherwise agreed by the Parties to the dispute, the arbitral tribunal shall not grant any additional or supplemental rights to any Third Parties regarding participation in arbitral tribunal proceedings.

5. Ifa Third Party considers that a measure already the subject of an arbitral tribunal proceeding nullifies or impairs benefits accruing to it under this Agreement, such Party may have recourse to dispute settlement procedures under this Chapter.

11. Establishment and Re-convening of Arbitral Tribunals

1. An arbitral tribunal requested pursuant to Article 8 (Request for Establishment of Arbitral Tribunals) shall be established in accordance with this Article.

2. Unless the Parties to the dispute otherwise agree, the arbitral tribunal shall consist of three arbitrators. All appointments and nominations of arbitrators under this Article shall conform fully with the requirements in Paragraphs 9 and 10.

3. Within five days of the date of the receipt of a request under Article 8 (Request for Establishment of Arbitral Tribunals), the Parties to the dispute shall enter into consultations with a view to reaching agreement on the procedures for composing

the arbitral tribunal, taking into account the factual, technical and legal circumstances of the dispute. The Parties to the dispute may agree to use any of the optional procedures specified in Annex 20B (Optional Procedures for Composing Arbitral Tribunals). Any procedures for composing the arbitral tribunal which are agreed under this Paragraph shall be used for the composition of the arbitral tribunal and shall also be used for the purposes of Paragraphs 12 and 13.

4. If the Parties to the dispute are unable to reach agreement on the procedures for composing the arbitral tribunal within 15 days of the date of the receipt of the request referred to in Paragraph 3, any Party to the dispute may at any time thereafter notify the other Parties to the dispute that it wishes to use the procedures set forth in Paragraphs 5 to 7. Where such a notification is made, the arbitral tribunal shall be composed in accordance with Paragraphs 5 to 7.

5. The Complaining Party or Parties shall appoint one arbitrator within 10 days of the date of the receipt of the notification referred to in Paragraph 4. The Responding Party shall appoint one arbitrator within 20 days of the date of the receipt of the notification referred to in Paragraph 4.

6. Following the appointment of the arbitrators in accordance with Paragraph 5, the Parties to the dispute shall agree on the appointment of the third arbitrator who shall serve as the chair of the arbitral tribunal. To assist in reaching this agreement, each of the Parties to the dispute may provide to the other Parties to the dispute a list of up to three nominees for appointment as the chair of the arbitral tribunal. If the Parties to the dispute have not agreed on the chair of the arbitral tribunal within 15 days of the appointment of the second arbitrator, the two appointed arbitrators shall designate by common agreement the third arbitrator who shall chair the arbitral tribunal.

7. If all three arbitrators have not been appointed within 45 days of the date of the receipt of the notification referred to in Paragraph 4, any Party to the dispute may request the Director-General of the WTO to make the remaining appointments within a further period of 15 days. Any lists of nominees which were provided under Paragraph 6 shall also be provided to the Director-General of the WTO and may be used in making the required appointments.

8. The date of establishment of the arbitral tribunal shall be the date on which the last arbitrator is appointed.

9. All arbitrators shall:

(a) have expertise or experience in law, international trade, other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;

(b) be chosen strictly on the basis of objectivity, reliability, and sound judgement;

(c) be independent of, and not be affiliated with or take instructions from, any Party to the dispute;

(d) not have dealt with the matter in any capacity; and

(e) disclose, to the Parties to the dispute, information which may give rise to justifiable doubts as to their independence or impartiality.

10. Unless the Parties to the dispute otherwise agree, arbitrators shall not be nationals of a Party to the dispute. In addition, the chair of arbitral tribunal shall not have his or her usual place of residence in the territory of a Party to the dispute.

11. Arbitrators shall serve in their individual capacities and not as government representatives, nor as representatives of any organisation. Parties shall not give them instructions nor seek to influence them as individuals with regard to matters before an arbitral tribunal.

12. If an arbitrator appointed under this Article resigns or becomes unable to act, a successor arbitrator shall be appointed in the same manner as prescribed for the appointment of the original arbitrator and shall have all the powers and duties of the original arbitrator. The work of the arbitral tribunal shall be suspended during the appointment of the successor arbitrator.

13. Where an arbitral tribunal is re-convened under Article 16 (Compliance Review) or Article 17 (Compensation and Suspension of Concessions or other Obligations) the re- convened arbitral tribunal shall, where possible, have the same arbitrators as the original arbitral tribunal. Where this is not possible, the replacement arbitrator(s) shall be appointed in the same manner as prescribed for the appointment of the original arbitrator(s), and shall have all the powers and duties of the original arbitrator(s).

12. Functions of Arbitral Tribunals

1. An arbitral tribunal shall make an objective assessment of the matter before it, including an objective assessment of:

(a) the facts of the case;

(b) the applicability of the provisions of this Agreement cited by the Parties to the dispute; and

(c) whether the Responding Party has failed to carry out its obligations under this Agreement.

2. An arbitral tribunal shall have the following terms of reference unless the Parties to the dispute agree otherwise within 20 days from the date of the establishment of an arbitral tribunal:

"To examine, in the light of the relevant provisions of this Agreement, the matter referred to in the request for establishment of an arbitral tribunal made pursuant to Article 8 (Request for Establishment of Arbitral Tribunals), and to make such findings and if applicable, suggestions provided for in this Agreement."

The arbitral tribunal shall make its findings in accordance with this Agreement.

3. The arbitral tribunal shall set out in its report:

(a) adescriptive section summarising the arguments of the Parties to the dispute and Third Parties;

(b) its findings on the facts of the case and on the applicability of the provisions of this Agreement;

(c) its findings on whether the Responding Party has failed to carry out its obligations under this Agreement; and

(d) its reasons for its findings in Subparagraphs (b) and (c).

4. In addition to Paragraph 3, an arbitral tribunal may include in its report any other findings jointly requested by the Parties to the dispute. The arbitral tribunal may suggest ways in which the Responding Party could implement the findings.

5. Unless the Parties to the dispute otherwise agree, an arbitral tribunal shall base its report solely on the relevant provisions of this Agreement and the submissions and arguments of the Parties to the dispute. An arbitral tribunal shall only make the findings and suggestions provided for in this Agreement.

6. The interests of Third Parties and those of other Parties shall be fully taken into account during the arbitral tribunal proceedings. Third Parties' submissions shall be reflected in the report of the arbitral tribunal.

7. The findings and suggestions of the arbitral tribunal cannot add to or diminish the rights and obligations provided in this Agreement or any other international agreement.

8. The arbitral tribunal shall consult regularly the Parties to the dispute and provide adequate opportunities for the development of a mutually satisfactory solution to the dispute.

9. An arbitral tribunal re-convened under this Chapter shall also carry out functions with regard to compliance review under Article 16 (Compliance Review) and review of level of suspension of concessions or other obligations under Article 17 (Compensation and Suspension of Concessions or other Obligations). Paragraphs 1 to 3 shall not apply to an arbitral tribunal re-convened under Article 16 (Compliance Review) and Article 17 (Compensation and Suspension of Concessions or other Obligations).

10. An arbitral tribunal shall make its findings by consensus provided that where an arbitral tribunal is unable to reach consensus it may make its findings by majority vote.

13. Arbitral Tribunal Procedures

1. An arbitral tribunal established pursuant to Article 11 (Establishment and Re-convening of Arbitral Tribunals) shall adhere to this Chapter. The arbitral tribunal shall apply the rules of procedure set out in Annex 20A (Rules of Procedure for Arbitral Tribunal Proceedings) (the "Rules of Procedure Annex") unless the Parties to the dispute agree otherwise. On the request of a Party to the dispute, or on its own initiative, the arbitral tribunal may, after consulting the Parties to the dispute, adopt additional rules of procedure which do not conflict with the provisions of this Chapter or with the Rules of Procedure Annex.

2. An arbitral tribunal re-convened under Article 16 (Compliance Review) or Article 17 (Compensation and Suspension of Concessions or other Obligations) may establish its own procedures which do not conflict with this Chapter or the Rules of Procedure Annex, in consultation with the Parties to the dispute, drawing as it deems appropriate from this Chapter or the Rules of Procedure Annex.

Timetable

3. After consulting the Parties to the dispute, an arbitral tribunal shall, as soon as practicable and whenever possible within 15 days after the establishment of the arbitral tribunal, fix the timetable for the arbitral tribunal process. The arbitral tribunal process, from the date of establishment until the date of the final report shall, as a general rule, not exceed the period of nine months, unless the Parties to the dispute agree otherwise.

4. Similarly, a Compliance Review Tribunal re-convened pursuant to Article 16 (Compliance Review) shall, as soon as practicable and whenever possible within 15 days after re- convening, fix the timetable for the compliance review process taking into account the time periods specified in Article 16 (Compliance Review).

Arbitral Tribunal Proceedings

5. Arbitral tribunal proceedings should provide sufficient flexibility so as to ensure high-quality reports, while not unduly delaying the arbitral tribunal process.

6. Arbitral tribunal deliberations shall be confidential. The Parties to the dispute and Third Parties shall be present only when invited by the arbitral tribunal to appear before it. An arbitral tribunal shall hold its hearings in closed session unless the Parties to the dispute agree otherwise. All presentations and statements made at hearings shall be made in the presence of the Parties to the dispute. There shall be no ex parte communications with the arbitral tribunal concerning matters under consideration by it.

Submissions

7. Each Party to the dispute shall have an opportunity to set out in writing the facts of its case, its arguments and counter arguments. The timetable fixed by the arbitral tribunal shall include precise deadlines for submissions by the Parties to the dispute and Third Parties.

Hearings

8. The timetable fixed by the arbitral tribunal shall provide for at least one hearing for the Parties to the dispute to present their case to the arbitral tribunal. As a general rule, the timetable shall not provide more than two hearings unless special circumstances exist.

9. The venue for hearings shall be decided by mutual agreement between the Parties to the dispute. If there is no agreement, the venue shall alternate between the capitals of the Parties to the dispute with the first hearing to be held in the capital of the Responding Party.

Confidentiality

10. Written submissions to the arbitral tribunal shall be treated as confidential, but shall be made available to the Parties to the dispute. No Party to the dispute shall be precluded from disclosing statements of its own positions to the public provided that there is no disclosure of information which has been designated as confidential by a Party to the dispute or Third Party. The Parties to the dispute, Third Parties and the arbitral tribunal shall treat as confidential information submitted by a Party to the dispute to the arbitral tribunal which that Party has designated as confidential. A Party to the dispute shall upon request of a Party, provide a non-confidential summary of the information contained in its written submissions that could be disclosed to the public.

Additional Information and Technical Advice

11. The Parties to the dispute and Third Parties shall respond promptly and fully to any request by an arbitral tribunal for such information as the arbitral tripunal considers necessary and appropriate.

12. An arbitral tribunal may seek information and technical advice from any individual or body which it deems appropriate. However, before doing so the arbitral tribunal shall seek the views of the Parties to the dispute. Where the Parties to the dispute agree that the arbitral tribunal should not seek the additional information or technical advice, the arbitral tribunal shall not proceed. The arbitral tribunal shall provide the Parties to the dispute with any information or technical advice it receives and an opportunity to provide comments.

Report

13. The arbitral tribunal shall provide to the Parties to the dispute an interim report, meeting the requirements specified in Article 12.3 (Functions of Arbitral Tribunals).

14. The interim report shall be provided at least four weeks before the deadline for completion of the final report. The arbitral tribunal shall accord adequate opportunity to the Parties to the dispute to review the entirety of its interim report prior to its finalisation and shall include a discussion of any comments made by the Parties to the dispute in its final report.

15. The interim and final report of the arbitral tribunal shall be drafted without the presence of the Parties to the dispute. Opinions expressed in the report of the arbitral tribunal by its individual members shall be anonymous.

16. The arbitral tribunal shall provide its final report to all other Parties seven days after the report is presented to the Parties to the dispute, and at any time thereafter a Party to the dispute may make the report publicly available subject to the protection of any confidential information contained in the report.

14. Suspension and Termination of Proceedings

1. The Parties to the dispute may agree that the arbitral tribunal suspend its work at any time for a period not exceeding 12 months from the date of such agreement. Within this period, the suspended arbitral proceeding shall be resumed upon the request of any Party to the dispute. If the work of the arbitral tribunal has been continuously suspended for more than 12 months, the authority for establishment of the arbitral tribunal shall lapse unless the Parties to the dispute agree otherwise.

2. The Parties to the dispute may agree to terminate the proceedings of an arbitral tribunal in the event that a mutually satisfactory solution to the dispute has been found.

3. Before the arbitral tribunal presents its final report, it may at any stage of the proceedings propose to the Parties to the dispute that the dispute be settled amicably.

4. The Parties to the dispute shall notify the other Parties that the arbitral tribunal has been suspended, terminated or its authority has lapsed pursuant to Paragraph 1.

Section D. Implementation Provisions

15. Implementation

1. Where an arbitral tribunal finds that the Responding Party has failed to carry out its obligations under this Agreement, the Responding Party shall comply with its obligations under this Agreement.

2. Within 30 days of the date of the presentation of the arbitral tribunal's final report to the Parties to the dispute, the Responding Party shall notify the Complaining Party:

(a) of its intentions with respect to implementation, including an indication of possible actions it may take to comply with the obligation in Paragraph 1;

(b) whether such implementation can take place immediately; and

(c) if such implementation cannot take place immediately, the reasonable period of time the Responding Party would need to implement.

3. If it is impracticable to comply immediately with the obligation in Paragraph 1, the Responding Party shall have a reasonable period of time to do so.

4. If a reasonable period of time is required, it shall, whenever possible, be mutually agreed by the Parties to the dispute. Where the Parties to the dispute are unable to agree on the reasonable period of time within 45 days of the date of the presentation of the arbitral tribunal's final report to the Parties to the dispute, any Party to the dispute may request that the chair of the arbitral tribunal determine the reasonable period of time. Unless the Parties to the dispute otherwise agree, such requests shall be made no later than 120 days from the date of the presentation of the arbitral tribunal's final report to the Parties to the dispute.

5. Where a request is made pursuant to Paragraph 4, the chair of the arbitral tribunal shall present the Parties to the dispute with a report containing a determination of the reasonable period of time and the reasons for such determination within 45 days of the date of the request.

6. Asaguideline, the reasonable period of time determined by the chair of the arbitral tribunal should not exceed 15 months from the date of the presentation of the arbitral triBunal's final report to the Parties to the dispute. However, such reasonable period of time may be shorter or longer, depending upon the particular circumstances.

16. Compliance Review

1. Where the Parties to the dispute disagree on the existence or consistency with this Agreement of measures taken to

comply with the obligation in Article 15.1 (Implementation), such dispute shall be decided through recourse to an arbitral tribunal re-convened for this purpose (Compliance Review Tribunal).(3) Unless otherwise specified in this Chapter, a Compliance Review Tribunal may be convened at the request of any Party to the dispute.

2. Such request may only be made after the earlier of:

(a) the expiry of the reasonable period of time; or

(b) a notification to the Complaining Party by the Responding Party that it has complied with the obligation in Article 15.1 (Implementation).

3. A Compliance Review Tribunal shall make an objective assessment of the matter before it, including an objective assessment of:

(a) the factual aspects of any implementation action taken by the Responding Party; and

(b) whether the Responding Party has complied with the obligation in Article 15.1 (Implementation).

4. The Compliance Review Tribunal shall set out in its report:

(a) a descriptive section summarising the arguments of the Parties to the dispute and Third Parties;

(b) its findings on the factual aspects of the case; and

(c) its findings on whether the Responding Party has complied with the obligation in Article 15.1 (Implementation).

5. The Compliance Review Tribunal shall, where possible, provide its interim report to the Parties to the dispute within 75 days of the date it re-convenes, and its final report 15 days thereafter. When the Compliance Review Tribunal considers that it cannot provide either report within the relevant timeframe, it shall inform the Parties to the dispute in writing of the reasons for the delay together with an estimate of the period within which it will submit the report.

6. Where an arbitral tribunal is requested to re-convene pursuant to Paragraph 1, it shall re-convene within 15 days of the date of the request. The period from the date of the request for the arbitral tribunal to re-convene to the submission of its final report shall not exceed 120 days, unless Article 11.12 (Establishment and Re-convening of Arbitral Tribunals) applies or the Parties to the dispute otherwise agree.

(3) Consultations under Article 6 (Consultations) are not required for these procedures.

17. Compensation and Suspension of Concessions or other Obligations

1. Compensation and the suspension of concessions or other obligations are temporary measures available in the event that the Responding Party does not comply with its obligation under Article 15.1 (Implementation). However, neither compensation nor the suspension of concessions or other obligations is preferred to compliance with the obligation under Article 15.1 (Implementation). Compensation is voluntary and, if granted, shall be consistent with this Agreement.

2. Where either of the following circumstances exists:

(a) the Responding Party has_ notified the Complaining Party that it does not intend to comply with the obligation in Article 15.1 (Implementation), or

(b) a failure to comply with the obligation in Article 15.1 (Implementation) has been established in accordance with Article 16 (Compliance Review),

the Responding Party shall, if so requested by the Complaining Party, enter into negotiations with a view to developing mutually acceptable compensation.

3. If no satisfactory compensation has been agreed within 30 days of the date of a request made under Paragraph 2, the Complaining Party may at any time thereafter notify the Responding Party and the other Parties that it intends to suspend the application to the Responding Party of concessions or other obligations equivalent to the level of nullification and impairment, and shall have the right to begin suspending concessions or other obligations 30 days after the date of receipt of the notification.

4. The right to suspend concessions or other obligations arising under Paragraph 3 shall not be exercised where:

(a) a review is being undertaken pursuant to Paragraph 8; or

(b) amutually agreed solution has been reached.

5. A notification made under Paragraph 3 shall specify the level of concessions or other obligations that the Complaining Party proposes to suspend, and the relevant Chapter and sector(s) which the concessions or other obligations are related to.

6. In considering what concessions or other obligations to suspend, the Complaining Party shall apply the following principles:

(a) the Complaining Party should first seek to suspend concessions or other obligations in the same sector or sectors as that affected by the measure; and

(b) the Complaining Party may suspend concessions or other obligations in other sectors it if considers that it is not practicable or effective to suspend concessions or other obligations in the same sector.

7. The level of suspending concessions or other obligations shall be equivalent to the level of nullification and impairment.

8. Within 30 days from the date of receipt of a notification made under Paragraph 3, if the Responding Party objects to the level of suspension proposed or considers that the principles set forth in Paragraph 6 have not been followed, the Responding Party may request the arbitral tribunal to re- convene to make findings on the matter. The arbitral tribunal shall provide its assessment to the Parties to the dispute within 30 days of the date it re-convenes. Where an arbitral tribunal is requested to re-convene pursuant to this Paragraph, it shall re-convene within 15 days of the date of the request, unless Article 11.12 (Establishment and Re-convening of Arbitral Tribunals) applies.

9. The suspension of concessions or other obligations shall be temporary and shall only be applied until such time as the obligation in Article 15.1 (Implementation) has been complied with or a mutually satisfactory solution is reached.

10. Where the right to suspend concessions or other obligations has been exercised under this Article, if the Responding Party considers that:

(a) the level of concessions or other obligations suspended by the Complaining Party is not equivalent to the level of the nullification and impairment; or

(b) it has complied with the obligation in Article 15.1 (Implementation),

it may request the arbitral tribunal to re-convene to examine the matter. (4)

11. Where the arbitral tribunal re-convenes pursuant to Paragraph 10(a), Paragraph 8 shall apply. Where the arbitral tribunal re-convenes pursuant to Paragraph 10(b), Article 16.3 to 16.5 (Compliance Review) shall apply.

(4) Where a Compliance Review Tribunal determines that measures taken to comply are inconsistent with this Agreement, it may also, on request, assess whether the level of any existing suspension of concessions is still appropriate and, if not, assess an appropriate level.

Section E. Final Provisions

18. Special and Differential Treatment Involving Newer ASEAN Member States

1. At all stages of the determination of the causes of a dispute and of dispute settlement procedures involving newer ASEAN Member States, particular sympathetic consideration shall be given to the special situation of newer ASEAN Member States. In this regard, Parties shall exercise due restraint in raising matters under these procedures involving a Least Developed Country Party. If nullification or impairment is found to result from a measure taken by a Least Developed Country Party, a Complaining Party shall exercise due restraint regarding matters covered under Article 17 (Compensation and Suspension of Concessions or other Obligations) or other obligations pursuant to these procedures.

2. Where one or more of the Parties to a dispute is a newer ASEAN Member State, the arbitral tribunal's reports shall explicitly indicate the form in which account has been taken of relevant provisions on special and differential treatment for a newer ASEAN Member State that form part of this Agreement which have been raised by the newer ASEAN Member State in the course of the dispute settlement procedures.

19. Expenses

1. Unless the Parties to the dispute otherwise agree, each Party to a dispute shall bear the costs of its appointed arbitrator and its own expenses and legal costs.

2. Unless the Parties to the dispute otherwise agree, the costs of the chair of the arbitral tribunal and other expenses associated with the conduct of its proceedings shall be borne in equal parts by the Parties to the dispute.

20. Contact Points

1. Each Party shall designate a contact point for this Chapter and shall notify the other Parties of the details of this contact point within 30 days of the entry into force of this Agreement. Each Party shall notify the other Parties of any change to its contact point.

2. Any request, written submission or other document relating to any proceedings pursuant to this Chapter shall be delivered to the relevant Party or Parties through their designated contact points who shall provide confirmation of receipt of such documents in writing.

21. Language

1. All proceedings pursuant to this Chapter shall be conducted in the English language.

2. Any document submitted for use in any proceedings pursuant to this Chapter shall be in the English language. If any original document is not in the English language, a Party submitting it for use in the proceedings shall provide an English language translation of that document.

ANNEX 20-A. RULES OF PROCEDURE FOR ARBITRAL TRIBUNAL PROCEEDINGS

1. Any reference made in these Rules to an Article is a reference to the appropriate Article in Chapter 20 (Consultations and Dispute Settlement).

Timetable

2. After consulting the Parties to the dispute, an arbitral tribunal shall, as soon as practicable and whenever possible within 15 days after the establishment of the arbitral tribunal, fix the timetable for the arbitral tribunal process. The arbitral tribunal process, from the date of establishment until the date of the final report shall, as a general rule, not exceed the period of nine months, unless the Parties to the dispute agree otherwise.

3. In determining the timetable for the arbitral tribunal process, the arbitral tribunal shall provide sufficient time for the Parties to the dispute to prepare their respective submissions. The arbitral tribunal shall set precise deadlines for written submissions by the Parties to the dispute and they shall respect those deadlines. The interim report shall be provided at least four weeks before the deadline for completion of the final report.

4. The arbitral tribunal shall present to the Parties to the dispute its final report within 180 days from the date of its establishment. In cases of urgency, including those relating to perishable goods, the arbitral tribunal shall aim to present its report to the Parties to the dispute within 90 days from the date of its establishment. When the arbitral tribunal considers that it cannot present its final report within 180 days or within 90 days in cases of urgency, it shall inform the Parties to the dispute in writing of the reasons for the delay together with an estimate of the period within which it will present its report.

5. Any time period applicable to the arbitral tribunal proceeding shall be suspended for a period that begins on the date on which any member of the arbitral tribunal resigns or becomes unable to act and ends on the date on which the successor member is appointed.

6. Unless otherwise agreed by the Parties to the dispute, an arbitral tribunal may, in consultation with the Parties to the dispute, modify any time period applicable in the arbitral tribunal proceeding and make such other procedural or administrative adjustments as may be required in the proceeding.

Operation of Arbitral Tribunals

7. The chair of the arbitral tribunal shall preside at all of its meetings. An arbitral tribunal may delegate to the chair authority to make administrative and procedural decisions.

8. Except as otherwise provided in this Annex, the arbitral tribunal may conduct its business by any means, including by telephone, facsimile transmission and any other means of electronic communication.

9. Only members of the arbitral tribunal may take part in the deliberations of the arbitral tribunal.

10. The arbitral tribunal may, in consultation with the Parties to the dispute, retain such number of assistants, interpreters or translators, or designated note takers as may be required for the proceeding and permit them to be present during its deliberations. Any such arrangements established by the arbitral tribunal may be modified by the agreement of the Parties to the dispute.

11. The arbitral triounal's deliberations shall be confidential. The members of the arbitral tribunal and the persons retained by the arbitral tribunal shall maintain the confidentiality of arbitral tribunal proceedings and deliberations.

12. There shall be no ex parte communications with the arbitral tribunal concerning matters under consideration by it.

13. The interests of Third Parties and those of other Parties shall be fully taken into account during the arbitral tribunal proceedings.

Written Submissions and Other Documents

14. Each Party to the dispute shall transmit to the arbitral tribunal a first submission in writing setting out the facts of its case and its arguments. Unless the Parties agree otherwise, a Complaining Party shall deliver its first submission to the arbitral tribunal and to the Responding Party within 14 days after the date of the establishment of the arbitral tribunal. The Responding Party shall deliver its first submission to the arbitral tribunal and to the Complaining Party within 21 days after the date of receipt of the first submission of the Complaining Party. Any subsequent written submissions shall be submitted simultaneously.

15. A Party to the dispute shall deliver no less than four copies of its written submissions to the arbitral tribunal and one copy to the other Parties to the dispute. Third Parties shall receive the submissions of the Parties to the dispute to the first substantive hearing.

16. In respect of any request, notice or other document(s) related to the arbitral tribunal proceeding that is not covered by Rules 14 and 15, each Party to the dispute may deliver a copy of the document(s) to the other Party to the dispute by facsimile, email or other means of electronic transmission.

17. A Party to the dispute may at any time correct minor errors of a clerical nature in any request, notice, written submission or other document(s) related to the arbitral tribunal proceeding by delivering a new document clearly indicating the changes.

Hearings

18. At the first substantive hearing with the Parties to the dispute, each Party to the dispute shall present the facts of its case and its arguments. The Complaining Party shall present its position first. The Parties to the dispute shall be given an opportunity for final statements, with the Complaining Party presenting its statement first.

19. All Third Parties shall be invited to present their views during a separate session of the first substantive hearing of the arbitral tribunal set aside for that purpose. All Third Parties may be present during the entirety of this session.

20. The Parties to the dispute and Third Parties shall make available to the arbitral tribunal written versions of their oral statements and responses to questions made in hearings with the arbitral tribunal.

Availability of Information

21. Written submissions to the arbitral tribunal shall be treated as confidential, but shall be made available to the Parties to the dispute. No Party to the dispute shall be precluded from disclosing statements of its own positions to the public provided that there is no disclosure of information which has been designated as confidential by a Party to the dispute or Third Party. The Parties to the dispute, Third Parties and the arbitral tribunal shall treat as confidential information submitted by a Party to the dispute to the arbitral tribunal which that Party has designated as confidential. A Party to the dispute shall, upon request of another Party, provide a non- confidential summary of the information contained in its written submissions that could be disclosed to the public.

Information Gathering

22. The Parties to the dispute and Third Parties shall respond promptly and fully to any request by an arbitral tribunal for such information as the arbitral tribunal considers necessary and appropriate.

23. An arbitral tribunal may seek information and technical advice from any individual or body which it deems appropriate. However, before doing so the arbitral tribunal shall seek the views of the Parties to the dispute. Where the Parties to the

dispute agree that the arbitral tribunal should not seek the additional information or technical advice, the arbitral tribunal shall not proceed. The arbitral tribunal shall provide the Parties to the dispute with any information or technical advice it receives and an opportunity to provide comments.

Reports

24. The arbitral tribunal shall provide to the Parties to the dispute an interim report, meeting the requirements specified in Article 12.3 (Functions of Arbitral Tribunals).

25. The interim report shall be provided at least four weeks before the deadline for completion of the final report. The arbitral tribunal shall accord adequate opportunity to the Parties to the dispute to review the entirety of its interim report prior to its finalisation and shall include a discussion of any comments made by the Parties to the dispute in its final report.

26. The interim report and final report of the arbitral tribunal shall be drafted without the presence of the Parties to the dispute. Opinions expressed in the reports of the arbitral tribunal by its individual members shall be anonymous.

Venue

27. The venue for the arbitral tribunal hearings shall be decided by mutual agreement between the Parties to the dispute. If there is no agreement, the venue shall alternate between the capitals of the Parties to the dispute with the first hearing to be held in the capital of the Responding Party.

Remuneration and Payment of Expenses

28. The arbitral tribunal shall keep a record and render a final account of all general expenses incurred in connection with the proceedings, including those paid to its assistants, designated note takers or other individuals that it retains pursuant to Rule 10.

ANNEX 20-B. OPTIONAL PROCEDURES FOR COMPOSING ARBITRAL TRIBUNALS

As provided in Article 11.3 (Establishment and Re-convening of Arbitral Tribunals), the Parties to the dispute may agree to use any of the following optional procedures, or variations thereof, for the purpose of composing an arbitral tribunal.

Optional Procedure A

1. The Complaining Party and the Responding Party shall each appoint one arbitrator within (period to be agreed by the Parties to the dispute) of the date of the receipt of a request to establish an arbitral tribunal. If either Party fails to appoint an arbitrator within such period, then the arbitrator appointed by the other Party shall act as the sole arbitrator of the arbitral tribunal.

2. Where two arbitrators are appointed in accordance with Paragraph 1, the Parties to the dispute shall designate by common agreement the third arbitrator who shall chair the arbitral tribunal. If the Parties to the dispute have not designated the chair of the arbitral tribunal within (period to be agreed by the Parties to the dispute) of the appointment of the second arbitrator, the two arbitrators appointed in accordance with Paragraph 1 shall designate by common agreement the third arbitrator who shall chair the tribunal. If the chair of the arbitral tribunal has not been designated by the arbitrators within (period to be agreed by the Parties to the dispute) of the appointment of the second arbitrator, the Director-General of the WTO shall, at the request of any Party to the dispute, appoint the chair of the arbitral tribunal within (period to be agreed by the Parties to the dispute) of that request.

Optional Procedure B

1. The Complaining Party and the Responding Party shall each appoint one arbitrator within (period to be agreed by the Parties to the dispute) of the date of the receipt of a request to establish an arbitral tribunal.

2. The Parties to the dispute shall agree on the appointment of the third arbitrator within (period to be agreed by the Parties to the dispute) of the appointment of the third arbitrator who shall serve as chair of the arbitral tribunal. If all three appointments have not been made within (period to be agreed by the Parties to the dispute), the necessary appointments shall be made at the request of any Party to the dispute by the Director-General of the WTO within a further (period to be agreed by the Parties to the dispute).

Optional Procedure C

1. Within (period to be agreed by the Parties to the dispute) of the date of the receipt of a request to establish an arbitral tribunal, each Party to the dispute shall provide to the other Parties to the dispute a list of up to (number to be agreed by

the Parties to the dispute) nominees for appointment as arbitrators, including at least two individuals suitable for appointment as chair. The Parties to the dispute shall then consult with each other on the composition of the arbitral tribunal with the objective of appointing the arbitrators drawing as appropriate on the lists of nominees.

2. If all of the arbitrators have not been appointed within (period to be agreed by the Parties to the dispute) of the request to establish an arbitral tribunal, any of the remaining arbitrators shall be appointed at the request of any Party to the dispute by random drawing from the lists of nominees separated for this purpose into separate lists of nominations for appointment as chair or as a regular arbitrator.

Chapter 21. FINAL PROVISIONS

1. Annexes, Appendices and Footnotes

The Annexes, Appendices and footnotes to this Agreement shall constitute an integral part of this Agreement.

2. Relation to other Agreements

1. Each Party reaffirms its rights and obligations under the WTO Agreement and other agreements to which the Parties are party.

2. Nothing in this Agreement shall be construed to derogate from any right or obligation of a Party under the WTO Agreement and other agreements to which the Parties are party.

3. In the event of any inconsistency between this Agreement and any other agreement to which two or more Parties are party, such Parties shall immediately consult with a view to finding a mutually satisfactory solution.

4. Nothing in this Agreement shall prevent any individual ASEAN Member State from entering into any agreement with any one or more ASEAN Member State and/or Australia and/or New Zealand relating to trade in goods, trade in services, investment and/or other areas of economic co- operation.

5. The provisions of this Agreement shall not apply to any agreement among ASEAN Member States. The provisions of this Agreement shall also not apply to any agreement involving any ASEAN Member State and/or Australia and/or New Zealand unless otherwise agreed by the parties to that agreement. (1)

(1) This Paragraph does not apply to any future agreement concluded in accordance with this Agreement.

3. Amended or Successor International Agreements

If any international agreement, or a provision therein, referred to in this Agreement (or incorporated into this Agreement) is amended, the Parties shall consult on whether it is necessary to amend this Agreement, unless this Agreement provides otherwise.

4. Disclosure of Information

Unless otherwise provided in this Agreement, nothing in this Agreement shall require any Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

5. Confidentiality

Unless otherwise provided in this Agreement, where a Party provides information to another Party in accordance with this Agreement and designates the information as confidential, the other Party shall maintain the confidentiality of the information. Such information shall be used only for the purposes specified, and shall not be otherwise disclosed without the specific permission of the Party providing the information, except to the extent that the Party receiving the information is required under its domestic law to provide the information to judicial proceedings.

6. Amendments

This Agreement may be amended by agreement in writing by the Parties and such amendments shall come into force on

such date or dates as may be agreed among them.

7. Depositary

1. The Secretary-General of ASEAN is designated as the Depositary for this Agreement.

2. The Depositary shall promptly notify each Party and provide them with the date and a copy of a notice of withdrawal under Article 9.1 (Withdrawal and Termination).

8. Entry Into Force

1. Each Party shall notify each other Party in writing upon completion of its internal requirements (2) necessary for entry into force of this Agreement. This Agreement shall enter into force on 1 July 2009 for any Party that has made such notifications provided that Australia, New Zealand and at least four ASEAN Member States have made such notifications by that date.

2. If this Agreement does not enter into force on 1 July 2009 it shall enter into force, for any Party that has made the notification referred to in Paragraph 1, 60 days after the date by which Australia, New Zealand and at least four ASEAN Member States have made the notifications referred to in Paragraph 1.

3. After the entry into force of this Agreement pursuant to Paragraph 1 or 2, this Agreement shall enter into force for any Party 60 days after the date of its notification referred to in Paragraph 1.

(2) For greater certainty, the term "internal requirements" may include obtaining governmental approval or parliamentary approval in accordance with domestic law.

9. Withdrawal and Termination

1. Any Party may withdraw from this Agreement by giving six months advance notice in writing to the Depositary.

2. This Agreement shall terminate if, pursuant to Paragraph 1:

(a) Australia withdraws;

(b) New Zealand withdraws; or

(c) this Agreement is in force for less than four ASEAN Member States.

10. Review

The Parties shall undertake a general review of this Agreement with a view to furthering its objectives in 2016, and every five years thereafter, unless otherwise agreed by the Parties.

ANNEX 3. SCHEDULE OF RESERVATIONS AND NON-CONFORMING MEASURES FOR INVESTMENT. CAMBODIA

LIST A. EXPLANATORY NOTES

1. This List A sets out, pursuant to Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), Cambodia's existing measures that are not subject to some or all of the obligations imposed by:

(a) Article 3 (National Treatment) of Chapter 11 (Investment);

(b) Article 4 (Most-Favoured-Nation Treatment) of Chapter 11 (Investment);

(c) Article 5 (Senior Management and Board of Directors) of Chapter 11 (Investment); or

(d) Article 6 (Prohibition of Performance Requirements) of Chapter 11 (Investment).

2. Each entry in this List A sets out the following elements:

(a) Sector refers to the sector for which the entry is made;

(b) Subsector, where referenced, refers to the specific subsector for which the entry is made;

(c) Industry Classification, where referenced, refers to the activity covered by the entry, according to the CPC, ISIC Rev. 3.1 or as expressly otherwise described in that entry;

ISIC Rev. 3.1 means the International Standard Industrial Classification of All Economic Activities as set out in the Statistical Papers, Series M, No. 4, ISIC Rev. 3.1, Statistical Office of the United Nations, New York, 2002; and

CPC means the Provisional Central Product Classification as set out in the Statistical Papers, Series M, No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991.

(d) Level of Government indicates the level of government maintaining the listed measures;

(e) Obligations Concerned specifies the obligations referred to in Paragraph 1 that, pursuant to Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), do not apply to the listed measures;

(f) Description sets out the non-conforming measure for which the entry is made; and

(g) Source of Measure means the laws, regulations or other measures that are the source of the non-conforming measure for which the entry is made. A measure cited in the Source of Measure element:

(i) means the measure as amended, continued or renewed as of the date of entry into force of the Second Protocol, and

(ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure.

3. In accordance with Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), the Articles of this Agreement specified in the Obligations Concemed element of an entry do not apply to the non-conforming measure identified in the Description element of that entry.

4. For greater certainty, the Description element of each of the entries in this List A is to be interpreted in accordance with the relevant cited sources of the non- conforming measures. For greater certainty, to the extent of any conflict between the Description element and other elements in an entry, the Description element shall prevail.

5. The Schedules of other Parties shall not be used to interpret Cambodia's commitments or obligations under Chapter 11 (Investment).

6. Cambodia reserves the right to maintain, modify, add or withdraw, for policy flexibility any reservation in or from the Lists for a period of 24 months from the date of entry into force of this Schedule, provided that relevant non-conforming measure is in existence as of the date of entry into force of the Second Protocol. Any such addition, withdrawal or modification will be submitted to the Depositary who will notify the other Parties, including the relevant laws and regulations. Such reservation shall be deemed to form part of this Schedule upon such notification.

1. Sector: All sectors

Subsector:

Industry Classification:

Level of Govemment: National Administration and Sub-National Administration

Obligations Concerned: National Treatment Most-Favoured-Nation Treatment Senior Management and Board of Directors

Description:

National Treatment and Most-Favoured-Nation Treatment shall not apply to any measure relating to land ownership within the constitutional law, land law and related laws and regulations.

Investors' ownership of land for the purpose of implementing investment projects is granted only to persons of Cambodian nationality in accordance with laws and regulations in force.

A foreigner has ownership rights over the private part of the co-owned building only from the first floor up. The ground floor and under-ground floors shall not be owned by the foreigners. A foreigner is not permitted to have ownership rights over the private part of the co-owned building situated within 30 kilometres distance from land border, and other areas defined

by the Royal Government of Cambodia, except the co- owned buildings located in the Special Economic Zones, for important public meeting, and other areas defined by the Royal Govemment of Cambodia.

Land along the border cannot be leased to a national or legal person of a bordering country.

Land owner has the rights to appoint senior management and board of director in accordance with the Labour law.

Source of Measure:

- Article 44 of the Constitution of the Kingdom of Cambodia

- Law on Investment of the Kingdom of Cambodia dated 15 October 2021

- Land Law (2001)

- The Law on Providing Foreigners with Ownership Rights Over Private Part of the Co- Owned Buildings (2010)

- Code of Civil Procedure (2006)

- Civil Code (2007)

- Sub-Decree No. 114 ANKR.BK dated 29 August 2007 on the Mortgage and Transfer of the Rights over a Long-term lease or an Economic Land Concession

- Govemment Circular No. 08 SR dated 17 November 2015

2. Sector: All sectors

Subsector:

Industry Classification:

Level of Govemment: National Administration and Sub-National Administration

Obligations Concerned: National Treatment Prohibition of Performance Requirements Senior Management and Board of Directors

Description:

National Treatment, Prohibition of Performance Requirements and Senior Management and Board of Directors shall not apply to any measure regarding the hiring of employment policies and obligation of an investor.

Employers must give preference to Cambodians when hiring a worker (Article 263 of Labour Law (1997). Investors shall be obliged to promote Cambodian staff to a senior management level, and this promotion shall be made over time.

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

This rate of 10 per cent is divided into three categories of employees:

1. Office employees: three per cent

2. Employees or skilled workers: six per cent

3. Employees or Non-skilled workers: one per cent

For the establishment and operation of a factory, the factory owner shall give priority to Cambodian engineers and technicians.

Foreign labour can be exceeding the above limit with the authorisation of the Ministry of Labour and Vocational Training.

Source of Measure

- Article 22 of the Law on Investment of the Kingdom of Cambodia dated 15 October 2021

- Article 10 of the Law on Administration of Factory and = Handicraft (2006 and amendment 2014)

- Sub-Decree No. 111 ANK/BK dated 27 September 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, Labour, Vocational Training and Youth Rehabilitation

- Prakas No.196 K.B/ BR K dated 20 August 2014 on Employment of Foreign Labour

- Code of Civil Procedure (2006)

3. Sector: All sectors

Subsector:

Industry Classification:

Level of Govemment: National Administration and Sub-National Administration

Obligations Concerned: National Treatment Senior Management and Board of Directors

Description:

National Treatment and Senior Management and Board of Directors shall not apply to any measure relating to portfolio investments.

- For domestic purchases by non-residents for equity securities, in the primary market, 20 per cent of each subscription for equity is reserved for Cambodian investors, and the remaining 80 per cent is for both Cambodian and non-Cambodian investors. However, the Director General of the Securities and Exchange Commission of Cambodia (SECC) may define the reallocation if the above allocation is not fulfilled.

- A foreign investor cannot buy 100 per cent of subscription of securities publicly issued (maximum 80 per cent).

- A corporate secretary must be a Cambodian national and an independent director shall have work experience condition different from a Cambodian national.

Source of Measure:

- Law on the Issuance and Trading of Non- Government Securities (2007)

- Law on Government Securities (2020)

- Sub-Decree on the Implementation of the Law on the Issuance and Trading of Non- Non-Government Securities (2009)

- Article 65 of Sub-Decree on the Implementation of the Law on the Issuance and Trading of Non-Government Securities (2009)

- Article 36 of Sub-Decree No. 005/15 (2015)

- Sub-Decree on the Conduct and Organization of the Securities and Exchange Commission of Cambodia

- Articles 12 and 23 of Prakas No. 031/10 on Corporate Govemance for the Listed Public Enterprise dated on 15 December 2010

- Prakas on Public Offering of Equities Securities

- Prakas on Public Offering of Debt Securities

- Prakas on Licensing and Supervision of Derivative Trading

- The Guideline on the Mechanics of Trading

- The Guideline on Client Money Account and Mechanism of Deposit, Withdrawal and Seitlement of Client Money for Trading Derivative

- National Economic Development Policy

- Stock Market Development Policy and Its Strategies

4. Sector : Manufacturing

Subsector : Production or processing of psychotropic substances and narcotic substances: Schedules I, Il, and Ill of the Single

Convention on Narcotic Drugs done at New York, 30 March 1961 (the "1961 Convention") and the Convention on Psychotropic Substances done at Vienna, 21 February 1971 (the "1971 Convention") in this Entry

Industry Classification: ISIC 2429

Level of Govemment : National Administration and Sub-National Administration

Obligations Concerned: National Treatment, Prohibition of Performance Requirements, Senior Management and Board of Directors

Description : National Treatment and Senior Management and Board of Directors shall not apply to any measure relating to the manufacturing of narcotic and psychotropic substances.

Manufacturing of narcotic and psychotropic substances of Schedule | is prohibited in Cambodia, but the manufacturing of finished products of Schedules II and III (1) are only permitted according to the needs and planning of the Ministry of Health of Cambodia.

Source of Measure :

- Articles 1 to 4 of the Law on the Controlling of Drugs (1997)

- Schedule I, II and Ill of the 1961 Convention and the 1971 Convention September 2005 on the implementation of the Law on the Amendment to the Law on Investment of the Kingdom of Cambodia

- Sub-Decree No. 111 ANK/BK dated 27 September 2005 on the implementation of the Law on the Amendment to the Law on Investment of the Kingdom of Cambodia

(1) Schedule II (Tables I and II of the 1961 Convention): Acétyldihydrocodéine, Acétylméthadol, Alfentanil, Allylprodine, Alphaméprodine, Alphaméthadol, Alpha-méthylthiophentanyl, Alphaprodine, Aniléridine, Benzéthidine, Benzylmorphine,Bétacétylméthadol, Bétaméprodine, Bétaméthadone, Bétaprodine, Bézitramide, Butyrate de dioxaphétyl, Cétobémidone, Clonitazene, Lévomoramide, Lévophénacylmorphane, Lévorphanol, Métazocine, Méthadone, Méthadone, intermediary of the cyano-4diméthylamino-2 diphényl-4, 4 butane, Méthyldésorphine,-Méthyldihydromorphine, Métopon, Moramide, Morphéridine, Morphine, Morphine méthobromide and other by producs from morphines of pentavalent azote, Myrophine, Nicocodine, Nicodicodine, Nicomorphine, Noracyméthadol, Norcodéine, Norlévorphanaol, Norméthadone, Normorphine, Norpipanone, Noxymorphine, Opium, Oxycodone, Oxymorphone, Péthidine, Mécloquelone, Métamfétamine, Métaqualone, Méthylphénidate, Phencyclidine, Phenmétrazine, Racémate de Métamfétamine, and Sécobarbital. Schedule III (Table III of the 1971 Convention): Amobarbital, Buprénorphine, Butalbital, Cathine, cyclobarbital, Glutéthimide, Pentazocine, and Pentobarbital. (Table IV of the 1971 Convention): Allobarbital, Alprazolam, Amfépranone, Barbital, Banzfétamine, Bromazépam, Butobarbital, Camazépam, Chloiazéproxide, Clobazam, Clonazépam, Nordazépam, Oxazépam, Oxazolam, Pémoline, Phendimétrazine, Phénobarbital, Phentermine, Pinazépam, Papradol, Prazépam, Pyrovalérone, Secbutabarbital, Témazépam, Trizolam, and Vinylbital.

5. Sector : Manufacturing

Subsector : Production of poisonous chemicals, agriculture pesticide, or insecticide and other goods by using chemical substances

Industry Classification : ISIC 2421

Level of Govemment : National Administration and Sub-National Administration

Obligations Concerned : National Treatment

Most-Favoured-Nation Treatment Prohibition of Performance Requirements Senior Management and Board of Directors

Description : National Treatment Most-Favoured-Nation Treatment and Prohibition of Performance Requirement Senior Management and Board of Directors shall not apply to any measure relating to the production of poisonous chemicals, and agriculture pesticide or insecticide.

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

The production, processing and registration of pesticide in the list of banned pesticides (2) in Cambodia are prohibited. The production, processing and registration of other pesticides shall also be rejected if:

1. information and data attached to the application are false;

2. pesticide is highly toxic to public health or causes risk rather than the advantage of that pesticide usage;

3. pesticide is a phytotoxic product that cannot compensate the losses of crop yield;

4. the efficacy of the pesticide has lower standard than what is clarified;

5. the pesticide contains persistent toxic residue in crops and in the environment.

Source of Measure :

- Prakas No. 598 BRK.KSK dated 15 December 2003 issued by the Ministry of Agriculture, Forestry and Fisheries

- Prakas No. 484 BRKKSK dated 26 November 2012 issued by the Ministry of Agriculture, Forestry and Fisheries

- Sub-Decree No. 111 ANK/BK dated 27 September 2005 on the implementation of the Law on the Amendment to the Law on Investment of the Kingdom of Cambodia

- Articles 8 and 16 of the Law on the Management of Pesticides and Fertilizers (2012)

(2) The list of banned pesticides can be found in annex 1 of Prakas No. 484 BRK. KSK dated 26 November 2012 issued by the Ministry of Agriculture, Forestry and Fisheries.

6. Sector: Agriculture

Subsector: Seed management and Plant breeder's rights

Industry Classification: ISIC 0140

Level of Govemment: National Administration and Sub-National Administration

Obligations Concerned: National Treatment Prohibition of Performance Requirements Senior Management and Board of Directors

Description:

A foreign person cannot enjoy a plant breeder's right or related rights except for a foreign person who:

1. has resident status in Cambodia; or

has a permanent residence in a signatory state of the Convention of the International Union for the Protection of New Varieties of Plants adopted in Paris in 1961, as amended, or in any State which has a memorandum of understanding with Cambodia regarding plant variety protection.

Source of Measure

- Article 13 of the Law on Seed Management and Plant Breeder's Rights (2008) and related regulations

7. Sector: Fishery

Subsector: Inland and marine fishery

Industry Classification: ISIC 0500

Level of Govemment: National Administration and Sub-National Administration

Obligations Concerned: National Treatment, Prohibition of Performance Requirements, Senior Management and Board of Directors

Description:

The following activities shall be prohibited for all investors:

1. fishing during closed season (for middle- scale and industrial fishing);

2. any fishing activities in the fishery conservation areas, except where special permission is granted by the Minister of Agriculture Forestry and Fisheries to the Fisheries Administration to conduct scientific, technical research, and experiments related to fishery;

3. bypass navigations or any activities in the fisheries conservation areas except competent officers in case of law enforcement;

4. new settlement of less than two kilometres distance from the boundaries of fishery conservation areas except for Fisheries Administration resident which is used for law enforcement purposes;

5. any fishing activities in the fishery domain using the prohibited gears (3);

6. producing, buying, selling, transporting, and storing any electrocuting devices, all types of mosquito net fishing gear, mechanised motor pushed nets, inland trawlers that are used for fishing purpose; and

7. Other activities prohibited in the Law of Fisheries (2006).

A foreign person cannot enjoy small-scale or family-scale fishing.

Fishing exploitation or aquaculture by foreigners must be conducted under the agreement with the Ministry of Agriculture Forestry and Fisheries after obtaining the approval from the Royal Government of Cambodia.

Transhipments of fishery products and anchoring of the foreign fishing vessels shall be in accordance with terms and conditions determined by the Fisheries Administration.

Foreign fishing vessels that are permitted to fish in the marine fishery domain shall inform the Fisheries Administration prior to port calls in marine fishery domains of Cambodia.

Only Cambodian (Khmer) nationals can establish fishing community in their locals in order to manage, conserve, develop and use fishery resources.

Source of Measure

- Law on Fisheries (2006)

- Sub-Decree No. 25 ANK.BK dated 20 March 2007 on Management of Fishing Community

(3) The prohibited fishing gears can be found in Article 20 of Law on Fisheries (2006).

8. Sector: Forestry

Subsector: Forestry and Logging: Forestry exploitation business

Industry Classification: ISIC 0200

Level of Govemment: National Administration and Sub-National Administration

Obligations Concerned: National Treatment Prohibition of Performance Requirements Senior Management and Board of Directors

Description:

National Treatment and Senior Management and Board of Directors shall not apply to any measure relating to restriction or regulation on forestry and forestry-related industries.

All activities prescribed in Articles 28 to 39 of Chapter 8 of the Law on Forestry (2002) shall be prohibited. Natural protected areas shall be govemed by the Law on Environmental Protection and Natural Resource Management (1996), with the purpose to:

- protect and promote environmental quality and public health through the prevention, reduction and control of pollution;

- assess environmental impacts of all proposed projects prior to the issuance of the decision by the Royal Government of Cambodia;

- ensure rational and sustainable conservation, development, management and use of the natural resources 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. Investors or the investment must comply with environmental impact assessment screening criteria and assessment process applicable to their proposed investments prior to their establishment required by the Law on Environmental Protection and Natural Resource Management (1996) and its Sub-Decree on Environmental Impact Assessment Process (EIAP) for such investment.

Source of Measure :

- Law on Forestry (2002)

- Law on Environmental Protection and Natural Resource Management (1996)

- Government Declaration dated 25 January 1999 on Management and Elimination of Forest Anarchy

- Sub-Decree No. 111 ANK/BK dated 27 September 2005 on the Implementation of the Law on the Amendment to the Law on Investment of the Kingdom of Cambodia

9. Sector: Mining

Subsector: Mining including sand exploitation, and oil and gas extraction and refinery

Industry Classification: ISIC 1410, 1110

Level of Govemment: National Administration and Sub-National Administration

Obligations Concerned: National Treatment, Prohibition of Performance Requirements, Senior Management and Board of Directors

Description:

To protect the natural environment in all areas within the fresh water and sea water in Cambodia, all kinds of sand exploitation for export abroad shall be prohibited.

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

An 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 Council of Ministers, the Ministry of Mines and Energy and the relevant regulatory authorities.

Investment projects involving exploration and exploitation of minerals and natural resources shall be submitted for the approval of the Council of Ministers.

The export of all types of natural resources is prohibited. Mineral resources shall be preserved to meet the demand of the domestic factories in converting those mineral resources to finished products. Only finished products are allowed for export.

Petroleum contractors shall have obligations to (1) provide education, training and prioritising employment for Cambodian people and (2) maximize the utilization of domestic labour force, goods and services.

The Royal Government of Cambodia can require petroleum contractors to supply not more than 25 per cent of their petroleum share for fulfilling domestic demand. In case of emergency in domestic supply, the exportation of petroleum's resources shall be prohibited.

Petroleum contractors shall submit all petroleum data from their operations to the Ministry of Mines and Energy when the petroleum agreement is completed or expired.

Petroleum contractors shall submit all information and reports to the Ministry of Mines and Energy.

The Ministry of Mines and Energy can publicly disseminate relevant information related to petroleum operations, and environmental and social.

The State has its right to participate in the shares of petroleum operation. The shares participation of the State is approved by the Prime Minister.

Source of Measure

- Law on Environmental Protection and National Resource Management (1996)

- Law on Mineral Resource Management and Exploitation (2001)

- Law on Management of Petroleum and Petroleum Products (2019)

- Sub-Decree No. 27 ANRK.BK dated 6 April 1999 on the Water Pollution Control

- Article 11 of Sub-Decree No. 60 ANK. BK dated 5 April 2016 on the Organization and Functioning of the Council for the Development of Cambodia

- Sub-Decree No. 08 ANK.BK dated 31 January 2005

- Govemment Decision No. 29 SSR dated 8 May 2009 on the Limitation of Sand Exploitation

10. Sector: All Sectors

Subsector:

Industry Classification:

Level of Govemment: National Administration and Sub-National Administration

Obligations Concerned: National Treatment Prohibition of Performance Requirements Senior Management and Board of Directors

Description:

Investment projects which:

- have investment capital of USD 50 million or more; involve politically sensitive issues;

- may have negative impact on the environment;

- have long-term strategy; or

- involve infrastructure concession,

shall be submitted for the approval of the Council of Ministers. Other or further requirements relating to National Treatment, Prohibition of Performance Requirements and Senior Management and Board of Directors for the aforementioned investment projects may be adopted by the Council of Ministers.

Prohibition of Performance Requirements and Senior Management and Board of Directors shall not apply to any measure relating to tax incentive for small and medium enterprises with any condition as follows:

- to use at least 60 per cent local content;

- to increase the number of employees by at least 20 per cent; or

- to locate in small and medium enterprises Cluster.

Source of Measure

- Sub-Decree No. 111 ANK/BK dated 27 September 2005 on the implementation of the Law on the Amendment to the Law on Investment of the Kingdom of Cambodia

- Sub-Decree No. 124 ANKBK dated 2 October 2018 on Tax Incentive for Small and Medium Enterprises

- Article 11 of Sub-Decree No. 60 ANK. BK dated 5 April 2016 on the Organization and Functioning of the Council for the Development of Cambodia

LIST B. EXPLANATORY NOTES

1. This List B sets out, pursuant to Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), the specific sectors, subsectors or activities for which Cambodia may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

(a) Article 3 (National Treatment) of Chapter 11 (Investment);

(b) Article 4 (Most-Favoured-Nation Treatment) of Chapter 11 (Investment);

(c) Article 5 (Senior Management and Board of Directors) of Chapter 11 (Investment); or

(d) Article 6 (Prohibition of Performance Requirements) of Chapter 11 (Investment).

2. Each entry in this List A sets out the following elements:

(a) Sector refers to the sector for which the entry is made;

(b) Subsector, where referenced, refers to the specific subsector for which the entry is made;

(c) Industry Classification, where referenced, refers to the activity covered by the entry, according to the CPC, ISIC Rev. 3.1, or as expressly otherwise described in that entry;

ISIC Rev. 3.1 means the International Standard Industrial Classification of All Economic Activities as set out in the Statistical Papers, Series M, No.4, ISIC Rev. 3.1, Statistical Office of the United Nations, New York, 2002; and

CPC means the Provisional Central Product Classification as set out in the Statistical Papers, Series M, No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991.

(d) Level of Government indicates the level of government maintaining the listed measures;

(e) Obligations Concerned specifies the obligations referred to in paragraph 1 that, pursuant to Artide 13 (Reservations and Non- Conforming Measures) of Chapter 11 (Investment), do not apply to the sectors, subsectors or activities listed in the entry;

(f) Description sets out the scope of the sectors, subsectors or activities covered by the entry; and

(g) Existing Measures where specified, identifies, for transparency purposes, a non-exhaustive list of existing measures that apply to the sectors, subsectors or activities covered by the entry.

3. In accordance with Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), the Articles of this Agreement specified in the Obligations Concemed element of an entry do not apply to the sectors, subsectors and activities identified in the Description element of that entry.

4. For greater certainty, where Cambodia has more than one entry in this List B that could apply to a measure, each entry is to be read independently, and is without prejudice to the application of any other entry to the measure.

5. The Schedules of other Parties shall not be used to interpret Cambodia's commitments or obligations under Chapter 11 (Investment).

6. Cambodia reserves the right to maintain, modify, add or withdraw, for policy flexibility any reservation in or from the Lists for a period of 24 months from the date of entry into force of this Schedule, provided that relevant non-conforming measure is in existence as of the date of entry into force of the Second Protocol. Any such addition, withdrawal or modification will be submitted to the Depositary who will notify the other Parties, including the relevant laws and regulations. Such reservation shall be deemed to form part of this Schedule upon such notification.

1. Sector: All sectors

Subsector:

Level of Government: National Administration and Sub-National Administration

Industry Classification:

Obligations Concerned: National Treatment, Most-Favoured-Nation Treatment, Prohibition of Performance Requirements, Senior Management and Board of Directors

Description:

Cambodia reserves the right to adopt or maintain any measure relating to special preferences or treatments granted to MSMEs.

Existing Measures

- Industrial Development Policy 2015-2025 dated 6 March 2015

- SME Promotion Policy Framework (2015)

- Draft Policy on Promotion of Smail and Medium Enterprises

- Law on Investment of the Kingdom of Cambodia dated 15 October 2021

- Draft Law on Special Economic Zones as of 14 June 2019

2. Sector: All sectors

Subsector:

Level of Government: National Administration and Sub-National Administration

Industry Classification:

Obligations Concerned: National Treatment, Most-Favoured-Nation Treatment; Senior Management and Board of Directors

Description:

Cambodia reserves the right to adopt or maintain any measure regarding subsidies.

3. Sector: All sectors

Subsector:

Level of Government: National Administration and Sub-National Administration

Industry Classification:

Obligations Concerned: National Treatment, Most-Favoured-Nation Treatment

Description:

Cambodia reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral intemational agreement or arrangement in force or signed prior to the date of entry into force of the Second Protocol.

Cambodia reserves the right to adopt or maintain any measure that accords differential treatment to Member States of ASEAN under any ASEAN agreement open to participation by any Member States of ASEAN in force or signed after the date of entry into force of the Second Protocol.

Cambodia reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral intemational agreement or arrangement in force or signed after the date of entry into force of the Second Protocol.

Existing Measures

- Cambodia industrial Development Policy 2015-2025 dated 6 March 2015

- Rectangular Strategy-Phase IV of the Royal Government of Cambodia

- National Strategic Development Plan (2019-2023)

4. Sector: Agro-industries, Supporting industries, Handicraft

Subsector:

Level of Government: National Administration and Sub-National Administration

Industry Classification:

Obligations Concerned: Article 11.3 (National Treatment) Article 11.4 (Most-Favoured-Nation Treatment) Article 11.6 (Prohibition of Performance Requirements) Article 11.5 (Senior Management and Board of Directors)

Description: Cambodia reserves the right to adopt or maintain any measure relating to agro-industries, supporting industries for the agriculture, tourism, textile sector, cultural, historical, or traditional handicraft and incidental services to all

the said sectors or industries.

Existing Measures:

- Cambodia industrial Development Policy 2015-2025 dated 6 March 2015

- Rectangular Strategy-Phase IV of the Royal Government of Cambodia

- National Strategic Development Plan (2019- 2023)

5. Sector: All sectors

Subsector:

Level of Government: National Administration and Sub-National Administration

Industry Classification:

Obligations Concerned: Article 11.3 (National Treatment) Article 11.4 (Most-Favoured-Nation Treatment) Article 11.5 (Senior Management and Board of Directors)

Description: Cambodia reserves the right to adopt or maintain any measure relating to national defence, public order and security.

Existing Measures: -

6. Sector: All sectors

Subsector:

Level of Government: Sub-National Administration

Industry Classification:

Obligations Concerned: National Treatment, Most-Favoured-Nation Treatment

Description:

Cambodia reserves the right to adopt or maintain any measure already or will be adopted, or maintained by Sub-National Administration or Authorities affecting investor or investment.

Existing Measures:

- Law on Investment of the Kingdom of Cambodia dated 15 October 2021

- Sub-Decree No. 120 dated 20 June 2022 on the Organisation and Functioning of Municipal-Provincial Investment Sub-Committee.

7. Sector: Real estate

Subsector:

Level of Government: National Administration and Sub-National Administration

Industry Classification:

Obligations Concerned: National Treatment, Prohibition of Performance Requirements

Description:

Cambodia reserves the right to adopt or maintain any measure with respect to real estate development, supply, management, sale and rental services.

Existing Measures: -

8. Sector: All sectors

Subsector:

Level of Government: National Administration and Sub-National Administration

Industry Classification

Obligations Concerned: National Treatment, Most-Favoured-Nation Treatment, Prohibition of Performance Requirements, Senior Management and Board of Directors

Description:

Cambodia reserves the right to adopt or maintain any measure that accords rights or preferences to socially or economically disadvantaged groups such as disabled persons and ethnic minorities.

Existing Measures: -

10. Sector: All sectors

Subsector:

Level of Government: National Administration and Sub-National Administration

Industry Classification:

Obligations Concerned: National Treatment, Most-Favoured-Nation Treatment, Prohibition of Performance Requirements, Senior Management and Board of Directors

Description:

Cambodia reserves the right to adopt or maintain any measure affecting the administration and operation of any State-owned enterprises, including the Electricity Authority of Cambodia (EAC), Small and Medium Enterprises Bank of Cambodia (SME Bank), Agricultural and Rural Development Bank (ARDB), Electricité du Cambodge (EDC), Phnom Penh Water Supply Authority (PPWSA) and Green Trade Company.

Existing Measures: -

10. Sector: All sectors

Subsector:

Level of Government: National Administration and Sub-National Administration

Industry Classification:

Obligations Concerned: National Treatment, Most-Favoured-Nation Treatment

Description:

Cambodia reserves the right to adopt or maintain any measure relating to investment in services, on condition that such measures do not constitute a violation of its obligations under Chapter 8 (Trade in Services), including National Treatment and Most-Favoured-Nation Treatment.

Existing Measures: -

11. Sector: All sectors

Subsector:

Level of Government: National Administration and Sub-National Administration

Industry Classification:

Obligations Concerned: National Treatment, Senior Management and Board of Directors

Description:

Cambodia reserves the right to adopt or maintain any measure already or will be adopted or maintained by Central Government.

Existing Measures:

- Law on the Issuance and Trading of Non- Government Securities (2007)

- Law on Government Securities (2020)

- Sub-Decree on the Implementation of the Law on the Issuance and Trading of Non- Government Securities (2009)

- Sub-Decree on the Conduct and Organisation of the Securities and Exchange Commission of Cambodia

- Prakas on Public Offering of Equities Securities

- Prakas on Public Offering of Debt Securities

- Prakas on Licensing and Supervision of Derivative Trading

- The Guideline on the Mechanics of Trading

- The Guideline on Client Money Account and Mechanism of Deposit, Withdrawal and Settlement of Client Money for Trading Derivative

- National Economic Development Policy

- Stock Market Development Policy and Its Strategies

12. Sector: All Sectors

Subsector:

Level of Government: National Administration and Sub-National Administration

Industry Classification:

Obligations Concerned:

National Treatment, Most-Favoured-Nation Treatment

Description:

Cambodia reserves the right to adopt or maintain any measure relating to land including the acquisition, ownership, lease, policy on the usage of land, land planning, term of land use and rights and obligations of land users.

Existing Measures

- Article 44 of the Constitution of the Kingdom of Cambodia

- Law on Investment of the Kingdom of Cambodia dated 15 October 2021

- Land Law (2001)

- Law on Providing Foreigners with Ownership Rights Over Private Part of the Co-Owned Buildings (2010)

- Code of Civil Procedure (2006)

- Civil Code (2007)

- Sub-Decree No. 114 ANKR.BK dated 29 August 2007 on the Morigage and Transfer of the Rights over a Long-Term Lease or an Economic Land Concession

- Govemment Circular No. 08 SR dated 17 November, 2015

13. Sector: Energy

Subsector: Processing and production of electricity power by using any waste imported from a foreign country

Level of Government: National Administration and Sub-National Administration

Industry Classification

Obligations Concerned: National Treatment, Prohibition of Performance Requirements

Description:

National Treatment and Article Prohibition of Performance Requirements Cambodia reserves the right to adopt or maintain any measure relating to energy sector and sub-sectors.

Existing Measures:

- Sub-Decree No. 111 ANK/BK dated 27 September 2005 on the implementation of the Law on the Amendment to the Law on Investment of the Kingdom of Cambodia

- Sub-Decree No. 36 ANKR.BK dated 27 April 1999 on the Solid Waste Management

14. Sector: Investment in Services

Subsector: All kinds of commercial activities, import, export, wholesale, retails, including duty free shop.

Level of Government: National Administration and Sub-National Administration

Industry Classification:

Obligations Concerned: National Treatment, Most-Favoured-Nation Treatment

Description:

National Treatment and Most-Favoured-Nation Treatment shall not apply to any measure regarding to incentives and subsidies

Existing Measures:

- Law on Investment of the Kingdom of Cambodia dated 15 October 2021

- Sub-Decree No. 111 ANK/BK dated 27 September 2005 on the implementation of the Law on the Amendment to the Law on Investment of the Kingdom of Cambodia

15. Sector: Investment in Services

Subsector: Any transportation services by waterway, by road, by air except investment in railway sector.

Level of Government: National Administration and Sub-National Administration

Industry Classification:

Obligations Concerned: National Treatment, Most-Favoured-Nation Treatment

Description:

National Treatment and Most-Favoured-Nation Treatment shall not apply to any measure regarding to incentives and subsidies

Existing Measures:

- Law on Investment of the Kingdom of Cambodia dated 15 October 2021

- Sub-Decree No. 111 ANK/BK dated 27 September 2005 on the implementation of the Law on the Amendment to the Law on Investment of the Kingdom of Cambodia

16. Sector: Investment in Services

Subsector: Restaurants, karaoke parlours, bars, nightclubs, massage parlours or fitness clubs which are located outside an international standard hotel.

Notwithstanding that the above locations are located in an international standard hotel, if an investor or investors leases them to a non-QIP third party to conduct such business, that third party shall not be entitled to profit tax exemption to investor under the Amendment to the Law on Investment.

Level of Government: National Administration and Sub-National Administration

Industry Classification:

Obligations Concerned: National Treatment, Most-Favoured-Nation Treatment

Description:

National Treatment and Most-Favoured-Nation Treatment shall not apply to any measure regarding incentives and subsidies

Existing Measures:

- Law on Invesiment of the Kingdom of Cambodia dated 15 October 2021

- Sub-Decree No. 111 ANK/BK dated 27 September 2005 on the implementation of the Law on the Amendment to the Law on Investment of the Kingdom of Cambodia

17. Sector: Investment in Services

Subsector: Tourism service provider, tourism agent, tourism information and tourism advertisement.

Level of Government: National Administration and Sub-National Administration

Industry Classification:

Obligations Concerned: National Treatment, Most-Favoured-Nation Treatment

Description: National Treatment and Most-Favoured-Nation Treatment shall not apply to any measure regarding to incentives and subsidies

Existing Measures:

- Law on Investment of the Kingdom of Cambodia dated 15 October 2021

- Sub-Decree No. 111 ANK/BK dated 27 September 2005 on the implementation of the Law on the Amendment to the Law on Investment of the Kingdom of Cambodia

18. Sector: Investment in Services

Subsector: Casino and gambling business and service of any kinds

Level of Government: National Administration and Sub-National Administration

Industry Classification:

Obligations Concerned: National Treatment, Most-Favoured-Nation Treatment

Description:

National Treatment and Most-Favoured-Nation Treatment shall not apply to any measure regarding to incentives and subsidies

Existing Measures

- Law on Investment of the Kingdom of Cambodia dated 15 October 2021

- Sub-Decree No. 111 ANK/BK dated 27 September 2005 on the implementation of the Law on the Amendment to the Law on Investment of the Kingdom of Cambodia

19. Sector: Investment in Services

Subsector: Currency and financial business and services, including bank, financial institution, insurance company and all kind intermediation.

Level of Government: National Administration and Sub-National Administration

Industry Classification:

Obligations Concerned: National Treatment, Most-Favoured-Nation Treatment

Description:

National Treatment and Most-Favoured-Nation Treatment shall not apply to any measure regarding incentives and subsidies

Existing Measures:

- Law on Investment of the Kingdom of Cambodia dated 15 October 2021

- Sub-Decree No. 111 ANK/BK dated 27 September 2005 on the implementation of the Law on the Amendment to the Law on Investment of the Kingdom of Cambodia

20. Sector: Investment in Services

Subsector: Activity related to newspaper and media, including radio, television, press, magazine, movie, video production or reproduction, theatre, studio and related activities.

Level of Government: National Administration and Sub-National Administration

Industry Classification:

Obligations Concerned: National Treatment, Most-Favoured-Nation Treatment

Description:

National Treatment and Most-Favoured-Nation Treatment shall not apply to any measure regarding incentives and subsidies

Existing Measures:

- Law on Investment of the Kingdom of Cambodia dated 15 October 2021

- Sub-Decree No. 111 ANK/BK dated 27 September 2005 on the implementation of the Law on the Amendment to the Law on Investment of the Kingdom of Cambodia.

21. Sector: Investment in Services

Subsector: Professional services

Level of Government: National Administration and Sub-National Administration

Industry Classification:

Obligations Concerned: National Treatment, Most-Favoured-Nation Treatment

Description:

National Treatment and Most-Favoured-Nation Treatment shall not apply to any measure regarding to incentives and subsidies

ANNEX 3. SCHEDULE OF RESERVATIONS AND NON-CONFORMING MEASURES FOR INVESTMENT. INDONESIA

LIST A. EXPLANATORY NOTES

1. This List A sets out, pursuant to Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), Indonesiaâs existing measures that are not subject to some or all of the obligations imposed by:

(a) Article 3 (National Treatment) of Chapter 11 (Investment);

(b) Article 4 (Most-Favoured-Nation Treatment) of Chapter 11 (Investment);

(c) Article 5 (Senior Management and Board of Directors) of Chapter 11 (Investment); or

(d) Article 6 (Prohibition of Performance Requirements) of Chapter 11 (Investment).

2. This List A and List B pursuant to Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment) follow the negative list with two list approach as follows:

(a) this List A sets out commitments in relation to existing non-conforming measures which are subject to standstill obligations but not subject to tatchet mechanism; and

(b) List B sets out policy flexibility in relation to measures in sectors, subsectors and activities.

3. Each entry in this List A sets out the following elements:

(a) Sector refers to the sector for which the entry is made;

(b) Subsector refers to specific industries, products, and activities in which a reservation is taken;

(c) Industry Classification where referenced, refers to the activity covered by the entry, according to the CPC, ISIC Rev. 3, or as expressly otherwise described in that entry:

ISIC Rev. 3 means the International Standard Industrial Classification of All Economic Activities as set out in the Statistical Papers, Series M, No.4, ISIC Rev. 3, Statistical Office of the United Nations, New York, 1990;

CPC means the Provisional Central Product Classification as set out in the Statistical Papers, Series M, No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991.

(d) Level of Government indicates the level of government maintaining the listed measures;

(e) Obligations Concerned refers to the obligations of Articles 3 (National Treatment), 4 (Most-Favoured-Nation Treatment), 5 (Senior Management and Board of Directors), and 6 (Prohibition of Performance Requirements) of Chapter 11 (Investment), as the case may be, which do not apply to the listed measures;

(f) Description sets out the non-conforming measure for which the entry is made; and

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

4. In accordance with Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), the Articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the non-conforming measure identified in the Description element of that entry.

5. In the interpretation of a reservation, all elements of a reservation shall be considered. The Description element shall prevail over all other elements.

6. The Schedules of other Parties shall not be used to interpret Indonesiaâs obligations under Chapter 11 (Investment).

7. This note shall form part of Indonesia's reservations.

1. Sector: All sectors

Subsector: Acquisition or Lease of Land

Industry Classification:

Level of Government: Central and Regional

Obligations Concerned: National Treatment

Description:

The right of ownership of land (hak milik) is restricted to Indonesian nationals only.

Note: Notwithstanding the above, foreign companies incorporated and domiciled in Indonesia or foreign nationals may acquire land and property on the basis of the following rights:

(a) Leasehold (hak guna usaha), granted to a foreign company for a maximum period of 35 years and may be extended for a further period of 25 years, and also may be followed by renewal for a maximum period of 35 years.

(b) Building rights (hak guna bangunan), granted to a foreign company for a maximum period of 30 years and may be extended for a further period of 20 years, and also may be followed by renewal for a maximum period of 30 years.

(c) Right of use (hak pakai), granted to a foreign company or a foreign national for a maximum period of 30 years and may be extended for a further period of 20 years, and also may be followed by renewal for a maximum period of 30 years.

(d) Right of lease (hak sewa), granted to a foreign company or a foreign national for a definite period as may be agreed by the parties.

Such acquisitions of land and property must be approved by the relevant authority, subject to such conditions and restrictions as may be imposed by that authority.

Source of Measure

- Article 33 of the 1945 Constitution of The Republic of indonesia

- Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles

- Law No. 25 of 2007 conceming Investment as amended by Law No. 6 of 2023 conceming Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 conceming Job Creation into Law

- Government Regulation No. 18 of 2021 concerning Management Aighis, Land Rights, Apartment Units and Land Registration

2. Sector : All sectors

Subsector : Registration Requirements for the Establishment of Foreign Investment

Industry Classification : -

Level of Government : Central

Obligations Concerned : National Treatment

Description : Foreign investment (1) shall have a total investment value of more than IDR 10 billion (excluding land and buildings) for each business field in each location, unless required otherwise by the specific sector in accordance with Indonesia's laws and regulations. In addition, foreign investment shall have the issued capital/paid-up capital at least IDR 10 billion, unless otherwise stipulated in any Indonesia's laws and regulations.

Source of Measure :

- Law No. 25 of 2007 concerning Investment as amended by Law No. 6 of 2023 concerning Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law

- Law No. 20 of 2008 concerning Micro, Small and Medium Enterprises as amended by Law No. 6 of 2023 conceming Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 conceming Job Creation into Law

- Government Regulation No. 5 of 2021 conceming implementation of Risk-Based Business Licensing

- Government Regulation No. 7 of 2027 concerning _ Ease, Protection, and Empowerment of Cooperatives and Micro, Small, and Medium Enterprises

- Presidential Regulation No. 10 of 2021 conceming investment Business Fields as amended by Presidential Regulation No. 49 of 2021

- Indonesia Investment Coordinating Board (BKPM) Regulation No. 4 of 2021 concerning Guidelines and Procedures on Risk-Based Business Licensing and Investment Incentives

(1) For the purposes of this reservation, the term "foreign investment" has the meaning set out in Law No. 25 of 2007 concerning investment as amended by Law No. 6 of 2023 concerning Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law.

3. Sector: All sectors

Subsector:

Industry Classification:

Level of Government: Central

Obligations Concerned: National Treatment

Description:

Foreign investment (2) shall be in the form of a Limited Liability Company based on the law of the Republic of Indonesia.

A foreign investor (2) incorporated under the laws of another country seeking to make direct investment in Indonesia must be established as an Indonesian Limited Liability Company (Perseroan Terbatas) and domiciled in Indonesia in accordance with Law No. 25 of 2007 concerning Investment as amended by Law No. 6 of 2023 concerning Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law.

Source of Measure :

- Law No. 25 of 2007 concerning Investment as amended by Law No. 6 of 2023 concerning Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law

- Law No. 40 of 2007 concerning Limited Liability Company as amended by Law No. 6 of 2023 concerning Siipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law

- Presidential Regulation No. 10 of 2021 conceming investment Business Fields as amended by Presidential Regulation No. 49 of 2021

(2) For the purposes of this reservation, the term "foreign investment" has the meaning set out in Law No. 25 of 2007 concerning investment as amended by Law No. 6 of 2023 concerning Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law.

(3) For the purposes of this reservation, the term "foreign investor" has the meaning set out in Law No. 25 of 2007 concerning investment as amended by Law No. 6 of 2023 concerning Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law.

4. Sector: All sectors

Subsector:

Industry Classification:

Level of Government: Central

Obligations Concerned: National Treatment

Description:

Foreign investment shall appoint local distribution agents to sell its products to the end-users in Indonesia.

For greater certainty, "foreign investment" means a foreign investor or a legal entity established as an Indonesian Limited Liability Company (Perseroan Terbatas) in accordance with the Source of Measures listed under reservation 3 of this List.

Source of Measure

- Law No. 20 of 2008 concerning Micro, Small and Medium Enterprises as amended by Law No. 6 of 2023 conceming Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 conceming Job Creation into Law

- Minister of Trade Regulation No. 24 of 2021 conceming Distributorship Agreement by Distributor or Agent

- Minister of Trade Regulation No. 22 of 2016 on General Provisions on the Distribution of Goods as amended by Minister of Trade Regulation No. 66 of 2019

5. Sector: All sectors

Subsector:

Industry Classification:

Level of Government: Central

Obligations Concerned: National Treatment, Senior Management and Board of Directors

Description:

A foreign investment established under Law No. 40 of 2007 concerning Limited Liability Company as amended by Law No. 6 of 2023 conceming Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law is required to have any positions related to personnel affairs to be occupied by Indonesian nationals.

Source of Measure:

- Law No. 13 of 2003 concerning Manpower as amended by Law No. 6 of 2023 conceming Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law

- Government Regulation No. 34 of 2021 concerning the Employment of Foreign Workers

- Minister of Manpower Regulation No. 8 of 2021 concerning Implementing Regulation of Government Regulation No. 34 of 2021 concerning the Employment of Foreign Workers

6. Sector: Mining and Quarrying

Subsector:

Industry Classification: ISIC 1410, 1429

Level of Government: Central

Obligations Concerned: National Treatment

Description:

The establishment and operation of foreign investment in the following business fields are prohibited for foreign investors:

- Sea sand extraction

- Rock (4) mining and quarrying

Source of Measure :

- Law No. 4 of 2009 concerning Mineral and Coal Mining as amended by Law No. 3 of 2020, and further amended by Law No. 6 of 2023 concerning Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law

- Government Regulation No. 96 of 2021 concerning the Implementation of Mineral and Coal Mining Activities

(4) For the purposes of this reservation, the term "rock" has the meaning set out in Law No. 3 of 2020 concerning The Amendment of Law No. 4 of 2009 concerning Mineral and Coal Mining and the coverage as set out in Government Regulation No. 96 of 2021 concerning the Implementation of Mineral and Coal Mining Activities Article 2 (1) (d).

7. Sector : All Sectors

Subsector : Public Enterprise

Industry Classification : -

Level of Government : Central

Obligations Concerned : National Treatment, Senior Management and Board of Directors

Description :

National Treatment and Senior Management and Board of Directors may not apply in the event where activities restricted to designated enterprises (5) are liberalized to those other than the designated entities, or in the event where such a designated enterprise no longer operate on a non-commercial basis.

Source of Measure : Government Regulation No. 13 of 1998 conceming Public Enterprise

(5) For illustrative purposes, designated enterprise may include State Forestry Public Enterprise denoted as Perum PERHUTANI and National Money Printing Public Enterprise denoted as Perum PERURI.

8. Sector: All sectors

Subsector:

Industry Classification:

Level of Government: Central

Obligations Concerned: National Treatment, Senior Management and Board of Directors

Description:

For companies or projects that are in existence prior to the date of entry into force of the Second Protocol, conditions imposed in their approvals for permits shall continue to apply. Any changes to these conditions shall be subject to approval.

Source of Measure:

Presidential Regulation No. 10 of 2021 concerning Investment Business Fields as amended by Presidential Regulation No. 49 of 2021

9. Sector : Manufacturing

Subsector: Dye

Industry Classification : ISIC (see below)

Level of Government : Central

Obligations Concerned : National Treatment

Description:

Foreign investors are prohibited from establishing the following businesses in Indonesia:

(a) reserved for micro, small, and medium enterprises (6) and cooperatives:

- fish processing: boiling of fish (ISIC 1512)

- manufacture of processed food from soybean: soybean tempeh manufacture; soybean tofu manufacture (ISIC 1513, 1549)

- manufacture of crackers (krupuk), flakes (keripik), fried and flavoured biscuits (peyek) and the likes (ISIC 1513, 1514, 1549)

- manufacture of palm sugar, Javanese sugar or red sugar (ISIC 1542)

- manufacture of prepared meal and dishes: Rendang or meat dishes (ISIC 1511, 1549)

- weaving of textiles industry, not included weaving of gunny sacks or other sacks asic 1711, 1721, 1729), which include: Weaving of Songket industry - Weaving of Ulos industry - Weaving of Cual industry - Weaving of Ulap Doyo industry - Weaving of Tenun Grinsing industry - Weaving of Tenun Tapis industry

- tied woven fabrics (kain tenun_ ikat) industry (ISIC 1711, 1721, 1729)

- embroidery/embroidery fabric industry (ISIC 1729) which include: - Karawo fabric industry - Karancang fabric industry - Sulam usus fabric industry - Other industry of embroidered fabrics that are not made by machine

- Batik industry: (ISIC 1712, 1729) - hand painted batik industry - combination of hand painted and stamped batik industry

- traditional clothing industries from textiles/fabric and clothing accessory industries from textiles (ISIC 1810), which include: - Peci/Kopiah/Songkok industry - Traditional headband industry - Traditional belt industry - Mukena-making industry

- handicrafts industry: rattan and bamboo plait industry; plait industry with plant other than rattan and bamboo (which include pandan, agel, mendong, ketak, purun, eceng gondok, keladi air); carving handicraft from wood, except furniture industry (which include wood carving, relief sculpture, mask, statue, wayang); kitchen household industry from wood, rattan and bamboo; wood, rattan, cork products industry that is not classified elsewhere (ISIC 2029, 3699)

- traditional musical instruments industry (ISIC 3692) Traditional musical instruments industry, which include: - Angklung from West Java - Gordang Sembilan from North Sumatra - Dambus from Bangka Belitung - Kolintang from Minahasa - Gendang Beleg from NTB - Sasando from NTT - Tifa from Papua

- "rubber curing industry" (ISIC 2519)

- clay/ceramic made household necessities industry especially pottery and decorative ceramic (ISIC 2691)

- non-power-driven cutting tools and hand tools for agriculture from metal (ISIC 2893), namely: Hoe, Shovel, Plow, Rake

Shovel, Sickle, Ketam, Dodos, Egreg, Rubber Tapping Knife manual or semi mechanical processed hand-tools industry for handwork and cutting (ISIC 2893)

- general tools industry (ISIC 2893), including: - Keris - Rencong - Mandau - Kujang - Badik - Tombak

- Other traditional tools\weapons

- maintenance and repair of motorcycles other than those integrating with sale of motorcycles (agents or distributor) (ISIC 5040)

- repair of personal and household goods and home and garden equipment (ISIC 3610, 5260)

- Salt processing industry that acquires geographical indication (ISIC 1549, 2429) which include: - Amed Bali Salt - Gunung Krayan Salt - Kusamba Bali Salt

(b) 100 per cent domestic equity participation:

- stamped batik industry (ISIC 1712)

- traditional medicines processing and industry (ISIC 2423)

- manufacture of raw materials for traditional medicines for humans (ISIC 2423)

- coffee processing industry that acquires geographical indication (ISIC 1549)

- manufacture of wooden goods (construction material industry) (ISIC 2022, 2029)

- traditional cosmetics industry (ISIC 2424)

- manufacture of ships: Pinisi, Cadik, and other wooden ships with distinctive traditional designs (ISIC 3511, 3512)

Source of Measure :

- Law No. 25 of 2007 conceming Investment as amended by Law No. 6 of 2023 conceming Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 conceming Job Creation into Law

- Presidential Regulation No. 10 of 2021 conceming investment Business Fields as amended by Presidential Regulation No. 49 of 2021

- Government Policy

(6) For the purposes of this reservation, the term "micro, small, and medium enterprises" has the meaning as set out in Government Regulation No. 7 of 2021 concerning Ease, Protection, and Empowerment of Cooperatives and Micro, Smail, and Medium Enterprises.

10. Sector: Agriculture

Subsector:

Industry Classification: ISIC (see below)

Level of Government: Central

Obligations Concerned: National Treatment

Description :

Foreign investors are prohibited from establishing the following businesses in Indonesia:

(a) reserved for micro, small, and medium enterprises (7) and cooperatives:

- for each individual crop cultivation in an area less than 25 hectares: - staple food crops (rice, corn, soybeans, groundnuts, green beans, cassava and sweet potatoes) and other food crops not classified elsewhere (ISIC 0111, 0112, 0113, 0200).

- for each individual plantation business in an area less than 25 hectares: - other sweetener crops, sugar cane, tobacco, textile raw materials and cotton, cashews, coconut palms, oil palms, beverage crops (tea, coffee and cocoa), peppercorns, cloves, essential oil crops, medicinal or pharmaceutical crop, other spice crops, rubber and other trees for extraction of sap, fodder crops, cover crops, other seasonal crops, dates, other oil-producing crops, bit, olives, other plantation farming (ISIC

0111, 0112, 0113, 0200).

Source of Measure :

- Law No. 39 of 2014 concerning Plantations as amended by Law No. 6 of 2023 concerning Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law

- Government Regulation No. 5 of 2027 concerning implementation of Risk-Based Business Licensing

- Government Regulation No. 18 of 2010 concerning Plant Cultivation Business

- Government Regulation No. 26 of 2021 conceming Implementation of The Agricultural Sector

- Presidential Regulation No. 10 of 2021 concerning Investment Business Fields as amended by Presidential Regulation No. 49 of 2021

- Agriculture Minister Regulation No. 98 of 2013 concerning Guidance of Plantation Business License as amended by Agriculture Minister Regulation No. 21 of 2017 concerning the Second Amendment of Regulation No. 98 of 2013

- Agriculture Minister Regulation No. 39 of 2010 concerning the Guidelines on Business Licensing for Staple Crops Cultivation

- Government Policy

(7) For the purposes of this reservation, the term "micro, small, and medium enterprises" has the meaning asset out in Government Regulation No. 7 of 2021 concerning Ease, Protection, and Empowennent of Cooperatives and Micro, Smail, and Medium Enterprises.

11. Sector: Forestry

Subsector:

Industry Classification : ISIC (see below)

Level of Government: Central

Obligations Concerned: National Treatment

Description :

Foreign investors are prohibited from establishing the following businesses in Indonesia:

(a) reserved for micro, small, and medium enterprises (8) and cooperatives:

- collecting forest products: - shellac, agarwood, palm sugar, incense, masohi bark, lawang bark, cinnamon, other resins, swiftlet's nest in nature, honey (ISIC 0122, 0200)

- collecting forests plants: rattan (ISIC 2010), pine sap (oleo pine resin) (ISIC 0200), bamboo (ISIC 0200), wood rosin or shorea javanica (damar) (ISIC 0200), eaglewood or aquilaria malaccensis (gaharu), cajuput/eucalyptus leaves (ISIC 0200)

- collecting silkworm cocoon (natural silk farming) (ISIC 0122)

(b) 100 per cent domestic equity participation:

- water provisioning in conservation area (ISIC 0200)

- water energy provisioning in conservation area (ISIC 0200)

- capturing and trading of wild plants and wild animal from the natural wildlife habitat (ISIC 0150)

Source of Measure :

- Law No. 41 of 1999 concerning Forestry as amended by Law No. 79 of 2004 and further amended by Law No. 6 of 2023 concerning Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law

- Law No. 5 of 1990 concerning Conservation of Natural Resources and lis Ecosystems

- Government Regulation No. 5 of 2021 conceming implementation of Risk-Based Business Licensing

- Government Regulation No. 23 of 2021 conceming Forestry Management

- 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 No. 10 of 2021 concerning Investment Business Fields as amended by Presidential Regulation No. 49 of 2021

- Government Policy

(8) For the purposes of this reservation, the term "micro, small, and medium enterprises" has the meaning as set out in Government Regulation No. 7 of 2021 concerning Ease, Protection, and Empowerment of Cooperatives and Micro, Smail, and Medium Enterprises.

12. Sector: All sectors

Subsector:

Industry Classification: -

Level of Government: Central

Obligations Concerned: National Treatment

Description :

(a) As may be required by the relevant regulatory authorities, a company in which foreign investors (9) own 100 per cent equity participation, 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 (10).

(b) In the case of Mineral and Coal Mining subsector (11), a mining business licence (izin Usaha Pertambangan) for foreign investment (12) shall be granted by the Minister of Investment and verified by the Ministry of Energy and Mineral Resources of the Republic of Indonesia.

Subject to prior notification before the grant of mining business licence (Uzin Usaha Pertambangan), 10 years after the commencement of production, foreign shareholders (13) of foreign investment should sell their shares gradually to Indonesian shareholders (14) according to the following priorities central government, local government, state-owned enterprises (Badan Usaha Milik Negara), regional- owned enterprises (Badan Usaha Milik Daerah) and/or national private business entity.

The shares of the said Indonesian shareholders shall reach majority after 15 years after the commencement of production.

Source of Measure :

- Law No. 25 of 2007 concerning Investment as amended by Law No. 6 of 2023 concerning Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law

- Law No. 4 of 2009 concerning Mineral and Coal Mining as amended by Law No. 3 of 2020 and Law No. 6 of 2023 conceming Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 Concerning Job Creation into Law

- Law No. 1 of 2014 concerning Management of Coastal Areas and Small Islands as amended by Law No. 6 of 2023 conceming Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law

- Government Regulation No. 20 of 1994 conceming Share Ownership in a Company Established as a Foreign Invesiment as amended by Government Regulation No. 83 of 2001

- Government Regulation No. 96 of 2021 concerning the Implementation of Mineral and Coal Mining Activities

- Indonesia Investment Coordinating Board (BKPM) Regulation No. 4 of 2021 concerning Guidelines and Procedures on Risk-Based Business Licensing and Investment Incentives

- Minister of Energy and Mineral Resources Regulation No. 9 of 2017 concerning Procedures of Divestment of Shares and Mechanism on Divestment Stock Pricing on Mineral and Coal Mining Sector as amended by Minister of Energy and Mineral Resources Regulation No. 43 of 2018

- Minister of Energy and Mineral Resources Regulation No. 25 of 2018 concerning Mineral and Coal Mining Business as amended several times lastly with Minister of Energy and Mineral Resources Regulation No. 17 of 2020

(9) For the purposes of this reservation, the term "foreign investor" has the meaning as set out in Law No. 25 of 2007 concerning investment as amended by Law No. 6 of 2023 concerning Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 2020 concerning Job Creation into Law.

(10) For the purposes of this reservation, the term "domestic investor" has the meaning as set out in Law No. 25 of 2007 concerning Investment as amended by Law No. 6 of 2023 concerning Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law. For greater certainty, the requirement set out in paragraph (a) of this reservation is based on Govemment Regulation No 20 of 1994 as amended by Govemment Regulation No. 83 of 2007 and it will not be applied to investment made after the stipulation of Law No. 25 of 2007 conceming investment.

(11) For the purposes of this reservation, the scope of Mineral and Coal Mining subsector is defined in Law No. 4 of 2009 as amended by Law No. 3 of 2020 concerning Mineral and Coal Mining and Government Regulation No. 96 of 2021, Concerning the implementation of Mineral and Coal Mining Activities.

(12) For the purposes of this reservation, the term "foreign investment" has the meaning as set out in Law No. 25 of 2007 concerning Investment as amended by Law No. 6 of 2023 concerning Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law.

(13) For the purposes of this reservation, the term "foreign shareholders" has the meaning as set out in Government Regulation No. 96 of 2021 Concerning the implementation of Mineral and Coal Mining Activities.

(14) For the purposes of this reservation, the term "Indonesian shareholders" has the meaning as set out in Government Regulation No. 96 of 2021 Concerning the implementation of Mineral and Coal Mining Activities.

13. Sector: Mining and Quarrying

Subsector:

Industry Classification: ISIC 1010, 1020, 1030, 1310, 1320

Level of Government: Central

Obligations Concerned: National Treatment

Description:

Mining Business License Area (hereinafter referred to as "WIUP"), refers to an area given to the holder of a Mining Business License.

Foreign investors or juridical person of another Party seeking to make an investment in Indonesia are prohibited from participating in the auction of metallic mineral and coal WIUP with the size of equal or under 500 hectares

Source of Measure

- Law No. 4 of 2009 concerning Mineral and Coal Mining as amended by Law No. 3 of 2020 and Law No. 6 of 2023 conceming Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law

- Government Regulation No. 96 of 2021 concerning the Implementation of Mineral and Coal Mining Activities

- Minister of Energy and Mineral Resources Regulation No. 7 of 2020 concerning the Procedure for Granting Area, License, and Reporting on Mineral and Coal Mining Activities as amended by Minister of Energy and Mineral Resources Regulation No. 16 of 2021

14. Sector: All sectors

Subsector:

Industry Classification:

Level of Government: Central

Obligations Concerned: National Treatment

Description:

Non-resident taxpayers will be subject to withholding tax of 20 per cent, if they derive the following income from an Indonesian source, which include:

(a) Interest;

(b) Royalty;

(c) Dividend; or

(d) Fee from service performed in Indonesia.

Source of Measure:

Law No. 36 of 2008 concerning The Fourth Amendment to Law No.7 of 1983 concerning Income Taxes amended by Law No. 7 of 2027 concerning Harmonization of Tax Regulations

15. Sector: All sectors

Subsector:

Industry Classification:

Level of Government: Central

Obligations Concerned: Prohibition of Performance Requirements

Description:

Obligation under Article 6 (Prohibition of Performance Requirements) shall not apply to all existing non-conforming measures, which include measures related to these requirements:

(a) to achieve a given level or percentage of domestic content;

(b) to relate the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with investments of that investor;

(c) to restrict sales of goods in its territory that such investment produces by relating such sales to the volume or value of its exports or foreign exchange earnings:

(d) to export a given level or percentage of goods;

(e) to transfer a particular technology, a production process, or other proprietary knowledge to a person in its territory.

For specific purpose, a foreign investor or a legal entity established as Indonesian Limited Liability Company (Perseroan Terbatas) in accordance with Law No. 40 of 2007 concerning Limited Liability Company as amended by Law No. 6 of 2023 concerning Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law, which are employing foreign experts are required to provide trainings and transfer of technology to workers of Indonesian nationals pursuant to the laws and regulations.

Source of Measure:

- Law No. 25 of 2007 concerning Investment as amended by Law No. 6 of 2023 conceming Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law

- Law No. 40 of 2007 concerning Limited Liability Company as amended by Law No. 6 of 2023 concerning Siipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law

- Government Policy

LIST B. EXPLANATORY NOTES

1. This List B sets out, pursuant to Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), Indonesia's existing measures that are not subject to some or all of the obligations imposed by:

(a) Article 3 (National Treatment) of Chapter 11 (Investment);

(b) Article 4 (Most-Favoured-Nation Treatment) of Chapter 11 (Investment);

(c) Article 5 (Senior Management and Board of Directors) of Chapter 11 (Investment); or

(d) Article 6 (Prohibition of Performance Requirements) of Chapter 11 (Investment).

2. List A and this List B pursuant to Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment) follow the negative list with two list approach as follows:

(a) List A sets out commitments in relation to existing non-conforming measures which are subject to standstill obligations but not subject to ratchet mechanism; and

(b) this List B sets out policy flexibility in relation to measures in sectors, subsectors and activities.

3. Each reservation shall set out the following elements, where applicable:

(a) Sector refers to the sector for which the entry is made;

(b) Subsector refers to specific industries, products, and activities in which a reservation is taken;

(c) Industry Classification where referenced, refers to the activity covered by the entry, according to the CPC, ISIC Rev. 3, or as expressly otherwise described in that entry:

ISIC Rev. 3 means the International Standard Industrial Classification of All Economic Activities as set out in the Statistical Papers, Series M, No.4, ISIC Rev. 3, Statistical Office of the United Nations, New York, 1990;

CPC means the Provisional Central Product Classification as set out in the Statistical Papers, Series M, No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991.

(d) Level of Government indicates the level of government maintaining the listed measures;

(e) Obligations Concemed refers to the obligations of Articles 3 (National Treatment), 4 (Most-Favoured-Nation Treatment), 5 (Senior Management and Board of Directors), and 6 (Prohibition of Performance Requirements), as the case may be, which do not apply to the listed measures;

(f) Description sets out the non-conforming measure for which the entry is made; and

(g) Existing Measure refers to existing measures that apply to the sector, subsector or activities covered by the reservations and is identified for transparency purposes only.

4. In accordance with Article 13 (Reservations and Non-Conforming Measures), the Articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the non-conforming measure identified in the Description element of that entry.

5. In the interpretation of a reservation, all elements of a reservation shall be considered. The Description element shall prevail over all other elements.

6. The Schedules of other Parties shall not be used to interpret Indonesiaâs obligations under Chapter 11 (Investment)

7. This note shall form part of Indonesia's reservations.

1. Sector: All sectors

Subsector: Customary Rights on Land and Properties

Industry Classification:

Level of Government: Central and Regional

Obligations Concerned: National Treatment

Description:

Indonesia reserves the right to adopt or maintain any measure related to customary rights of land and properties of minorities tribal groups.

Existing Measures

- Article 33 of the 1945 Constitution of The Republic of indonesia

- Government Policy

2. Sector: Manufacturing

Subsector:

Industry Classification: ISIC (see below)

Level of Government: Central

Obligations Concerned: National Treatment

Description:

Indonesia reserves the right to adopt or maintain measures for the establishment and operation of foreign investment in the following subsectors:

a. Limitation on Foreign Equity Participation:

- industry of main equipment for defence and security (ISIC 2520, 2893, 2927, 2929, 3530). In the event of a strategic interest, foreign equity ownership may exceed the limitation with the approval of the Minister of Defence

b. Partnership:

- manufacture of copra (ISIC 1514)

- sweetening and saline fruits and vegetable industry (ISIC 1513)

- manufacture of soy sauce (ISIC 1549) manufacture of foods from soybeans and beans other than soy sauce, tempeh, and tofu (ISIC 1513, 1514, 1531, 1549)

- milk powder and condensed milk processing and industry (ISIC 1520)

- rattan processing industry (ISIC 2010)

- preserving industry of rattan, bamboo, and the likes (ISIC 2010)

- coconut industry: coconut charcoal/briquettes industry; coconut coir fibre industry (ISIC 2411, 3699)

- essential oil industry (ISIC 2429)

- bricks and clay or ceramic industry (ISIC 2691, 2692, 2693)

- other goods made from clay or ceramic industry (ISIC 2691, ISIC 2693)

- lime industry (ISIC 2694)

- goods made from cement industry (ISIC 2695)

- good made from lime industry (ISIC 2695)

- other goods made from cement and lime industry (ISIC 2695)

- nails, nuts and bolts industry; component and spare parts industry for engine and turbine; other pumps, compressors, taps, and valves industry; component and accessories for two and three wheels motor vehicles industry (ISIC 2899, 2911, 2912, 3591, 3592)

- spare parts accessories for motor vehicles with four or more wheels (ISIC 3430)

- manufacture of devices and fittings of wooden ships for marine tourism and fishing (ISIC 3511)

- manufacture of jewellery products from precious metal for personal use (ISIC 3330, 3691)

- manufacture of jewellery products from precious metal for non-personal use (ISIC 3330, 3691)

- manufacture of imitation jewellery and similar goods (ISIC 3330, 3699)

- manufacture of precious stones (ISIC 3691)

- manufacture of handicraft not elsewhere classified (ISIC 3699)

- repair of boat, ship, and floating structure (ISIC 3511, 3512)

- repair of other transport equipment other than motor vehicles (ISIC 3520, 3530, 3599)

- non-metal waste recycling and materials recovery (ISIC 3720)

- sugar industry (ISIC 1542)

- fishery processing industry: salting and drying of fish and biota from other waters (ISIC 1512); smoking of fish and biota from other waters (ISIC 1512); fish yeasting or fermentation, and other cooked products for extraction and fish jelly (ISIC 1512, 1549); processing of minced fish and surimi (ISIC 1512)

- fish cannery (ISIC 1512)

- saw mill or lumbering industry with production or output capacity below or equal to 2,000 cubic metres per year (ISIC 2010)

- manufacture of medical devices in class A (ISIC 2423)

Existing Measures:

Law No. 25 of 2007 concerning Investment as amended by Law No. 6 of 2023 conceming Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 conceming Job Creation into Law

Presidential Regulation No. 10 of 2021 conceming investment Business Fields as amended by Presidential Regulation No. 49 of 2021

Regulation of the Minister of Health No. 62 of 2017 conceming Medical Devices and Household Health Products Distribution Authorisation as amended by Regulation of the Minister of Health No. 26 of 2018 conceming Integrated Electronic Business Licensing Services for the Health Sector

Regulation of the Minister of Marine and Fisheries No. 5 of 2021 conceming Fishery Processing Business

Government Policy

3. Sector: Agriculture

Subsector: -

Industry Classification: ISIC (see below)

Level of Government: Central

Obligations Concerned: National Treatment

Description:

Indonesia reserves the right to adopt or maintain measures for the establishment and operation of foreign investment in the following subsectors:

(a) Limitation on Foreign Equity Participation

- For each individual crops cultivation business in an area of more than 25 hectares: - staple food crops (rice, corn, soybeans, groundnuts, green beans and other food crops including cassava and sweet potatoes) (ISIC 0111, 0112, 0113, 0200)

(b) Locational requirement: e Swine breeding and farming (ISIC 0122)

(c) Partnership: e Breeding of broiler chicken (ISIC 0122)

Existing Measures

- LawNo. 18 of 2009 concerning Livestock and Animal Health as amended by Law No. 41 of 2014 and further amended by Law No. 6 of 2023 conceming Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 conceming Job Creation into Law

- Government Regulation No. 18 of 2010 conceming Plantation Cultivation Business

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

- Government Regulation No. 26 of 2021 conceming Implementation of The Agricultural Sector

- Presidential Regulation No. 10 of 2021 concerning Investment Business Fields as amended by Presidential Regulation No. 49 of 2021

- Agriculture Minister Decree No. 404 of 2002 conceming Guidelines for License and Registration on Livestock Sector as amended by Agriculture Minister Regulation No. 70 of 2014 concerning Registration and Licensing for Livestock Businesses

- Agriculture Minister Regulation No. 39 of 2010 concerning the Guidelines conceming Business Licensing for Staple Crops Cultivation

- Government Policy

4. Sector: Forestry

Subsector: -

Industry Classification: ISIC (see below)

Level of Government: Central

Obligations Concerned: National Treatment

Description:

Indonesia reserves the right to adopt or maintain measures for the establishment and operation of foreign investment in the following subsectors:

(a) Security and environmental restriction:

- hunting business in Hunting Parks and Hunting Blocks (ISIC 0150, 9219, 9241, 9249)

- captive breeding of animals and plants, and conservation institutions (ISIC 0150)

(b) Recommendation or specific requirements by relevant authorities:

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

Existing Measures

- Law No. 41 of 1999 conceming Forestry as amended by Law No. 79 of 2004 and further amended by Law No. 6 of 2023 conceming Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law

- Law No. 5 of 1990 concerning Conservation of Natural Resources and lis Ecosystems

- Government Regulation No. 23 of 2021 conceming Forestry Management

- 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

- Government Policy

5. Sector: All sectors

Subsector:

Industry Classification:

Level of Government: Central and Regional

Obligations Concerned: National Treatment

Description:

Indonesia reserves the right to adopt or maintain any measure relating to the privatization, corporatization, commercialization or divestment of government assets, entities or agencies including:

(a) limitations on ownership of assets;

(b) transfer or disposal of equity interests or their assets;

(c) the right of foreign investors or their investments to control their assets; and

(d) nationality of the senior management or members of the board of directors.

For greater certainty:

(i) where Indonesia transfers an interest in an existing state enterprise to another state enterprise, such transfer shall not be considered to be an initial transfer or disposal of the interest for purposes of this reservation; and

(ii) where Indonesia transfers or disposes of an interest in an existing state enterprise in multiple phases, subparagraph (i) shall apply separately to each such phase.

Existing Measures

- Law No. 19 of 2003 concerning State Owned Enterprises as amended by Law No. 6 of 2023 conceming Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law

- Law No. 40 of 2007 concerning Limited Liability Company as amended by Law No. 6 of 2023 concerning Siipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law

- Government Policy

6. Sector : All Sectors

Subsector: -

Industry Classification: -

Level of Government: Central and Regional

Obligations Concerned: National Treatment

Description :

Indonesia reserves the right to adopt or maintain any measure with respect to special preferences given to micro, small and medium sized enterprises and cooperatives (Usaha Mikro, Kecil, Menengah dan Koperasi or UMKMK) in Indonesia (15).

Existing Measures :

- Law No. 20 of 2008 concerning Micro, Small and Medium Enterprises as amended by Law No. 6 of 2023 concerning Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law

- Law No. 17 of 2012 concerning Cooperatives as amended by Law No. 6 of 2023 conceming Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law

- Government Regulation No. 7 of 2021 concerning Ease, Protection, and Empowerment of Cooperatives and Micro, Small, and Medium Enterprises

- Presidential Regulation No. 10 of 2021 concerning Investment Business Fields as amended by Presidential Regulation No. 49 of 2021

- Government Policy

(15) For the purposes of this reservation, the term "micro, small, and medium sized enterprises (UMKM)" has the meaning as set out in Law No. 20 of 2008 concerning Micro, Small and Medium Enterprises as amended by Law No. 6 of 2023 concerning Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law and Government Regulation No. 7 of 2021 concerning Ease,

Protection, and Empowerment of Cooperatives and Micro, Small, and Medium Enterprises and the term âcooperativesâ has the meaning as set out in Law No. 17 of 2012 concerning Cooperatives as amended by Law No. 6 of 2023 concerning Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law. For illustrative purpose, the criteria for micro, small, and medium enterprises are as follows: (a) Criteria for micro enterprise are as follows: (i) has an asset, excluding land and building, up to IDR 1 billion; or (ii) has an annual sales up to IDR 2 billion. (b) Criteria for small enterprise are as follows: (i) has an asset, excluding land and building, more than IDR 1 billion up to IDR 5 billion; or (ii) has an annual sales of more than IDR 2 billion up to IDR 15 billion. (c) Criteria for medium enterprise are as follows: (i) has an asset, excluding land and building, more than IDR 5 billion up to IDR 10 billion; or (il) has an annual sales of more than IDR 15 billion up to IDR 50 billion. (d) The nominal amount as determined in subparagraphs (a), (b), and (c) above may be revised due to the economic condition by the Indonesia's laws and regulations.

7. Sector: Fishery

Subsector: Capture Fisheries

Industry Classification: ISIC 0500

Level of Government: Central

Obligations Concerned: National Treatment

Description:

Indonesia reserves the right to adopt or maintain any measure with respect to capture fisheries.

Existing Measures

Law No. 31 of 2004 concerning Fishery as amended by Law No. 45 of 2009, and further amended by Law No. 6 of 2023 conceming Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law

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

Government Regulation No. 27 of 2021 concerning implementation of The Marine and Fisheries Sector

Government Regulation No. 85 of 2021 concerning Types and Tariffs for Types of Non-Tax State Revenues Applicable at The Ministry of Maritime Affairs and Fisheries

Presidential Regulation No. 38 of 2015 concerning Cooperation Between Government and Companies on Infrastructure Provision

Regulation of the Minister of Marine Affairs and Fisheries of the Republic of Indonesia No. 58/PERMEN-KP/2020 concerning Capture Fishery Business

Government Policy

8. Sector: Fishery

Subsector: -

Industry Classification: ISIC (see below)

Level of Government: Central

Obligations Concerned: National Treatment

Description:

Indonesia reserves the right to adopt or maintain any measure for the establishment and operation of foreign investment in the following subsectors:

(a) Partnership: e fish hatchery and grow-out for freshwater, brackish water, and marine aquaculture (ISIC 0500)

(b) Recommendation or specific requirements by relevant authorities: e cultivation of coral or omamental coral reef (ISIC 0150)

Existing Measures

- Law No. 31 of 2004 concerning Fishery as amended by Law No. 45 of 2009, and further amended by Law No. 6 of 2023

conceming Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law

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

- Presidential Regulation No. 10 of 2021 concerning Investment Business Fields as amended by Presidential Regulation No. 49 of 2021

- Decree of the Minister of Forestry of the Republic of indonesia No. 447/Kpts-il/2003 concerning Procedures on Exploitation or Capturing and Distribution of Wild Plants and Animals

- Government Policy

9. Sector: Mining and Quarrying

Subsector: Extraction of Salt

Industry Classification: ISIC 1422

Level of Government: Central

Obligations Concerned: National Treatment

Description:

Indonesia reserves the right to adopt or maintain any measure for the establishment and operation of foreign investment in the following subsectors:

(a) Partnership: e Salt extraction/production

Existing Measures

Presidential Regulation No. 10 of 2021 concerning Investment Business Fields as amended by Presidential Regulation No. 49 of 20217

10. Sector: Energy

Subsector: Electricity provision for power plant with less than 1 megawatt capacity

Industry Classification: ISIC 4010

Level of Government: Central

Obligations Concerned: National Treatment

Description:

Indonesia reserves the right to adopt or maintain any measure with respect to investment in electricity provision for power plant with less than 1 megawatt capacity.

Existing Measures

Presidential Regulation No. 10 of 2021 concerning Investment Business Fields as amended by Presidential Regulation No. 49 of 20217

11. Sector: All sectors

Subsector: -

Industry Classification: -

Level of Government: Central

Obligations Concerned:

National Treatment

Most-Favoured-Nation Treatment Prohibition of Performance Requirements Senior Management and Board of Directors

Description:

Indonesia reserves the right to adopt or maintain any measure relating to sectors other than those recognized or that should have been recognized owing to the circumstances at the date of entry into force of the Second Protocol by Indonesia.

Any sector classified explicitly in ISIC Revision 3 at the date of entry into force of the Second Protocol should have been recognized by Indonesia at that time.

Existing Measures

Government Policy

12. Sector: All Sectors

Subsector: -

Industry Classification: -

Level of Government: Central

Obligations Concerned: National Treatment, Senior Management and Board of Directors

Description:

Indonesia reserves the right to maintain any existing measure with respect to foreign investors or investments that have been overlooked, provided that the measures involved are already in force at the date of entry into force of the Second Protocol. When an overlooked measure is identified, it will be promptly inserted into List A of this Schedule.

If an overlooked measure referred to in the paragraph above is identified, Indonesia will provide other Parties with details of the measure and the opportunity for consultations at least 90 days before including it in this Schedule.

Indonesia will not withdraw a right or benefit from an investor that has made an investment in accordance with its laws and regulations, through the addition of an overlooked measure to this Schedule.

Existing Measures

Government Policy

13. Sector: All Sectors

Subsector: -

Industry Classification: -

Level of Government: Regional

Obligations Concerned: National Treatment

Description:

National Treatment may not apply to measures relating to the procedural aspect of investment implementation licenses or permits (16) at the provincial level (17).

Existing Measures

Law No. 23 of 2014 concerning Local Goverment as amended by Law No. 6 of 2023 conceming Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law

Government Regulation No. 6 of 2021 conceming Implementation of Business Licensing in Regional Level

Government Regulation No. 24 of 2019 concerming Investment Incentive and Ease in Regional Level

Provincial Regulations

Government Policy

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

(17) For the purposes of this reservation, provincial level means the regional level of government.

14. Sector: Manufacturing, Agriculture, Fishery, and Forestry

Subsector:

Industry Classification:

Level of Government: Central

Obligations Concerned:

National Treatment, Prohibition of Performance Requirements, Senior Management and Board of Directors

Description:

Indonesia reserves the right to adopt or maintain any measure to address a food security emergency as declared under relevant legislation and only for the duration of the declared food security emergency.

Existing Measures

- Article 33 of the 1945 Constitution of the Republic of Indonesia

- Law No. 718 of 2012 concerning Foods as amended by Law No. 6 of 2023 conceming Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law

- Government Regulation No. 17 of 2015 concerning Food Security and Nutrition

- Government Policy

15. Sector: All sectors

Subsector: -

Industry Classification: -

Level of Government: Central

Obligations Concerned: National Treatment

Most-Favoured-Nation Treatment Prohibition of Performance Requirements Senior Management and Board of Directors

Description

Indonesia reserves the right to adopt or maintain any measure with respect to investment in services sectors and subsectors

Existing Measures

Government Policy

16. Sector: All Sectors

Subsector: -

Industry Classification: -

Level of Government: Central

Obligations Concerned: Prohibition of Performance Requirements

Description:

Indonesia reserves the right to adopt any future non- conforming measure relating to rate or amount of royalty under a license contract.

Existing Measures

Government Policy

17. Sector: All sectors

Subsector:

Industry Classification:

Level of Government: Central and Regional

Obligations Concerned: Most-Favoured-Nation Treatment

Description:

Indonesia reserves the right to adopt or maintain any measure related to more favourable treatment accorded to investors to a non-Party and their investment resulting from:

(a) any existing or future preferential agreement or arrangement between or among Member States of ASEAN;

(b) any existing agreement in force or signed prior to the date of entry into force of the Second Protocol; and

(c) any international agreement in force or signed after the date of entry into force of the Second Protocol, involving:

(i) aviation;

(ii) fisheries; or

(iii) maritime matters, including salvage.

Existing Measures

Government Policy

18. Sector: Manufacturing, Agriculture, Fishery, and Forestry

Subsector:

Industry Classification:

Level of Government: Central

Obligations Concerned: National Treatment

Most-Favoured-Nation Treatment Prohibition of Performance Requirements Senior Management and Board of Directors

Description:

Indonesia reserves the right to adopt or maintain any measure on the following line of business:

- cultivation and manufacture of class narcotics (ISIC 0111)

- catching of fish species listed in Appendix I to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (ISIC 0500)

- lifting of valuable artifacts from shipwrecks (ISIC 6303)

- utilization (collection) of coral from nature for construction materials, lime, or calcium, aquarium, and souvenirs or jewellery as well as living coral or dead coral (recently dead) coral from nature (ISIC 0500)

- industrial chemical industry and Ozone Depleting Substances (BPO) industry (ISIC 2411)

- chemical weapon industry (ISIC 2411) e alcoholic hard liquor industry (ISIC 1551) e alcoholic beverages industry: wine (ISIC 1552)

- malt beverages industry (ISIC 1553)

Existing Measures

- Law No. 6 of 2023 concerning Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 conceming Job Creation

into Law

- Presidential Regulation No. 10 of 2021 conceming Investment Business Fields as amended by Presidential Regulation No. 49 of 2021

- Government Policy

19. Sector: All sectors

Subsector: -

Industry Classification: -

Level of Government: Central

Obligations Concerned: National Treatment, Most-Favoured-Nation Treatment, Prohibitions of Performance Requirements, Senior Management and Board of Directors

Description

Any obligations arising from the recognition of any natural person possessing the right of permanent residence in a Party as investor under this Agreement shall neither apply to, nor be claimed upon Indonesia.

Existing Measures

- Law No. 25 of 2007 concerning investment as amended by Law No. 6 of 2023 concerning Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 conceming Job Creation into Law

- Government Policy

ANNEX 3. SCHEDULE OF RESERVATIONS AND NON-CONFORMING MEASURES FOR INVESTMENT. LAO PDR

LIST A. EXPLANATORY NOTES

1. This List A sets out, pursuant to Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), Lao PDR's existing measures that are not subject to some or all of the obligations imposed by:

(a) Article 3 (National Treatment) of Chapter 11 (Investment);

(b) Article 5 (Senior Management and Boards of Directors) of Chapter 11 (Investment); or

(c) Article 6 (Prohibition of Performance Requirements) of Chapter 11 (Investment).

2. Each entry in this List A sets out the following elements:

(a) Sector refers to the sector or sectors for which the entry is made;

(b) Subsector refers to the specific subsector for which the entry is made;

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

(i) International Standard Industrial Classification (ISIC) Revision 3 for manufacturing, agriculture, fishery, forestry, mining and quarrying;

(ii) If the entry does not exactly conform to the ISIC, Lao PDR specified the coverage of the entry, as necessary and appropriate;

(d) Level of Government indicates the level of government maintaining the listed measures;

(e) Obligations Concerned specifies the obligations referred to in Paragraph 1 that, pursuant to Article on Reservations, do not apply to the listed measures;

(f) Description sets out the non-conforming measure for which the entry is made; and

(g) Source of Measure means the laws, regulations or other measures that are the source of the non-conforming measure for which the entry is made. A measure cited in the Source of Measure element:

(i) means the measure as amended, continued or renewed as of the date of entry into force of the Second Protocol, and

(ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure.

3. This List A and List B pursuant to Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment) follow the negative list with two-list approach as follows:

(a) this List A sets out commitments in relation to existing non-conforming measures which are subject to standstill obligations but not subject to ratchet mechanism; and

(b) List B sets out policy flexibility in relation to measures in sectors, subsectors and activities.

4. Lao PDR may maintain any non-conforming measures other than those set out in this List A provided that the non-conforming measures are in effect on the date of entry into force of the Second Protocol.

5. In the interpretation of an entry, all elements of an entry shall be considered. The Description element shall prevail over all the other elements.

6. These Explanatory Notes shall form part of the Lao PDR's Schedule of Reservations and Non-Conforming Measures for Investment.

1. Sector: Business Sectors Relating to Hazardous Chemicals Type

Subsector: Hazardous Chemicals Type

Industry Classification:

Level of Govemment: Central

Obligations Concerned: National Treatment

Description:

The Govemment of Lao PDR prohibits business activities using Hazardous Chemicals Type I, except for the activities relating to research, technology development, protection and prevention of danger which may arise against health, life, property or environment and the use of national defence and public security activities, provided that such activities are approved by the Govemment of Lao PDR.

Source of Measure:

Law on the Chemicals Management (No. 07/NA, dated 10 November 2016), Article 10

2. Sector: Central Bank Currency Issuance

Subsector: Paper money, money printing inks, money printing machinery and coin smelting equipment

Industry Classification:

Level of Govemment: Central

Obligations Concerned: National Treatment

Description:

According to the Law on the Bank of Lao PDR, Article 24 states that the Bank of Lao PDR has the sole right to issue notes and coins (including paper money, money printing inks, money printing machinery and coin smelting equipment) with the approval of the Govemment of Lao PDR.

Source of Measure

Law on the Bank of Lao PDR (No. O5/NA, dated 14 October 1999), Article 24

3. Sector: Manufacturing Sectors

Subsector: Weaving of textile Needlework

Industry Classification: ISIC 1312, 1321

Level of Govemment: Central

Obligations Concerned: National Treatment

Description:

Investments in weaving of textile with unique ethnic designs by hand, not including industrial textiles and clothes manufacturing, are reserved for citizens of Lao PDR.

Investments in needlework with unique ethnic design by hand, not including industrial textiles and clothes manufacturing, are reserved for citizens of Lao PDR.

Source of Measure:

Notification on the List of Types of Businesses Reserved for Citizens of Lao PDR (No. 1328/MOIC.DERM, dated 13 July 2015)

4. Sector: Manufacturing Sectors

Subsector: Manufacturing of other products of wood Manufacture of articles of cork, straws, and plaiting materials

Industry Classification: ISIC 1629

Level of Govemment: Central

Obligations Concerned: National Treatment

Description:

Investments in small wood processing factories and businesses of manufacturing carved wood and wicker with unique ethnic sculpture are reserved for citizens of Lao PDR.

Source of Measure

Notification on the List of Types of Businesses Reserved for Citizens of Lao PDR (No. 1328/MOIC.DERM, dated 13 July 2015)

5. Sector: Manufacturing Sectors

Subsector: Manufacturing of porcelain and ceramic products

Industry Classification: ISIC 2393

Level of Govemment: Central

Obligations Concerned: National Treatment

Description:

Investments in businesses relating to local handicraft porcelain and ceramic products with unique ethnic design are reserved for citizens of Lao PDR.

Source of Measure:

Notification on the List of Types of Businesses Reserved for Citizens of Lao PDR (No. 1328/MOIC.DERM, dated 13 July 2015)

6. Sector : Manufacturing Sectors

Subsector: Manufacturing of jewellery and related articles Manufacture of imitation jewellery and related articles

Industry Classification: ISIC 3211, 3212

Level of Government: Central

Obligations Concerned: National Treatment

Description :

Investments in businesses of production of local handicraft jewellery products and related articles with unique ethnic designs are reserved for citizens of Lao PDR.

Source of Measure :

Notification on the List of Types of Businesses Reserved for Citizens of Lao PDR (No. 1328/MOIC.DERM, dated 13 July 2015)

7. Sector: Forestry Sectors

Subsector: Exploitation of timber and non-timber forest products of national forest (NTFPs) Forestry, logging and related activities

Industry Classification: ISIC 0200, 0220

Level of Govemment: Central

Obligations Concerned: National Treatment Prohibition on Performance Requirements

Description:

Investments in exploitation of timber and non- timber forest products of national forests are reserved for domestic investors.

Forestry, logging and related activities are subject to specific approval by the Govemment of Lao PDR.

Source of Measure:

- Forestry Law (No. O6/NA, dated 24 December 2007), Article 49;

- Prime Ministers Order Regarding the Increase of Strictness in Forest Management and Logging Business in 2007-2008 (No. 30/PM, dated 17 August 2007)

8. Sector: Mining Sectors

Subsector: Mining of Uranium and Thorium Ores (Radioactive Mineral)

Industry Classification: ISIC 0721

Level of Govemment: Central

Obligations Concerned: National Treatment

Description:

The Govemment of Lao PDR defines reserved areas and protects some mineral resource areas in accordance with the national social-economic development plan for exploration, planning development and mining operations, in support of the national interest and the sustainability of natural resources.

Source of Measure

Law on Minerals (No.02/NA, dated 20 December 2011), Article 10

9. Sector: Fishery Sectors

Subsector: Commercial omamental fisheries

Industry Classification:

Level of Govemment: Central

Obligations Concerned: National Treatment

Description:

Any foreign individual or organisation with the aim of engaging in commercial omamental fisheries such as aquaculture, breeding, propagation, and import shall seek approval of the relevant authorities in accordance with the Law on Investment Promotion.

Source of Measure

- Law on Fishery (No. 03/NA, dated 9 July 2009), Article 31

- Law on Investment Promotion (No. 14/NA, dated 17 November 2016)

10. Sector: Agriculture

Sectors: Subsector Guano (Bat Dung)

Industry Classification: -

Level of Government: Central

Obligations Concerned: National Treatment, Prohibition of Performance Requirements

Description:

Investments in Guano (Bat Dung) businesses are reserved for domestic investors.

Source of Measure

- Order of the Minister of Agriculture and Foresiry (No. 2050/MAF99, dated 20 December 1999), regarding prohibition of Guano excavation for export

- Order of the Minister of Agriculture and Foresiry (No. 613/MAF99, dated 8 July 2005), regarding utilisation and management of Guano in Lao PDR

LIST B. EXPLANATORY NOTES

1. This List B sets out, pursuant to Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), the specific sectors, subsectors or activities for which Lao PDR may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

(a) Article 3 (National Treatment) of Chapter 11 (Investment);

(b) Article 5 (Senior Management and Boards of Directors) of Chapter 11 (Investment); or

(c) Article 6 (Prohibition of Performance Requirements) of Chapter 11 (Investment).

2. Each entry in this List B sets out the following elements:

(a) Sector refers to the sector or sectors for which the entry is made;

(b) Subsector refers to the specific sector for which the entry is made;

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

(i) Intemational Standard Industrial Classification (ISIC) Revision 3 for manufacturing, agriculture, fishery, forestry, mining and quarrying;

(ii) If the entry does not exactly conform to the ISIC, Lao PDR specified the coverage of the entry, as necessary and appropriate;

(d) Level of Government indicates the level of government maintaining the listed measures;

(e) Obligations Concerned specifies the obligations referred to in Paragraph 1 that, pursuant to Article 13 (Reservations and Non-Conforming Measures), do not apply to the sectors, subsectors or activities listed in the entry;

(f) Description sets out the sector, subsector or activities covered by the entry; and

(g) Existing Measures identifies, for transparency purposes, a non-exhaustive list of existing measures that apply to the sectors, subsectors or activities covered by the entry.

3. List A and this List B pursuant to Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment) follow the negative list with two-list approach as follows:

(a) List A sets out commitments in relation to existing non-conforming measures which are subject to standstill obligations but not subject to ratchet mechanism; and

(b) this List B sets out policy flexibility in relation to measures in sectors, subsectors and activities.

4. In accordance with Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), the Articles of this Agreement specified in the Obligations Concemed element of an entry do not apply to the sectors, subsectors and activities identified in the Description element of that entry.

5. In the interpretation of an entry, all elements of an entry shall be considered. The Description element shall prevail over all other elements.

6. These Explanatory Notes shall form part of the Lao PDR's Schedule of Reservations and Non-Conforming Measures for Investment.

1. Sector : All Sectors

Subsector: -

Industry Classification: -

Level of Govemment: Central

Obligations Concemed: National Treatment

Description :

In the case of joint ventures between domestic and foreign investors, the foreign investor is required to contribute at least 10 per cent of the total capital. (1)

Existing Measures :

Law on Investment Promotion (No. 14/NA, dated 17 November 2016), Articles 26 to 31

(1) For the purposes of this entry: (a) a wholly domestic or foreign-owned investment is an investment entirely owned by either domestic or foreign investors, and can be either a single investor or group of investors in the enterprise or project in Lao PDR; (b) business cooperation by contract is a joint business arrangement between domestic and foreign juridical persons including public and private parties through a business cooperation contract according to the laws and regulations of Lao PDR for a certain period of time without need to establish a new legal entity or branch in Lao PDR; (c) a joint venture between a state-owned enterprise and a private enterprise is a partnership between a state-owned enterprise and a private enterprise in order to operate business, have co-ownership, and establish a new entity under the laws and regulations of Lao PDR; (d) a public private partnership business is a joint-venture investment between a public authority and a private party under a joint-venture contract to implement a project of new construction, improvement of infrastructure, or provide a service to the public.

2. Sector: Concession Investment

Subsector:

Industry Classification:

Level of Govemment: Central

Obligations Concerned: National Treatment

Description:

The registered capital of concession businesses shall not be less than 30 per cent of the total capital.

For general businesses, the registered capital shall comply with the Law on Enterprise.

Existing Measures

- Law on Investment Promotion (No. 14/NA, dated 17 November 2016), Articles 51 and 52

- Law on Enterprise (No. 46/NA, dated 26 December 2013)

3. Sector: All Sectors

Subsector: -

Industry Classification :

Level of Govemment: Central

Obligations Concemed: National Treatment

Description

Foreign employees shall not exceed 15 per cent for technical experts undertaking physical work and 25 per cent for technical experts undertaking mental work of the total number of Lao workers in the enterprise. Working permission shall be obtained from the Ministry of Labour and Social Welfare.

Existing Measures:

Labour Law (No. 43/NA, dated 24 December 2013), Article 68

4. Sector: All Sectors

Subsector: -

Industry Classification :

Level of Govemment: Central

Obligations Concemed: National Treatment

Description:

Term of investment licences General business:

The investment in general business has unlimited term of investment except for a business where the term has been determined in accordance with the laws and regulations of relevant authorities.

Concession investment:

The term of investment in concession business depends on the type, size, investment value, and conditions of the concession activities based on relevant laws and regulations; it shall not exceed 55 years, but may be extended with the approval of the Government of Lao PDR or provincial authorities.

Existing Measures

Law on Investment Promotion (No. 14/NA, dated 17 November 2016), Articles 40 and 42

5. Sector: Manufacturing

Subsector: Manufacture of other food products n.e.c.

Industry Classification: ISIC 1079

Level of Govemment: Central

Obligations Concerned: National Treatment Senior Management and Board of Directors

Description:

A foreign investor is allowed to establish a joint venture on the following conditions:

(a) a domestic investor must be the owner and hold the joint venture's licence;

(b) the registered capital of the joint venture must be at least one billion Kip; and

(c) the foreign investor shall hold not more than 20 per cent of total shares of the joint venture.

Existing Measures

Notification on the List of Types of Businesses Subject to Conditions for Foreign Investors (No. 1327/MOIC.DERM, dated 13 July 2015)

6. Sector: Manufacturing

Subsector: Manufacture of pharmaceutical, medicinal chemical and botanical products

Industry Classification: ISIC 2100

Level of Govemment: Central

Obligations Concerned: National Treatment Senior Management and Board of Directors

Description:

A foreign investor is allowed to establish a joint venture on the following conditions:

(a) a domestic investor must be the owner and hold the joint venture's licence;

(b) the registered capital of the joint venture must be at least one billion Kip; and

(c) the foreign investor shall hold not more than 49 per cent of total shares of the joint venture.

Existing Measures

Notification on the List of Types of Businesses Subject to Conditions for Foreign Investors (No. 1327/MOIC.DERM, dated 13 July 2015)

7. Sector: Agriculture

Subsector:

Industry Classification:

Level of Govemment: Central and Provincial

Obligations Concerned: National Treatment

Description:

An investor wishing to invest in agriculture activities with a government land concession, shall obtain an approval for primary data collection of land and project from the relevant competent authorities, following procedures as stipulated in relevant laws and regulations. Following the completion of primary data collection, the investor shall obtain an investment approval from relevant competent authorities, and sign a Memorandum of Understanding with the Government of Lao PDR.

Provincial competent authorities shall consider a request for:

(a) a project with degraded forestland up to 150 hectares and with a lease or concession period not more than 30 years, which may be extended on a case by case basis; and

(b) a project with barren forestland up to 500 hectares and with a lease or concession period not more than 30 years, which may be extended on a case by case basis.

Central competent authorities shall consider a request for:

(a) a project with degraded forestland between 151 and 15,000 hectares and with a lease or concession period more than 30 years, but not exceeding 40 years, which may be extended on a case by case basis; and

(b) a project with barren forestland between 501 and 30,000 hectares and with a lease or concession period more than 40 years, but not exceeding 60 years, which may be extended on a case by case basis.

Existing Measures :

Decree on the Lease or Concession of Government Lands (No. 135/PM, dated 25 May 2009), Articles 28 and 29

8. Sector : Agriculture

Subsector: Pesticide

Industry Classification: -

Level of Govemment : Central

Obligations Concemed: National Treatment

Description :

Investments in pesticide businesses are reserved for citizens of Lao PDR.

Existing Measures :

Regulation on Management and Usage of Pesticide (No. 0886/MAF, dated 10 March 2000)

9. Sector: Fishery

Subsector: -

Industry Classification:

Level of Govemment: Central

Obligations Concerned: National Treatment

Description:

The Govemment of Lao PDR reserves the right to adopt or maintain any measure with respect to an investor or investment in any activity related to fishery including operation of capture fisheries in Mekong River and its tributary and reservoirs, except for the commercial aquaculture of fish and other aquatic fauna for trade and distribution which shall be licensed and registered in accordance with the Law on Investment Promotion.

Existing Measures

- Law on Fishery (No. O3/NA, dated 09 July 2009), Article 30

- Law on Investment Promotion (No. 14/NA, dated 17 November 2016)

10. Sector: Mining

Subsector: Mining

Industry Classification :

Level of Govemment: Central

Obligations Concerned: National Treatment

Description:

The following licences issued by the Govemment of Lao PDR shall be obtained:

(a) licence for prospecting and exploration; and

(b) licence for exploitation and processing.

Existing Measures

Law on Minerals (No.02/NA, dated 20 December 2011), Article 32

11. Sector: Mining

Subsector: -

Industry Classification: Level of Govemment Central

Obligations Concerned: Prohibition of Performance Requirements

Description:

The Government of Lao PDR reserves the right to adopt or maintain any measure with respect to an investor or investment related to requirements to supply exclusively from Lao PDR of products that such investment produces to a specific regional market or to the world market.

Existing Measures

Law on Minerals (No.02/NA, dated 20 December 2011)

12. Sector: Mining

Subsector: Oil and Natural Gas Industry Classification ISIC 0620 Level of Govemment Central

Obligations Concerned: National Treatment

Description:

A licence issued by the Government of Lao PDR on oil and natural gas shall be obtained and production sharing contract with an investor must be used.

Existing Measures

Law on Minerals (No.02/NA, dated 20 December 2011), Article 32

13. Sector: All sectors

Subsector: -

Industry Classification :

Level of Govemment Central

Obligations Concerned: Prohibition on Performance Requirements

Description

The Govemment of Lao PDR reserves the right to adopt or maintain any measure with respect to an investor or investment in activities related to royalty and technology transfers.

Existing Measures

14. Sector: All sectors

Subsector: -

Industry Classification :

Level of Govemment: All levels

Obligations Concerned:

National Treatment Prohibition of Performance Requirements Senior Management and Board of Directors

Description

The Govemment of Lao PDR reserves the right to adopt or maintain any measure with respect to any sectors not identified in this Schedule and new sectors or industries. Any sector classified in the ISIC Code Version 3 as at the date of entry into force of the Second Protocol shall not be considered a new sector or industry for the purposes of this entry.

ANNEX 3. SCHEDULE OF RESERVATIONS AND NON-CONFORMING MEASURES FOR INVESTMENT. MYANMAR

LIST A. EXPLANATORY NOTES

1. This List A sets out pursuant to Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), Myanmar's existing measures that do not conform to the obligation under:

(a) Article 3 (National Treatment) of Chapter 11 (Investment);

(b) Article 5 (Senior Management and Board of Directors) of Chapter 11 (Investment); or

(c) Article 6 (Prohibition of Performance Requirements) of Chapter 11 (Investment).

2. This List A sets out the following element

(a) Sector refers to the sectors for which the non-conforming measure is taken;

(b) Subsector refers to specific sectors for which the entry is made;

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

The Central Product Classification (CPC) of the United Nations Statistics Division Version 2.1; or

International Standard Industrial Classification (ISIC) Revision 3;

(d) Level of Government means the level of government either Central or Regional which maintains the measure for which an entry is taken;

(e) Obligations Concerned refers to the obligations which do not apply to the listed measures;

(f) Description refers to measure that do not conform to Article 3 (National Treatment), Article 5 (Senior Management and Board of Directors) and Article 6 (Prohibition of Performance Requirements) of Chapter 11 (Investment) as the case may be, which do not apply to the listed measures;

(g) Source of Measure means the laws, regulations or other measures that are the source of the non-conforming measure for which the entry is made. A measure cited in the Source of Measure element:

(i) means the measure as amended, continued or renewed as of the date of entry into force of the Second Protocol; and

(ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure.

3. In the interpretation of an entry, all elements of an entry shall be considered. The Description element shall prevail over all other elements.

4. Notwithstanding the entries contained in this List A, if there is overlap between the contents of this List A and List B, Myanmar may adopt or maintain relevant measures in accordance with List B.

5. For the purposes of this List A:

(a) "Direct Investment" means an investment in which the investor has the tight to control, influence or manage, of such assets which are invested by the investor within the Union in accordance with its laws and regulations;

(b) "Foreign Investment" means any direct investment made by a foreign investor within the Union; and

(c) "Myanmar" or "Union" means the Republic of the Union of Myanmar.

6. Myanmar takes out the MFN obligation from this List A as the MFN obligation shall not apply to Myanmar according to the Article 4 (Most-Favoured-Nation Treatment) of Chapter 11 (Investment). For greater certainty, Myanmar reserves the right to adopt or maintain any measure with regard to investments in services sectors that are consistent with Chapter 8 (Trade in Services).

1. Sector: All Sectors

Subsector:

- Manufacturing of products for security and defense being specified by the notification of the Government of Myanmar from time to time. (ISIC 2927, 7522)

- Manufacturing and related services of arms and ammunition for the national defense. (ISIC 2927)

- Issuing the national postage stamps; establishment and hiring of post office and postboxes which are only to be performed by the post office operator on behalf of the Union. (ISIC 6411, 2221)

- Air Traffic Services

- Pilotage services (CPC 6752)

- Management of natural forest and forest area except the business relating to reduction of carbon emission (ISIC 0200)

- Feasibility study and _ production Â§ of tadioactive metals such as uranium and thorium (ISIC 1200, 2330)

- Administration of electric power system (CPC 8631)

- Inspection of electrical business (CPC 8621)

- Inspection of electrical equipment

- Construction, operation and management of power transmission network

Industry Classification: ISIC, CPC

Level of Government: Central or Regional

Obligations Concerned: National Treatment

Description:

The above-mentioned subsectors are to be carried out only by the Union.

Source of Measure:

- Myanmar Investment Law (2016), Section 42 (a)

- Paragraph 1(a) of the Notification No.15/2017 of the Myanmar Investment Commission

2. Sector: All Sectors

Subsector:

- Publishing and distribution of periodicals in ethnic languages including Myanmar (ISIC 2212, CPC 3241, 8911, 8912)

- Freshwater fishing and related services (ISIC 0500, CPC 0421, 8615)

- Establishment of quarantine station for exportation and importation of animals (Livestock Breeding and _ Veterinary Department shall undertake to inspect animals and to issue permits) (ISIC 0500, CPC 8352, 8359, 8612)

- Pet care service (CPC 8351, 86129)

- Extraction of forest products from forest area and government administered natural forest (ISIC 0200, 0230)

- Prospecting, exploration feasibility study and production of mineral for small and medium scale businesses in accordance with the Mines Law (ISIC 1110, 1421, 1429)

- Refinement of minerals by medium scale and small scale (ISIC 2320)

- Performing shallow oil wells up (ISIC 1030, 1110)

- Printing and issuing sticker for visa and stay permit for foreigners (ISIC 2221, 6411, CPC 89122, 91210)

- Prospecting, exploration and production of jade or gemstones (ISIC 1429, 3691)

- Tour guide service (CPC 8555)

- Mini-market, convenience stores (floor area must be above (100 ft x 100 ft) 10,000 square feet or 929 square meter

Industry Classification (ISIC/CPC): ISIC, CPC

Level of Government: Central or Regional

Obligations Concerned: National Treatment

Description:

Foreign investors are not allowed to carry out the investment activities in the above-mentioned subsectors.

Source of Measure

- Myanmar Investment Law (2016), Section 42(b)

- Paragraph 1(b) of Notification No. 15/2017 of the Myanmar Investment Commission

3. Sector: All Sectors

Subsector:

- Construction for fish landing site or fishing harbor and fish auction market (ISIC 0500, 4520, 4530)

- Research activities related with fishery (CPC 8114)

- Veterinary clinic (CPC 8351, 8352, 8559)

- Cultivation of crops in agriculture land, distribution of agriculture products for local market and export (ISIC 0111, 0112)

- Manufacturing and domestic marketing of plastic product (ISIC 2520, 1920)

- Manufacturing and domestic distribution of chemicals based on available natural resources (ISIC 1110, 1120, 2411)

- Manufacturing and domestic distribution of flammable solid, liquid, gaseous fuel and aerosol (Acetylene, Gasoline, Propane, Hair Sprays, Perfume, Deodorant, Insect spray) (ISIC 2411, 4020, 5141, 5050, 2320, 2424)

- Manufacturing and domestic marketing of oxidant (Oxygen, Hydrogen Peroxide) and compressed gas (Acetone, Argon, Hydrogen, Nitrogen, Acetylene) (ISIC 2411, 2812)

- Manufacturing and domestic marketing of corrosive chemical (Sulphur Acid, Nitric Acid) (ISIC 2411, 2421, 2429)

- Manufacturing and distribution of industrial chemical gas including compressed, liquefied and solid forms (ISIC 2411, 2412, 2429, 2330, 5149)

- Value added manufacturing and domestic distribution of cereal product such as biscuit, wafer, all kinds of noodles and vermicelli (ISIC 1531,1544, 1549)

- Manufacturing and domestic distribution of all kind of confectionery including those of sweet, cocoa and chocolate (ISIC 1543, 2925)

- Preserving, canning, processing and domestic distribution of food product except milk and dairy product (ISIC 1512, 1513, 1532, 1542)

- Manufacturing and domestic marketing of malt and malt liquors and non-aerated products (ISIC 1553)

- Manufacturing, distilling, blending, rectifying, bottling and domestic distribution of all kinds of spirits, alcohol, alcoholic beverages and non-alcoholic beverages (ISIC 1551, 1552, 1554, 3131)

- Manufacturing and domestic distribution of all kinds of purified ice (ISIC 1554, 4100)

- Manufacturing and domestic distribution of purified drinking water (ISIC 1554, 4100)

- Manufacturing and domestic distribution of all kinds of soap (ISIC 2424, 5139, 5211)

- Manufacturing and domestic wholesale of all kinds of cosmetic product (ISIC 5139, 5211)

- Development, sale and lease of residential apartment and condominium (ISIC 4520, 4530, 7010)

- Movie production (ISIC 9211, 9213, 9214)

- Local Tour Service (CPC 8554)

- Transportation agency for patients to overseas hospitals (CPC 93121)

Industry Classification: ISIC, CPC

Level of Government: Central or Regional

Obligations Concerned: National Treatment

Description:

Foreign investors are allowed to carry out the investment activities in the above-mentioned subsectors only in the form of a joint venture with Myanmar citizen owned entity or Myanmar citizen. The foreign equity ratio shall not be more than 80 per cent in the joint venture company under the Myanmar Investment Rules.

Source of Measure

- Myanmar Investment Law (2016), Section 42 (c)

- Myanmar Investment Rules (2017), Rule 22

- Paragraph 1(c) of Notification No. 15/2017 of the Myanmar Investment Commission

4. Sector: All Sectors (Land Ownership)

Subsector:

Industry Classification:

Level of Government: Central or Regional

Obligations Concerned: National Treatment

Description:

State is the ultimate owner of all lands and all natural resources above and below the ground, above and beneath the water and in the atmosphere in the State and shall permit citizens tight of private property, right of inheritance, right of private initiative and patent in accordance with the Law under the Myanmar Constitution 2008.

Section 50(a) of the Myanmar Investment Law (2016) provides that an investor who obtains a permit or an endorsement under this Law has the right to obtain a long-term lease of land or building from the private owned or from the relevant government departments, governmental organizations managed by the Government of Myanmar, or owned by the Union in accordance with the stipulations in order to do investment.

Citizen investors may invest in their own land or building in accordance with relevant laws. Section 50(e) of the Myanmar Investment Law (2016) provides that the Government of Myanmar may grant more favorable terms and conditions for the lease of land and the use of land by Myanmar citizen investors.

However, government-owned lands, lands owned by the government department, organization and private lands owned by the citizens can be leased up to initially 50 years depending upon the category of business, industry and the volume of amount and can be extendable for two consecutive terms of 10 years subject to the approval of the Myanmar Investment Commission.

According the Vacant, Fallow and Virgin Lands Management Law (2012), if the persons/organisations want to use the vacant, fallow and virgin lands for the purpose of doing agricultural, livestock, production of minerals, and other business activities allowed by the government under the existing laws, the ones shall apply to the central committee or respective management committee. No one shall allow the aforementioned lands to be mortgaged, transferred, sold, hired, transferred by other means or partially divided.

For the PPP projects, the term of their business operation shall be allowed to carry out the maximum period of 30 years and two consecutive terms of 10 years extension to such term in accordance with the stipulation.

For real estate activities with own or leased property (ISID 6810), rental or leasing services involving own or leased non-residential property (CPC 72114), monetary intermediation banks (ISIC 6419) and financial services, except investment banking, insurance services and pension services (CPC 711), as the long-term lease of the foreign banks, no person shall grant a lease of immovable property, for a term exceeding one year:

(a) to a foreigner or foreign owned company

(b) no foreigner or foreign owned company shall receive a lease of immovable property for a term exceeding owned company.

According to the approval of the Union Government, Foreign Bank branches and subsidiaries can extend the term of the Lease Agreement for lease of land and building for banking services up to 10 years after obtaining approval from the Central Bank of Myanmar.

Source of Measure

- The Constitution of the Republic of the Union of Myanmar (2008)

- Myanmar Investment Law (2016)

- Transfer of Immovable Property Restriction Act (1987)

- Farmland Law (2012), Chapter Ill, Section 9 (a-f)

- Vacant, Fallow and Virgin Lands Management Law (2012), Chapter IV, Section 11 (a-e), Chapter V, Section 12, 14.

- Vacant, Fallow and Virgin Lands Management Law (2012), Section 5 (d) and (e), Section 16 (c)

- Directive of the Ministry of Investment and Foreign Economic Relations dated 3 May 2022

- Letter No: 74/ 168/ Pa Hta Pha (3/2021) dated 13-12-2021 of the Union Government.

- Letter No: Ma Ba Ba/ MP/ FIR/ Bank Regulation/Htwe (179/2022) dated 21-3- 2022 of the Central Bank of Myanmar

5. Sector : All Sectors

Subsector:

Industry Classification

Level of Government : Central

Obligations Concerned: National Treatment, Prohibition of Performance Requirements

Description: According to Section 76 of the Myanmar Investment Law (2016), the Government may undertake or allow with respect to:

- funding capacity building and training for Myanmar Citizen investors and citizen-owned small and medium enterprises; and

- exemptions and reliefs for the locations where Myanmar Citizen-owned business Operate or undertake other economic activities.

Source of Measure : Myanmar Investment Law (2016), Section 76

6. Sector: All sectors

Subsector:

Industry Classification:

Level of Government: Central

Obligations Concerned: National Treatment, Prohibition of Performance Requirements

Description: The following investments activities are stipulated as the prohibited investments under Section 41 of Myanmar Investment Law:

(a) investment activities which may bring or cause hazardous or poisonous wastes into the Union;

(b) investment activities which may bring technologies, medicines, flora and fauna and instruments which are still being tested abroad, or which have not obtained approvals to use, plant or cultivate, except the investments which are made for the purpose of research and development;

(c) investment activities which may affect the traditional culture and customs of the ethnic groups within the Union;

(d) investment activities which may affect the public;

(e) investment activities which may cause an enormous harmful impact to the natural environment and ecosystem;

(f) investment activities which manufacture goods or provide services that are prohibited under the applicable laws.

Source of Measure:

- Myanmar Investment Law (2016), Section 41

- Myanmar Investment Rules (2017), Rule 12

7. Sector: All sectors

Subsector:

Industry Classification:

Level of Government: Central or Regional

Obligations Concerned: Senior Management and Board of Directors

Description: Myanmar reserves the rights to maintain existing measures relating to composition of board of directors which refers that a director shall be a resident in the Union.

Source of Measure: Myanmar Companies Law (2017)

8. Sector: Manufacturing

Subsector:

- Manufacturing and distribution of medicines which are produced by using narcotic drugs and psychotropic substances (ISIC 3522)

- Cross ownership between print media and broadcasting media service (ISIC 2211-2230)

- Publishing of periodical newspapers in foreign languages (ISIC 2212)

- Broadcasting FM radio programmes (ISIC 6010, CPC 8461, 8462)

- Broadcasting Direct to Home (DTH) programmes (ISIC 6020, CPC 846)

- Broadcasting DVB-T2 programmes (ISIC 6020, CPC 846)

- Cable TV (ISIC 6020, CPC 846) Manufacturing and distribution of veterinary biological products (ISIC 7310)

- Manufacturing and distribution of veterinary medicines (ISIC 3311)

- Manufacturing private traditional medicine and medical product (ISIC 2100 (21001, 21002))

- Manufacturing of traditional drugs (ISIC 2100 (21001, 21002))

- Private hospital services (ISIC 8620)

- Private general health services (ISIC 8620, CPC 93121)

- Private traditional hospital (ISIC 8620 (86201))

- Private care shelter services (ISIC 8710 (87102)), CPC 93210, 93221)

- Private mobile health services (CPC 93121)

- Private traditional clinic (ISIC 8620 (86201))

- Trading of traditional pharmaceutical raw materials (herbal items) (ISIC 4620 (46202), 4642 (46421), 4772)

- Business which produce elements impact to Ozone (ISIC 25)

- Production, storage, distribution and exporting of agricultural insecticide, fertilizer, hormone, weed killer, etc. (ISIC 2411-2412) Production and domestic marketing of mobile handset and telephone (ISIC 3220)

- Large scale manufacturing of pulp for paper (ISIC 3411, 2021, 2101)

- Manufacturing of vaccine (ISIC 2423) Research on vaccine and diagnostic test kit production (ISIC 7310-7320)

- Manufacturing and maintenance of locomotives, carriages, wagons and spare parts and maintenance of railway (ISIC 2710, 2811, 2911, 2915, 3190, 3520, 3710)

- Generation of electric power to be used for train operation (ISIC 3110)

- Train operation (CPC 6739)

- Construction of new railway track, stations and buildings related to the train operation (CPC 421, 4210, 410, 4100)

- Production and distribution of satellite communication items (ISIC 3530, 6220, 6420)

- Production and distribution of radar communication items and related equipment (ISIC 3312, 6420, 3832)

- Dry port services relevant with rail transport (ISIC 4220, 42909, CPC 53112)

- Production and distribution of radio communication items (ISIC 3210, 3220, 3230, 9213)

- Production and domestic marketing of bridge connection items (PC Strand, PC bar, Anchor, etc.), steel frame, bally frame, plate girder, steel truss, bridge and related steel structure concrete, steel _â concrete, compressive strength of concrete and etc. (ISIC 4520, 4530, 4540, 2695, 2710, 6303, 2811)

- Manufacture of pharmaceuticals, medicinal chemical and bio pharmaceuticals (ISIC 2100)

- Snake Anti-venom Production

Industry Classification: ISIC, CPC

Level of Government: Central or Regional

Obligations Concerned: National Treatment, Prohibition of Performance Requirements, Senior Management and Board of Directors

Description: Investment activities in the above-mentioned subsectors shall be carried out with the approval of the relevant ministries under the Paragraph 1(d) of Myanmar Investment Commission Notification No.15/2017 and the applicable laws by the Union.

Source of Measure

- Myanmar Investment Law (2016), Section 42 Co)

- Paragraph 1(d) of Notification No.15/2017 Myanmar Investment Commission

9. Sector: Agriculture

Subsector:

- Commercial livestock farming (ISIC 1110)

- Breeder farm and hatchery (poultry) (ISIC 0140, 1511)

- Genetical research, genetic conservation and distribution of animal breeds (ISIC 5121, 7310)

- Importation, production and marketing of animal breeds (breeding animals, frozen semen straw and embryos) (ISIC 0121, 0140, 0122)

- Laboratory services for the safety of animal feeds and animal products (ISIC 1533, 2429)

- Laboratory services for the animal diseases diagnosis (ISIC 1533, 2429, 8511)

- Services on research and surveillance for animal health (ISIC 8520)

- Importing, production, domestic marketing and re-exporting of seed (ISIC 2921, 5239)

- Importing, production and distribution of new species of plant (ISIC 0111, 0112, 2421)

- Production and exporting of hybrid seeds (ISIC 0111, 0112, 0113, 1514, 2921)

- Laboratory services for agriculture (ISIC 2919)

- Research on agriculture and agricultural products (ISIC 7310)

- Production of seasonal crops (ISIC 0113, 0111, 3699)

- Traditional herbal cultivation and production (ISIC 0111, 0112, 2421)

- Traditional medicine research and laboratory (ISIC 3311, 2423)

- Pearl culturing and production (ISIC 0501, 3691)

Industry Classification: ISIC, CPC

Level of Government: Central or Regional

Obligations Concerned: National Treatment, Prohibition of Performance Requirements, Senior Management and Board of Directors

Description: Investment activities in the above-mentioned subsectors shall be carried out with the approval of the relevant ministries under the Paragraph 1(d) of Myanmar Investment Commission Notification No. 15/2017 and the applicable laws by the Union.

Source of Measure:

- Myanmar Investment Law (2016), Section 42 (d) - Paragraph 1(d) of Notification No. 15/2017 of the Myanmar Investment Commission

10. Sector: Fishery

Subsector:

- Investment in relation to fisheries resources and fish species (ISIC 0501, 0502)

- Marine fishing (ISIC 0501)

Industry Classification: ISIC

Level of Government: Central or Regional

Obligations Concerned: National Treatment, Prohibition of Performance Requirements, Senior Management and Board of Directors

Description Investment activities in the above-mentioned subsectors shall be carried out with the approval of the relevant ministries under the Paragraph 1(d) of the Myanmar Investment Commission Notification No.15/2017.

Source of Measure:

- Myanmar Investment Law (2016), Section 42 (d)

- Paragraph 1(d) of Notification No. 15/2017 of the Myanmar Investment Commission

11. Sector: Fishery

Subsector:

- Fishing of marine fish, prawn and other aquatic organism (ISIC 0501)

- Service related to processing on board for fish crustaceans and mollusk and other related services and exploitation of sea-products (ISIC 1511, 1512, 1549)

- Service related to exploitation of fresh water fisheries (ISIC 0501)

- Quarantine quality control of aquaculture and processing product, service on supply of feed, medicine and chemical for aquaculture (ISIC 0502, 1512)

Industry Classification:ISIC/CPC 88200

Level of Government: Central (Marine Fisheries), State and Region (Fresh water)

Obligations Concerned: National Treatment, Prohibition of Performance Requirements

Description: If the investors desire to engage in a fishery in the exclusive economic zone, they shall apply to the Department of Fisheries in the prescribed form. Such an investor shall form a joint venture with State Organisation, current joint venture company or private Myanmar company, subject to the approval of the Government of Myanmar. In exceptional circumstances, the investor may apply for permission to operate a fishery in other fisheries water. (Chapter 3, Para 6 of the Law relating to the Fishing Rights of Foreign Vessels (Law No.11/89))

An investor who has been granted a fishery right on application under Section 6 of the Law relating to the Fishing Rights of Foreign Vessels (Law No.11/89) shall obtain a licence and register at the Department of Fisheries.

Source of Measure:

- Law relating to the Fishing Rights of Foreign Vessels (Law No.11/89)

- Myanmar Marine Fisheries Law (Law No.9/90)

- According to Section 188, Schedule 2 of the Constitution of the Republic of the Union of Myanmar (2008) was transferred to State and Region Governments in 2011-2012 fiscal years.

12. Sector: Forestry

Subsector:

- Extraction of teak and sale of teak (ISIC 0200)

- Wood-based industry (ISIC 2010)

- Cultivation and conservation of forest plantation with the exception of village-owned fire-wood plantation cultivated by the villager for personal use (ISIC 0200)

Industry Classification: ISIC

Level of Government: Central or Regional

Obligations Concerned: National Treatment, Prohibition of Performance Requirements, Senior Management and Board of Directors

Description: According to Section 4 of the State-owned Economic Enterprises Law (1989), the Government of Myanmar may, by notification, permit in the interest of Myanmar any economic enterprise which is prescribed under Section 3 of the State-owned Economic Enterprises Law (1989) to be operated solely by the Government of Myanmar to be carried out by joint-venture between the Government and any other person or any other economic organization or by any person or any economic organization subject to conditions.

According to Section 5 of the State-owned Economic Enterprises Law (1989), the Government of Myanmar may, by notification, prohibit or prescribe conditions regarding the purchase, procurement, improvement, storage, possession, transport, sale and transfer of products derived from or produced by or used by economic enterprises which are prescribed under Section 3 of the State-owned Economic Enterprises Law (1989) to be carried out solely by the Government of Myanmar.

According to the Notification No.86/2017 of Myanmar Investment Commission, a foreign investor shall not be allowed to operate in wood- based industries which use raw timber extracted from natural forests of Myanmar.

Source of Measure:

- Notification No. 86/2017 of Myanmar Investment Commission

- State-owned Economic Enterprises Law (1989)

13. Sector: Forestry

Subsector: Extraction of Teak and Hardwoods

Industry Classification:

Level of Government: Central

Obligations Concerned: National Treatment

Description: The extraction of forest products shall be permitted through competitive bidding according to the Section 18 of the Forest Law (2018) if the extraction is on a commercial scale. The extraction for the following purposes may be permitted without using the competitive bidding:

a. where extraction of a forest product and sales in and outside the State are carried out by a State-owned enterprise;

b. where the Ministry is empowered by the Government in respect of the extraction of a forest product;

c. where a forest product is permitted to be extracted from private forest plantations and community forests;

d. where a forest product is permitted to be extracted from reserved trees or teak trees to which ownership is granted under sub- section (b) of Section 8;

e. where a non-timber forest product is permitted to be extracted on a commercial scale with the exception of special restriction of the Forest Department;

f. where a forest product is permitted to be extracted not on a commercial scale for the following works;

- Research and education works;

- Work beneficial to the public or religion.

According to Section 20 of the Myanmar Forest Rules 1995, within the forest land and forest covered land at the disposal of the Government:

a. wishes to carry out any development work or economic scheme shall obtain prior approval of the Ministry;

b. wishes to carry out educational or research work or conduct a training course or a study tour shall obtain prior permission of the Director General or the Forest Officer empowered by the Director General;

c. the extraction of a non-timber forest product on a commercial scale shall be permitted through competitive bidding under the Section 8 of the Forest Law.

Source of Measure :

- Forest Law (2018)

- Myanmar Forest Rules (1995)

14. Sector: Forestry

Subsector:

- Logging in forest land and land administered by the Government of Myanmar (ISIC 0200)

- Establishment of forest plantation (teak, hardwood, bamboo, cane etc.) (ISIC 2010)

- Wood-based industry and related businesses with implementation of forest plantation (ISIC 2010, 2021, 2023)

- Eco-tourism based on forest area and natural land (ISIC 7513)

- Reproduction and distribution of importing genetically modified organism and _ living modified organism for commercial purposes

- Advanced technical research and commercial activities in production of improved valuable and rare tree species, conservation and tissue culture production (ISIC 0200, 7310, 7320)

- Development of advanced technology, research and human resource in forest sector (ISIC 7320)

- Importing of wild life animals and plants for breeding and production, distribution at local or overseas through importation and exportation for commercial purposes (ISIC 0121, 0122, 0130)

Industry Classification: ISIC

Level of Government: Central or Regional

Obligations Concerned: National Treatment, Prohibition of Performance Requirements

Description: Investment activities in the above-mentioned subsectors shall be carried out with the approval of the relevant ministries under the Paragraph 1(d) of Myanmar Investment Commission Notification No.15/2017.

Source of Measure

- Myanmar Investment Law (2016), Section 42 (d)

- Myanmar Investment Commission Notification No. 15/2017, Paragraph 1(d): Investment activities to be carried out with the approval of the relevant ministries

15. Sector: Mining and Quarrying

Subsector:

- Exploration and Extraction of Natural Gas and Petroleum (ISIC 1110)

- Services relating to Exploration and Extraction of Natural Gas and Petroleum.

Industry Classification: ISIC, CPC

Level of Government: Central or Regional

Obligations Concerned: National Treatment, Prohibition of Performance Requirements Senior Management and Board of Directors

Description: According to Section 3 of the State-owned Economic Enterprises Law (1989), exploration and extraction of natural gas and petroleum are restricted activities to be carried out solely by the Government of Myanmar. However, an investor who wants to engage in these activities shall complete the international bidding round when it is announced.

Source of Measure:

- State-owned Economic Enterprises Law (1989)

- State-owned Economic Enterprises Law Related Directives

16. Sector: Mining and Quarrying and Services incidental to Mining and Quarrying

Subsector:

- Prospecting, survey, feasibility study and exploration with foreign investment for large scale production of mineral (ISIC 1010, 1020, 1310,1410)

- Prospecting, survey, feasibility study and exploration with citizen investment for small, medium and large scale production of mineral (ISIC 1010, 1020, 1310, 1410)

- Manufacturing and marketing of gems, jewellery and finished product with foreign investment (ISIC 1429, 3691)

- Exploration, finishing and marketing of gem, jewellery and its product with citizen investment (ISIC 1429, 3691)

Industry Classification: ISIC, CPC

Level of Government: Central

Obligations Concerned: National Treatment, Prohibition of Performance Requirements, Senior Management and Board of Directors

Description: Under Section 3 of the State-owned Economic Enterprises Law (1989), the Government of Myanmar has the sole right to carry out the following economic activities as state-owned economic enterprises:

1. Exploration, extraction and export of pearl, jade and precious stone; and

2. Exploration, extraction and export of mineral.

According to Section 4 of the State-owned Economic Enterprises Law (1989), the Government of Myanmar may, by notification, permit in the interest of Myanmar any economic enterprise which is prescribed under Section 3 of the State-owned Economic Enterprises Law (1989) to be operated solely by the Government of Myanmar to be carried out by joint venture between the Government of Myanmar and any other person or any other economic organization or by any person or any economic organization subject to conditions.

According to Section 5 of the State-owned Economic Enterprises Law (1989), the Government of Myanmar may, by notification, prohibit or prescribe conditions regarding the purchase, procurement, improvement, storage, possession, transport, sale and transfer of products derived from or produced by or used by economic enterprises which are prescribed under Section 3 of the State-owned Economic Enterprises Law (1989), to be carried out solely by the Government of Myanmar.

Investment activities in the above-mentioned subsectors shall be carried out with the approval of the relevant ministries under Paragraph 1(d) of Myanmar Investment Commission Notification No.15/2017.

Source of Measure:

- State-owned Economic Enterprises Law (1989)

- Myanmar Mines Law 1994 and its Amendment Law (2015)

- Myanmar Investment Law (2016), Section 42 Co)

- Paragraph 1(d) of Notification No. 15/2017 of the Myanmar Investment Commission

17. Sector: Mining and Quarrying and Services incidental to Mining and Quarrying

Subsector:

- Importing, producing, constructing and installing of equipment, accessory and part of installation as for construction of the various kind of off shore drilling (ISIC 3511, 4510, 1110, 1120)

- Importing, producing, constructing and installing of equipment, accessory and part of installation as for exploring and interpreting of oil and gas by geological, geophysical and geochemical methods (ISIC 3511, 4510, 1110, 1120)

- Importing, producing, constructing and installing of equipment, accessory and part of installation as for exploiting, producing and researching of oil and gas (ISIC 3511, 4510, 1110, 1120)

- Importing, producing, constructing and installing of equipment, accessory and part of installation as for transporting and constructing pipeline network for oil and gas (ISIC 4020, 4510, 4520, 4530)

Industry Classification: ISIC, CPC

Level of Government: Central

Obligations Concerned: National Treatment, Prohibition of Performance Requirements, Senior Management and Board of Directors

Description: Under Section 3 of the State-owned Economic Enterprises Law (1989), the Government of Myanmar has the sole right to carry out the exploration, extraction and sale of petroleum and natural gas and production of products of the same as state-owned economic enterprises.

According to Section 4 of the State-owned Economic Enterprises Law (1989), the Government of Myanmar may, by notification, permit in the interest of Myanmar any economic enterprise which is prescribed under Section 3 of the State-owned Economic Enterprises Law (1989) to be operated solely by the Government of Myanmar to be carried out by joint venture between the Government of Myanmar and any other person or any other economic organization or under conditions by any person or any economic organization subject to conditions.

According to Section 5 of the State-owned Economic Enterprises Law (1989), the Government of Myanmar may, by notification, prohibit or prescribe conditions regarding the purchase, procurement, improvement, storage, possession, transport, sale and transfer of products derived from or produced by or used by economic enterprises which are prescribed under Section 3 of the State-owned Economic Enterprises Law (1989) to be carried out solely by the Government of Myanmar.

Investment activities in the above-mentioned subsectors shall be carried out with the approval of the relevant ministries under Paragraph 1(d) of Myanmar Investment Commission Notification No.15/2017.

Source of Measure:

- State-owned Economic Enterprises Law (1989)

- Oil fields Act 1918 and its amendment law (2010)

- Petroleum and Petroleum Product Law (2017)

- Myanmar Investment Law (2016), Section 42 (d)

- Paragraph 1(d) of Notification No. 15/2017 of the Myanmar Investment Commission

18. Sector: Mining and quarrying

Subsector: Exploring and interpreting of oil and gas by geological and geochemical methods, and importing, producing, constructing and installing of equipment, accessories and part of installation for such related businesses (ISIC 0910, 0991, 7120)

Industry Classification: ISIC

Level of Government: Central

Obligations Concerned: National Treatment

Description: The above-mentioned activity shall be carried out with the approval of the Ministry of Electrical Power according to the Paragraph 1(d) of the Myanmar Investment Commission Notification No. (15/2017) and the Petroleum and Petroleum Product Law (2017)

Source of Measure:

Myanmar Investment Law, Section 42 (d) Paragraph 1(d) of Notification No. 15/2017 of the Myanmar Investment Commission Petroleum and Petroleum Product Law (2017)

19. Sector: Mining and quarrying

Subsector:

- Constructing and installing all kinds of offshore platforms, and importing, producing, constructing and installing as for such related businesses (ISIC 2511)

- Importing, exporting, transporting, storage, distribution and selling of oil, gas and petroleum products, and construction and implementation of storage tank, loading port, pipe line, related machineries and equipment and building for such related businesses (ISIC 2512)

- Construction of the various type of refinery, maintaining and upgrading of old refinery and implementation of work (ISIC 4100)

- Exploiting, producing and testing of oil and gas importing, producing, construction and installing of equipment, accessories and part of installation as for such related businesses (ISIC 0910)

- Transporting and _ constructing pipeline network for oil and gas, importing, producing, construction and installing of equipment, accessories and part of installations as for such related businesses (ISIC 1910)

Industry Classification: ISIC

Level of Government: Central

Obligations Concerned: National Treatment, Prohibition of Performance Requirements

Description: The above-mentioned activity shall be carried out with the approval of the Ministry of Electrical Power according to the Paragraph 1(d) of the Myanmar Investment Commission Notification No. (15/2017) and the Petroleum and Petroleum Product Law (2017)

Source of Measure:

- Myanmar Investment Law, Section 42 (d)

- Paragraph 1(d) of Notification No. 15/2017 of the Myanmar Investment Commission

- Petroleum and Petroleum Product Law (2017)

20. Sector: Mining

Subsector:

- Medium scale and small scale of prospecting, exploration, feasibility study, production, processing, selling, and purchasing of mineral (ISIC 0510, 0520, 0710, 0721, 0729, 0990)

- Refinement of minerals by medium scale and small scale (ISIC 2410)

Industry Classification: ISIC

Level of Government: Central

Obligations Concerned: National Treatment

Description: Foreigners and Foreign Companies are not allowed for prospecting, exploration, feasibility study, processing, selling and purchasing, and production mineral for small and medium scale business.

Small Scale Mineral Production is:

Defined as 20 acres (0.08 square kilometers) for Raw Material and Stone.

Defined as 10 acres (0.04 square kilometers) for other metals, except for gold and precious metals.

Defined as 4 acres (0.016 square kilometers) for gold and precious metals.

Medium Scale Mineral Production is defined as up to 247.1 acres (1 square kilometer).

The above-mentioned subsectors are not allowed to be carried out by foreign investor according to the Paragraph 1(b) of the Myanmar Investment Commission Notification No. 15/2017.

Source of Measure:

- Myanmar Mines Law (2015), Section 4

- Myanmar Mines Rules (2018), Rule 4, 12, 20, 35, 46, 99, 109

- The Myanmar Investment Law, Section 42 (b)

- Paragraph 1(b) of Notification No. 15/2017 of the Myanmar Investment Commission

21. Sector: Mining

Subsector: Jade, gemstone prospecting, exploration and extraction to operate

Industry Classification: ISIC 0990, 3211

Level of Government: Central or Regional

Obligations Concerned: National Treatment

Description: The above-mentioned activity shall not be allowed by foreign investor.

Company or co-operative society which specified under the Section 2, Sub-section (m) and Section 2, Sub-section (n) of the Myanmar Gem Law (2019), can operate a gem extraction according to Section 11 of the Myanmar Gem Law (2019). The gem extraction shall also conform to the conditions prescribed by the Ministry.

According to Section 13 of the Myanmar Gem Law (2019), the Ministry shall issue a permit to the company or co-operative society which is approved for medium scale extraction as the bit offered by such company or society conforms to the stipulations specified in the rules under this law.

According to Section 63 of the Myanmar Gem Law (2019), the Union Government may for the interest of the State, allow any company, co- operative society or individual to prospect and explore gems in any appropriate area within a region where gems may be produced, by prescribing terms and conditions.

The above-mentioned subsectors are not allowed to be carried out by foreign investor according to the Paragraph 1(b) of the Myanmar Investment Commission Notification No. 15/2017.

Source of Measure:

- Sections 2, 11, 13 and 63 of the Myanmar Gem Law (2019)

- Myanmar Investment Law, Section 42 (b)

- Paragraph 1(b) of Notification No. 15/2017 of the Myanmar Investment Commission

22. Sector: Construction

Subsector:

- All) roads administered by Ministry of Construction, all parallel roads to be constructed at those existing roads, city by pass roads to be newly constructed on those toads as necessary, all roads to be linked with those roads (ISIC 4210)

- Construction of elevated express way, tunnel, inner ring road, outer ring road, interchange, underpass, over pass or flyover, semi underground road and submersible tunnel (ISIC 4210, (42103, 42104, 42105, 42101, 42102))

- Construction of bridge which is over 180 ft. and above (ISIC 4210 (42102), (42103)

- Production and domestic marketing of bridge connection items (PC Strand, PC bar, Anchor, etc.), steel frame, bally frame, plate girder, steel truss, bridge and related steel structure concrete, steel concrete, compressive strength of concrete and etc. (ISIC 2395, 24100)

- Urban development which is above 100 acres (ISIC 4100, 421, 422, CPC 532 (53290))

- Building and marketing of residential apartment having the floor of 50,000 square meter and affordable housing which related to Industrial Zone (ISIC 4100, 6810)

- Urban Redevelopment which is above 4 acres of land in the capital of the Region or State excluding Nay Pyi Taw, Yangon and Mandalay (ISIC 4100, 421, 422, 4290, CPC 532 (53290))

- Development of new city/town (ISIC 410, 421, 422, CPC 5411, 8321)

Industry Classification: ISIC, CPC

Level of Government: Central or Regional

Obligations Concerned: National Treatment

Description: Investment activities in the above-mentioned subsectors shall be carried out with the approval of the relevant ministries under Paragraph 1(d) of Myanmar Investment Commission Notification No.15/2017.

Source of Measure:

- Myanmar Investment Law (2016), Section 42 (d)

- Paragraph 1(d) of Notification No.15/2017 of the Myanmar Investment Commission

23. Sector: Hotels and Tourism

Subsector: Tourist Guide/Tour Guide (CPC 8555) Industry Classification CPG

Level of Government: Central

Obligations Concerned: National Treatment

Description: According to the Notification No. 1/2020 (Rule 35 of the Myanmar Tourism Rules), a foreign investor shall not be allowed to operate in Tourist Guide Business in Myanmar.

Tour Guide Service is not allowed to carry out by the foreign investor according to the Notification No. 15/2017 of the Myanmar Investment Commission.

Source of Measure:

- Myanmar Tourism Law (2018)

- Myanmar Tourism Rules (2020)

- Notification No. 1/2020 of the Ministry of Hotels and Tourism

- Myanmar Investment Law (2016), Section 42 (b)

- Paragraph 1(b) of Notification No. 15/2017 of the Myanmar Investment Commission

24. Sector: Road Transport

Subsector

- Passenger Transportation

- Freight Transportation

Industry Classification:

Level of Government: Central

Obligations Concerned: National Treatment, Prohibition of Performance Requirements, Senior Management and Board of Director

Description: Under the Article 26 (b) of the Road Transport Operations Law (2016), a transport operator who performs cross border transport operations from the State to any other contracting party shall possess more than half of the capital by the Myanmar citizen if he operates the joint venture with a foreigner, and have the right to administer in the administrative sector more than the foreigner.

Source of Measure:

Article 26 b) of the Road Transport Operations Law (2016)

25. Sector: Road Transport Sector

Subsector:

- Private Vehicle Inspection Business

- Private Driver Training School Business

Industry Classification:

Level of Government: Central

Obligations Concerned: National Treatment

Description: In terms of the Chapter 5, Rule 132 and Chapter 7, Rule 227 of the Road Safety and Motor Vehicles Management Rules (2022), a person who wants to apply the above-mentioned subsectors shall be:

(a) a citizen or an associate citizen or a naturalized citizen; or

(b) a company owned by the citizen and legally registered under the Myanmar Companies Law and shall not be owned by foreign entities.

Source of Measure:

- Chapter 5 of the Road Safety and Motor Vehicles Management Rules (2022)

- Chapter 7 of the Road Safety and Motor Vehicles Management Rules (2022)

26. Sector: Transport

Subsector:

- Air Traffic Services (as defined in Annex (A) to the Notification No. 15/2017 of Myanmar Investment Commission)

- Civil Aviation Training Services (as defined in Annex (A) to the Notification No. 15/2017 of Myanmar Investment Commission)

- Aircraft Repair and Maintenance Services (as defined in Annex (A) to the Notification No. 15/2017 of Myanmar Investment Commission)

- Airport Hotel Services (as defined in Annex (A) to the Notification No. 15/2017 of Myanmar Investment Commission)

- Ground Handling Services (as defined in Annex (A) to the Notification No. 15/2017 of Myanmar Investment Commission)

- Selling and Marketing of Air Transport Services (as defined in Annex (A) to the Notification No. 15/2017 of Myanmar Investment Commission)

- Computer Reservation System (CRS) Services (as defined in Annex (A) to the Notification No. 15/2017 of Myanmar Investment Commission)

- Aircraft Leasing without Crew Services (CPC 73116)

- Aircraft Leasing with Crew Services (CPC 66031)

- Air Freight Forwarding Services (as defined in Annex (A) to the Notification No. 15/2017 of Myanmar Investment Commission)

- Aircraft Line Maintenance Services (as defined in Annex (A) to the Notification No. 15/2017 of Myanmar Investment Commission)

- Ramp Handling Services (as defined in Annex (A) to the Notification No. 15/2017 of Myanmar Investment Commission)

- Passenger Handling Services (as defined in Annex (A) to the Notification No. 15/2017 of Myanmar Investment Commission)

- Baggage Handling Services (as defined in Annex (A) to the Notification No. 15/2017 of Myanmar Investment Commission)

- Cargo Handling Services (as defined in Annex (A) to the Notification No. 15/2017 of Myanmar Investment Commission)

- Refueling Services (as defined in Annex (A) to the Notification No. 15/2017 of Myanmar Investment Commission)

- Airport Security Services (as defined in Annex (A) to the Notification No. 15/2017 of Myanmar Investment Commission)

- Aircraft catering services

- Leasing aircraft related items (ISIC 7730, CPC 7312)

Industry Classification: CPC or as defined in Annex (A) to the Notifications No. 15/2017 of Myanmar Investment Commission

Level of Government: All levels

Obligations Concerned: National Treatment, Senior Management and Board of Directors

Description: The above-mentioned subsectors shall be carried out with the approval of the relevant ministries under the Paragraph 1 (d) of Myanmar Investment Commission Notification No. 15/2017.

According to the decision made by the 10/2015 Meeting of the Executive Committee of the Ministry of Transport and Communications, foreign investments in air transport services are allowed only in the form of Joint Venture (JV) and foreign equity participation in the JV shall not exceed 49 per cent.

According to Rule 139 of the Myanmar Aircraft Rules (2018), no air transport service shall be established or shall operate within Myanmar, except under the authority of, and in accordance with, a license issued by the Director General of the Department of Civil Aviation.

According to the aforementioned Rule, the Director General of the Department of Civil Aviation may permit for the operation of air transport services to or access Myanmar from and to places outside Myanmar by persons not domiciled in Myanmar or by companies registered elsewhere than in Myanmar with aircraft registered elsewhere than in Myanmar on such terms and conditions as he may think fit.

Source of Measure:

- Notification No.15/2017 of Myanmar Investment Commission;

- Decision made by the 10/3015 Meeting of the Executive Committee of the Ministry of Transport and Communications;

- Rules 139 of the Myanmar Aircraft Rules (2018);

27. Sector: Transport

Subsector: Domestic Air Transport Services and International Air Transport Services (as defined in Annex (A) to the Notification No. 15/2017 of Myanmar Investment Commission)

Industry Classification:

Level of Government: Central

Obligations Concerned: National Treatment, Senior Management and Board of Directors

Description: According to Section 3 of the State-owned Economic Enterprises Law (1989), The Government of Myanmar has the sole right to carry out air transport services as State-owned economic enterprises.

According to Section 4 of the aforementioned law, the Government of Myanmar may, by notification, permit, in the interest of Myanmar, air transport services to be carried out by joint- venture between the Government and any other person or any other economic organization or by any person or any economic organization subject to conditions.

According to Notification No. 15/2017 of Myanmar Investment Commission, investment activities regarding air transport

services (domestic air transport services and international air transport services) are required to be carried out with the approval of the Ministry of Transport and Communications.

According to the decision made by the 10/2015 Meeting of the Executive Committee of the Ministry of Transport and Communications, foreign investments in air transport services are allowed only in the form of Joint Venture (JV) and foreign equity participation in the JV shall not exceed 49 per cent.

According to Rule 139 of the Myanmar Aircraft Rules (2018), no air transport service shall be established or shall operate within Myanmar, except under the authority of, and in accordance with, a license issued by the Director General of the Department of Civil Aviation.

According to the aforementioned Rule, the Director General of the Department of Civil Aviation may permit for the operation of air transport services to or access Myanmar from and to places outside Myanmar by persons not domiciled in Myanmar or by companies registered elsewhere than in Myanmar with aircraft registered elsewhere than in Myanmar on such terms and conditions as he may think fit.

Source of Measure:

- Sections 3 and 4 of the State-owned Economic Enterprises Law (1989);

- Notification No. 15/2017 of Myanmar Investment Commission;

- Decision made by the 10/2015 Meeting of the Executive Committee of the Ministry of Transport and Communications;

- Rule 139 of the Myanmar Aircraft Rules (2018);

28. Sector: Transport

Subsector: Air Transport (Registration of aircraft on national register)

Industry Classification:

Level of Government: Central or Regional

Obligations Concerned: National Treatment

Description: According to Rule 47 (b) of the Myanmar Aircraft Rules (2018), an aircraft may be registered in Myanmar in one or other of the following categories, namely;

(1) Category A. If the aircraft is wholly owned either-

(aa) by organizations controlled by the Union Level authority, by the Region or State level authority or by local authorities; or

(bb) by citizens of Myanmar; or

(cc) by companies or other associations organized under the laws in force in Myanmar, not less than 65 per cent of whose capital is owned by the Government, or by any Region or State, or by any local authority or by citizens of Myanmar; and

(2) Category B. If the aircraft is wholly owned either-

(aa) by persons, resident in or carrying on business in Myanmar, who are not citizens of Myanmar; or

(bb) by companies or other associations which do not qualify for Category A but are carrying on business in Myanmar.

According to Rule 27 of the Myanmar Aircraft Rules (2018), aircraft registered in accordance with Category B contained in Rule 47 of Chapter IV shall not be used as an aerial work aircraft or as a public transport aircraft. However, the Ministry of Transport and Communications may, from time to time, permit and impose restrictions on the performance of aerial work or public transport by aircraft other than those registered in accordance with Category A contained in Rule 47 of Chapter IV, and such restrictions shall be deemed to have been effectively imposed if they have been notified in writing to the owner or operator of such aircraft.

Source of Measure:

Rule 27 and 47 (b) of the Myanmar Aircraft Rules (2018);

29. Sector: Transport

Subsector: Airport Constructions, Maintenances, Managements and Operations (CPC 53122, 53213, 54122, 54619)

Industry Classification: CPC

Level of Government: Central

Obligations Concerned: National Treatment

Description: According to Rule 127 of the Myanmar Aircraft Rules (2018), a license and/or certificate for an aerodrome shall not be granted to any person other than a citizen of Myanmar or a company or corporation registered and having its principal place of business in Myanmar.

The above-mentioned subsector shall be carried out by the approval of the Ministry of Transport and Communications according to the Paragraph 1(d) of the Myanmar Investment Commission Notification No. 15/2017.

Source of Measure:

- Myanmar Investment Law, Section 42 (d)

- Paragraph 1(d) of Notification No. 15/2017 of the Myanmar Investment Commission

- Rule 127 of the Myanmar Aircraft Rules (2018);

30. Sector: Transport Services

Subsector: Shipyards capable of operating for building and repairing of ship and afloat structures (CPC 6751; ISIC 3011)

Industry Classification: CPC, ISIC

Level of Government: Central or Regional

Obligations Concerned : National Treatment, Prohibition of Performance Requirements, Senior Management and Board of Directors

Description: The investor who operates the subsector shall provide requirements for technology, research and development.

In this business activity, at least 51 per cent of Myanmar engineers, staff and executive members of the company shall be employed as required by Department of Marine Administration.

Investment activity in the above-mentioned subsector shall be carried out with the approval of the Ministry of Transport and Communication under the Paragraph 1(d) of Myanmar Investment Commission Notification No. 15/2017.

Source of Measure:

- ACS Rules and Regulations (International Association of Classification

- Paragraph 1(d) of Notification No. 15/2017 of the Myanmar Investment Commission

31. Sector: Maritime Transport Services

Subsector:

- Coastal and Inland Water Transport Service for Passenger (CPC 6423, 6412)

- Coastal and Inland Water Transport Service for Cargo (CPC 6521, 6522)

Industry Classification: CPC

Level of Government: Central or Regional

Obligations Concerned: National Treatment

Description: The 100 per cent ownership of Myanmar citizen can be registered for Myanmar vessel in line with the provision of Section 5 of the Myanmar Registration of Ships Act.

Only Myanmar citizen crew shall be employed in the vessels registered in Myanmar as required by the Myanmar Registration of Ships Act.

Only Myanmar registered vessels could be obtained service license to carry out any water transport services in accordance with the provision of Section 11 of the Myanmar Coastal and Inland Water Transport Service License Law.

Source of Measure:

The Myanmar Registration of Ships Act and the Myanmar Coastal and Inland Water Transport Service License Law

32. Sector: Maritime Transport Services

Subsector:

- International Transport Service for Passenger (not including coastal) (CPC 6423)

- International Transport Service for Cargo (not including coastal) (CPC 6521)

Industry Classification: CPC

Level of Government: Central or Regional

Obligations Concerned: National Treatment

Description: The above-mentioned subsector shall be carried out with the approval of the Ministry of Transport and Communications according to the Paragraph 1(d) of Myanmar Investment Commission Notification No. 15/2017.

The investor who operates the subsector shall provide the requirements for agency service according to the Myanma Port Authority Law.

Source of Measure:

- Myanma Port Authority Law (2015)

- Myanmar Investment Law, Section 42 (d)

- Paragraph 1(d) of Notification No. 15/2017 of the Myanmar Investment Commission

33. Sector: Maritime Transport Services

Subsector: Supporting Service for Water Transport (CPC 652)

Industry Classification: CPC

Level of Government: Central or Regional

Obligations Concerned: National Treatment

Description: The investor who operates the subsector shall employ Myanmar Citizen as per rules and regulations imposed by Department of Marine Administration (DMA) and this business shall be required permission according to rules and regulations of DMA.

Investment activity in the above-mentioned subsector shall be carried out with the approval of the Ministry of Transport and Communication under the Paragraph 1(d) of Myanmar Investment Commission Notification No. 15/2017.

Source of Measure:

- Myanmar Coastal and Inland Transport Service License Law (2015)

- Paragraph 1(d) of Notification No. 15/2017 of the Myanmar Investment Commission

34. Sector: Maritime Transport Services

Subsector: Maritime Education and Training Centre (CPC 92919)

Industry Classification: CPC

Level of Government: Central or Regional

Obligations Concerned: National Treatment

Description: According to the provisions of paragraph (8) of Directive (4/2013) issued by the Department of Marine

Administration (DMA), Maritime Training Institute approved by the Director General of the DMA should conduct only courses approved by the Director General.

Moreover, Maritime Training Centre (MTC) that would like to apply Institute Approval must be owned by the Myanmar citizen in accordance with the DMAâs procedures for MTC to apply permission.

The instructors and assessors who will conduct the courses must meet the DMA's standards for instructor and assessor qualifications, as well as possess the necessary certificates.

The above-mentioned subsector shall be carried out by the approval of the Ministry of Transport and Communications according to the Paragraph 1(d) of the Myanmar Investment Commission Notification No. 15/2017.

Source of Measure:

- Directive (4/2013) Approval and Operation Procedures for Maritime Education and Training (MET) Training Centre

- Myanmar Investment Law, Section 42 (d)

- Paragraph 1(d) of Notification No.15/2017 of the Myanmar Investment Commission

35. Sector: Transport Services

Subsector:

- Vessel leasing without crew (CPC 73115)

- Vessel leasing with crew (CPC 6602)

Industry Classification: CPC

Level of Government: Central or Regional

Obligations Concerned: National Treatment

Description: Investment activity in the above-mentioned subsector shall be carried out with the approval of the relevant ministry under the Paragraph 1(d) of Myanmar Investment Commission Notification No. 15/2017.

The investor who operates the vessel leasing without crew shall employ Myanmar Citizen and shall require registration of ship according to Myanmar Registration of Ship Act. The subsector shall be required transport license according to Myanmar Coastal and Inland Water Transport Service License Law.

The investor who operates the vessel leasing with crew shall be require registration of ship according to Myanmar Registration of Ship Act and Vessel Registration Order No. 034/2022, and transport license according to Myanmar Coastal and Inland Water Transport Service License Law.

Source of Measure

- The Myanmar Registration of Ships Act, Section (5A)

- Myanmar Coastal and Inland Water Transport Service License Law

- Myanmar Investment Law, Section 42 (d)

- Paragraph 1(d) of Notification No. 15/2017 of the Myanmar Investment Commission

- Vessel Registration Order No. 034/2022

36. Sector: Transport Services

Subsector: Tow boat and Tug boat Service

Industry Classification: CPC 65219, 65229

Level of Government: Central or Regional

Obligations Concerned: National Treatment

Description: The investor who operates the subsector shall employ Myanmar citizen crew under Myanmar Registration of

Ship Act.

The subsector shall be required registration of ship according to Myanmar Registration of Ship Act and transport license according to Myanmar Coastal and Inland Water Transport Service License Law.

If the business jointly operates with the foreign company and Myanmar enterprise, joint venture ratio shall be 51 per cent by Myanmar enterprise and 49 per cent by foreign company.

Investment activity in the above-mentioned subsector shall be carried out with the approval of the relevant ministry under the Paragraph 1(d) of Myanmar Investment Commission Notification No. 15/2017.

Source of Measure:

- The Myanmar Registration of Ships Act, Section (5A)

- Myanmar Coastal and Inland Water Transport Service License Law

- Myanma Port Authority Law (2015)

- Myanmar Investment Law, Section 42 (d)

- Paragraph 1(d) of Notification No. 15/2017 of the Myanmar Investment Commission

37. Sector: Transport Services

Subsector: Ship demolition service

Industry Classification: CPC 94312

Level of Government: Central or Regional

Obligations Concerned: National Treatment

Description: Investment activity in the above-mentioned subsector shall be carried out with the approval of the relevant ministry under the paragraph (d) of Myanmar Investment Commission Notification No. 15/2017.

Source of Measure:

- Myanmar Investment Law, Section 42 (d) - Paragraph 1(d) of Notification No. 15/2017 of the Myanmar Investment Commission

38. Sector: Maritime Transport Services

Subsector: Brokerage Service for Ship

Industry Classification: CPC 67910, ISIC 5229

Level of Government: Central or Regional

Obligations Concerned: National Treatment

Description: The investor who operates the above subsector shall employ Myanmar citizen agent as per rules and regulations imposed by Department of Marine Administration.

Investment activity in the above-mentioned subsector shall be carried out with the approval of the relevant ministry under the Paragraph 1(d) of Myanmar Investment Commission Notification No. 15/2017.

Source of Measure:

- Myanma Port Authority Law (2015), Section 26

- Paragraph 1(d) of Notification No. 15/2017 of the Myanmar Investment Commission

39. Sector: Maritime Transport Services

Subsector: Survey and Inspection Service for Ship's Standard (CPC 67990)

Industry Classification: CPC

Level of Government: Central or Regional

Obligations Concerned: National Treatment, Prohibition of Performance Requirements

Description: Investment activity in the above-mentioned subsector shall be carried out with the approval of the relevant ministry under the Paragraph 1(d) of Myanmar Investment Commission Notification No. 15/2017.

The investor who operates the above-mentioned subsector shall employ Myanmar citizen agent if foreigner cannot operate under the current procedures of government. Moreover, the investor shall employ Myanmar _ citizen inspectors/surveyors.

The investor who operates the above subsector shall provide technology requirements and shall be a Recognized Organization required delegation of authority by DMA.

Source of Measure:

- The Myanmar Merchant Shipping Act, as amended in 2007

- Inland Vessel Law (2015)

- Myanmar Investment Law (2016), Section 42 (d)

- Paragraph 1(d) of Notification No. 15/2017 of the Myanmar Investment Commission

40. Sector: Maritime Transport Services

Subsector:

- Construction of switchback/slipway, dockyard, wet/dry dockyard, landing and mud dock (a narrow basin at foreshore area for docking), building of jetty and landing stage and vessel landing by drainage in the river- creek boundary, bank boundary and waterfront boundary (ISIC 4290)

- Construction of warehouse, soils, tanks, container yard and port related infrastructure in the bank boundary and waterfront boundary (ISIC 4100)

- Construction of inland river-port (ISIC 4290)

- Conservation works and improvement works of waterways (CPC 54232)

- Expansion of port area and port limit area (ISIC 4290)

- Service for port and waterway (CPC 5222)

- Service for salvage the sunken ship (CPC 6753)

- Deep sea port and international multi- purpose port (ISIC 4290)

Industry Classification: CPC, ISIC

Level of Government: Central or Regional

Obligations Concerned: National Treatment, Prohibition of Performance Requirements

Description: Investment activity in the above-mentioned subsectors shall be carried out with the approval of the relevant ministry under the Paragraph 1 (d) of Myanmar Investment Commission Notification No. 15/2017.

The investor who operates the above-mentioned subsectors shall employ Myanmar citizen agent if foreigner cannot operate under the current procedures of government.

The investor who operates the above subsectors shall provide technology requirements and shall be a Recognized Organization required delegation of authority by DMA.

Source of Measure

- The Myanmar Merchant Shipping Act, as amended in 2007

- Inland Vessel Law (2015)

- Myanmar Investment Law, Section 42 (d)

- Paragraph 1(d) of Notification No. 15/2017 of the Myanmar Investment Commission

41. Sector: Maritime Transport Services

Subsector: Shipping agency service (CPC 5229)

Industry Classification: CPC

Level of Government: Central or Regional

Obligations Concerned: National Treatment

Description: Investment activity in the above-mentioned subsector shall be carried out with the approval of the relevant ministry under the Paragraph 1(d) of Myanmar Investment Commission Notification No. 15/2017.

The investor who operates the above-mentioned subsector shall employ Myanmar citizen agent if foreigner cannot operate under the current procedures of government. Moreover, the investor shall employ Myanmar _ citizen inspectors/surveyors.

The investor who operates the above subsector shall provide technology requirements and shall be a Recognized Organization required delegation of authority by DMA.

Source of Measure:

- Constitution of the Republic of the Union of Myanmar (2008), Chapter 4, Section 188, Schedule Two

- The Myanmar Merchant Shipping Act, as amended in 2007

- Inland Vessel Law (2015)

- Myanmar Investment Law, Section 42 (d)

- Paragraph 1(d) of Notification No. 15/2017 of the Myanmar Investment Commission

42. Sector Communications Sector

Subsector: Postal Services (CPC 681)

Industry Classification: CPG

Level of Government: Central

Obligations Concerned: National Treatment, Senior Management and Board of Directors

Description: Investment activity in the above-mentioned subsector shall be carried out with the approval of the Ministry of Transport and Communications under the Paragraph 1(d) of Myanmar Investment Commission Notification No. 15/2017.

According to Section 4 of the State-owned Economic Enterprises Law (1989), the Government of Myanmar may, by notification, permit in the interest of Myanmar any economic enterprise which is prescribed under Section 3 to be operated solely by the Government of Myanmar to be carried out by joint-venture between the Government and any other person or any other economic organization or under conditions by any person or any economic organization subject to conditions.

Source of Measure:

- Notification No. 15/2017 of Myanmar Investment Commission

- Sections 3 and 4 of the State-owned Economic Enterprises Law (1989)

43. Sector: Education

Subsector: Primary Education (Formal Education) Secondary Education

Industry Classification: CPC

Level of Government: Central

Obligations Concerned: National Treatment

Description: In establishing the private school, it shall not be the school established with foreign aid, shall not be the school led and established by a foreign organization or established with the aid of such organization or shall not be a missionary

school.

The person who desires to establish a private school shall conform with the following facts;

(i) being a Myanmar citizen if a sole person desires to establish;

(ii) being all members of the administrative body of such organization are Myanmar citizens if an organization desires to establish.

Source of Measure:

- The Private School Registration Law (2011)

44. Sector: Distribution Services

Subsector: Retail and Wholesale Sector

Industry Classification: CPG

Level of Government: Central

Obligations Concerned: National Treatment

Description: According to the Notification No. 25/2018 of Ministry of Commerce, in prohibitions (9), a fully foreign-owned company of a joint-venture between citizen and foreigner, shall not engage in retail distribution, including mini-markets and convenience stores, [in premises of] less than 929 square meters in floor area.

According to the Paragraph 1 (b) of the Myanmar Investment Commission Notification No. 15/2017, the mini-markets and convenience stores (floor area must be below 10,000 square feet or 929 square meter) is not allowed to be carried out by the foreign investors.

Source of Measure:

- Notification No. 25/2018 of Ministry of Commerce

- The Myanmar Investment Law, Section 42 (b)

- Paragraph 1(b) of Notification No. 15/2017 of the Myanmar Investment Commission

45. Sector: Healthcare services

Subsector:

- Private hospital services (ISIC 8620)

- Private general health services (ISIC 8620, CPC 93121)

- Private traditional hospital (ISIC 8620 (86201))

- Private care shelter services (ISIC 8710(87102)), CPC 93210, 93221)

- Private mobile health services (CPC 93121)

- Private traditional clinic (ISIC 8620 (86201))

- Trading of traditional pharmaceutical raw materials (herbal items) (ISIC 4620 (46202), 4642 (46421), 4772)

Industry Classification: ISIC, CPC

Level of Government: Central or Regional

Obligations Concerned: National Treatment, Prohibition of Performance Requirements

Description: Investment activities in the above-mentioned subsectors shall be carried out with the approval of the relevant ministries under the Paragraph 1(d) of Myanmar Investment Commission Notification No. 15/2017.

Source of Measure:

- Myanmar Investment Law (2016), Section 42 (d)

- Paragraph 1(d) of Notification No.15/2017 of the Myanmar Investment Commission

46. Sector: Private health care services

Subsector:

- General medical services (CPC 93121)

- Specialized medical services (CPC 93122) - Dental services (CPC 93123)

- Hospital services (CPC 931 1/93110)

- Private diagnostic service

Industry Classification: CPC

Level of Government: Central or Regional

Obligations Concerned: National Treatment, Prohibition of Performance Requirements Description Commercial presence is up to 70 per cent foreign equity participation is permitted and to be in accordance with Private Health Care Services Law 2007.

Source of Measure:

Law Relating to Private Health Care Services (2007)

47. Sector: Electricity sector

Subsector: Large scale electrical business (business that can generate more than 30 MW according to the Electricity Law) (ISIC 3510, 35101)

Industry Classification: ISIC

Level of Government: Central

Obligations Concerned: National Treatment, Prohibition of Performance Requirements, Senior Management and Board of Directors

Description: In accordance with the Section 8 (a) of the Electricity Law, the exploration, construction, generation, transmission, distribution, trading and exchanging of large-scale electrical business shall be carried out by the Ministry with the approval of the Cabinet.

The above-mentioned subsector shall be carried out by the approval of the Ministry of Electrical Power according to the Paragraph 1(d) of the Myanmar Investment Commission Notification No. 15/2017.

Source of Measure:

- Section 8 (a) of the Electricity Law

- Myanmar Investment Law, Section 42 (d)

- Paragraph 1(d) of Notification No. 15/2017 of the Myanmar Investment Commission

48. Sector: Electricity sector

Subsector: All electrical business to be connected with power system

Industry Classification: ISIC 35102

Level of Government: Central

Obligations Concerned: National Treatment, Prohibition of Performance Requirements, Senior Management and Board of Directors

Description: In accordance with the Section 8 (a) of the Electricity Law, the exploration, construction, generation, transmission, distribution, trading and exchanging of large-scale electrical business shall be carried out by the Ministry with the approval of the Cabinet.

According to Rule 80 (b) of the Electricity Rules, to connect with the power system directly or through, it shall acquire the approval of the Ministry of Electrical Power after getting the approval of the relevant government organizations.

The above-mentioned subsector shall be carried out by the approval of the Ministry of Electrical Power according to the Paragraph 1(d) of the Myanmar Investment Commission Notification No. 15/2017.

Source of Measure:

- Section 8 (a) of the Electricity Law and Rule 80 (b) of the Electricity Rules

- Myanmar Investment Law, Section 42 (d)

- Paragraph 1(d) of Notification No.15/2017 of the Myanmar Investment Commission

49. Sector: Financial Service

Subsector:

- Other Monetary Intermediation - Banks (ISIC 6419)

- Financial Services, except investment banking, insurance services and pension services (CPC 711)

Industry Classification: ISIC, CPC

Level of Government: Central or Regional

Obligations Concerned: National Treatment, Senior Management and Board of Directors

Description:

- Foreign Bank Branch is permitted to provide wholesale banking services.

- Foreign Bank Subsidiary is allowed to establish up to 10 places of business being branches or off-site ATMs.

- The private banks shall seek and obtain the approval of CBM at least 30 days before employing a foreign employee. CBM sets out a maximum number of employees a bank may employ, depends on its size:

Type	**Market Share**	**Maximum number of foreign employees**
Large Bank	>5%	25
Medium Bank	Between 1% to 5%	15
Small Bank	<1%	8

- To obtain approval from CBM, prescribed documentation must be provided, including evidence that the applicant bank has scrutinized and cleared the proposed foreign employee in relation to political involvement, criminal records and insolvency.

- The local private banks are not allowed to appoint foreign employee as Chairman or Deputy Chairman.

- If the foreign employee is appointed as Chief Executive Officer, the Deputy Executive Officer must be a Myanmar citizen.

- Foreigners may be Head of Department (HOD) as long as they do not comprise more than 50 per cent of the bankâs department heads. If a foreign employee is appointed as HOD, the Deputy HOD must be a Myanmar citizen.

The probation period for HOD will be one year and other lower rank under HOD will be six months. The maximum term of employment is three years including the probation period and it can be extended up to maximum of two years.

If foreigners are on the Board of Directors due to the bank's equity participation, the bank must submit to CBM for its approval, which is on a case by case basis.

Source of Measure:

- Foreign Bank Branch License Terms and Conditions

- Announcement for new round of Foreign bank licensing in the Republic of the Union of Myanmar dated on 7*" November 2019

50. Sector: Financial services

Subsector:

Industry Classification: ISIC, CPC

Level of Government: Central or Regional

Obligations Concerned: National Treatment, Senior Management and Board of Directors

Description: All export proceeds in foreign currency from Asia countries shall be deposited within 45 days from the date of shipment of goods.

All export proceeds in foreign currency from outside Asia countries shall be deposited within 90 days from the date of shipment of goods.

Source of Measure:

Notification No. 27/2022 of the Central Bank of Myanmar

LIST B. EXPLANATORY NOTES

1. This List B sets out pursuant to Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), the specific sectors, subsectors or activities for which Myanmar may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

(a) Article 3 (National Treatment) of Chapter 11 (Investment);

(b) Article 5 (Senior Management and Board of Directors) of Chapter 11 (Investment); or

(c) Article 6 (Prohibition of Performance Requirements) of Chapter 11 (Investment).

2. This List B sets out the following elements:

(a) Sector refers to the general sectors in which an entry is made;

(b) Subsector refers to specific sectors in which an entry is made;

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

(i) the Central Product Classification (CPC) of the United Nations Statistics Division Version 2.1; or

(ii) International Standard Industrial Classification (ISIC) Revision 3;

(d) Level of Government means the level of government either Central or Regional which maintain the measure for which an entry is made;

(e) Obligations Concerned specifies the obligations referred to in Paragraph 1 that, pursuant to Article 13 (Reservations and NonConforming Measures) of Chapter 11 (Investment), do not apply to the sectors, subsectors or activities listed in the entry;

(f) Description sets out the scope or nature of the sector, subsector, or activities covered by the entry; and

(g) Existing Measures are identified for transparency purpose only, for existing measure that apply to the sector, subsector or activities covered by the entry.

3. In the interpretation of an entry, all elements of an entry shall be considered. The Description element shall prevail over all other elements.

4. Notwithstanding the obligations contained in List A, where there is overlap between the contents of List A and this List B, Myanmar may adopt or maintain relevant measures in accordance with this List B

5. In this List B:

(a) "Direct Investment" means an investment in which the investor has the right to control, influence or manage, of such assets which are invested by the investor within the Union in accordance with the law;

(b) "Foreign Investment" means any direct investment made by a foreign investor within the Union; and

(c)"Union" means the Republic of the Union of Myanmar.

6. Myanmar takes out the MFN obligation from this List B as the MFN obligation shall not apply to Myanmar according to the Article 4 (Most-Favoured-Nation Treatment) of Chapter 11 (Investment). For greater certainty, Myanmar reserves the right to adopt or maintain any measure with regard to investments in services sectors that are consistent with Chapter 8 (Trade in Services).

1. Sector: All sectors

Subsector:

Industry Classification:

Level of Government: All Levels

Obligations Concerned: National Treatment, Senior Management and Board of Directors

Description: Myanmar reserves the right to adopt or maintain any measure relating to investment or the supply of services in sectors or industries other than those recognised or other than those that should have been recognised by the Government of Myanmar owing to the circumstances at the date of entry into force of this Agreement for it. Any sectors or industries classified positively and explicitly in ISIC or CPC, at the date of entry into force of the Second Protocol for Myanmar should have been recognised by the Government of Myanmar at that time.

Myanmar reserves the right to adopt or maintain any measure with respect to new sectors or industries. Any sector classified in the ISIC Code version 3 or CPC version 2.1 as of the date of entry into force of the Second Protocol shall not be considered a new sector or industry for the purposes of this entry.

Existing Measure:

2. Sector: All sectors

Subsector:

Industry Classification:

Level of Government: All Levels

Obligations Concerned: National Treatment

Description: Myanmar reserves the right to adopt or maintain any measure relating to national defense, public order and security.

Existing Measure:

3. Sector: All sectors

Subsector:

Industry Classification:

Level of Government: All Levels

Obligations Concerned: National Treatment, Prohibition of Performance Requirements, Senior Management and Board of Directors

Description: Myanmar reserves the right to adopt or maintain any measure relating to the following sectors:

1. investment which is administered and operated by law of the concerned ministries and organisations;

2. banking, insurance and financial services.

Existing Measure:

4. Sector: All sectors

Subsector:

Industry Classification:

Level of Government: All Levels

Obligations Concerned: National Treatment, Prohibition of Performance Requirements

Description: Myanmar reserves the right to adopt or maintain any measure and condition imposed in approvals for licences or permits to the companies or projects which were in existence before the date of entry into force of the Second Protocol.

Existing Measure:

5. Sector: All sectors

Subsector:

Industry Classification:

Level of Government: All Levels

Obligations Concerned: National Treatment, Prohibition of Performance Requirements

Description: Myanmar reserves the right to adopt or maintain any measure, with respect to the establishment or acquisition of an investment pursuant to Section 47 (a) of the Myanmar Investment Law (2016).

Existing Measure:

6. Sector: All sectors

Subsector:

Industry Classification:

Level of Government: All Levels

Obligations Concerned: National Treatment, Prohibition of Performance Requirements, Senior Management and Board of Directors

Description: Myanmar reserves the rights to adopt or maintain any measure relating to investment activities which may socially or economically disadvantage the indigenous people.

Existing Measure:

- Constitution of the Republic of the Union of Myanmar (2008), Sections 96, 188 and 196 - Myanmar Investment Rules (2017)

7. Sector: All sectors

Subsector:

Industry Classification:

Level of Government: All Levels

Obligations Concerned: National Treatment, Prohibition of Performance Requirements, Senior Management and Board of Directors

Description: Myanmar reserves the rights to adopt or maintain any measure relating to the acquisition or usage of land in the territory of Myanmar, including development and usage of land or other type of activities which may be conducted on land in accordance with its land zoning, land usage, urban planning, development control, conservation and preservation policies as well as policies relating to environmental protection, nature reserve and national park.

Myanmar reserves the right to adopt or maintain any measure affecting the land, cultural heritage, natural and mineral resources associated with land.

Existing Measure:

8. Sector: All sectors

Subsector:

Industry Classification:

Level of Government: All Levels

Obligations Concerned: National Treatment, Prohibition of Performance Requirements, Senior Management and Board of Directors

Description: Myanmar reserves the right to adopt or maintain any measure relating to health assessment, cultural heritage impact assessment, environmental impact assessment and social impact assessment.

Existing Measure:

9. Sector: All sectors

Subsector:

Industry Classification:

Level of Government: All Levels

Obligations Concerned: National Treatment, Prohibition of Performance Requirements, Senior Management and Board of Directors

Description: Myanmar reserves the right to adopt or maintain any measure with respect to real estate development, supply, management, sale and rental services.

10. Sector: All sectors

Subsector:

Industry Classification:

Level of Government: All Levels

Obligations Concerned: National Treatment, Prohibition of Performance Requirements, Senior Management and Board of Directors

Description: Myanmar reserves the right to adopt or maintain any measure affecting the administration, management and operation of any state-owned economic enterprises.

Existing Measure:

11. Sector: All sectors

Subsector:

Industry Classification:

Level of Government: All Levels

Obligations Concerned: National Treatment, Senior Management and Board of Directors

Description: Myanmar reserves the right to adopt or maintain any measure with respect to investor or investment relating to portfolio investments.

Existing Measure:

12. Sector: All sectors

Subsector: Industry Classification

Level of Government: All Levels

Obligations Concerned: National Treatment, Senior Management and Board of Directors

Description: Myanmar reserves the right to adopt or maintain any measure relating to special preferences or treatments granted to small and medium enterprises.

Existing Measure:

- Myanmar Investment Law (2016)

- Myanmar Companies Law (2017)

- Small and Medium Enterprises Development Law (2015)

13. Sector: All sectors

Subsector:

Industry Classification:

Level of Government: All Levels

Obligations Concerned: National Treatment, Prohibition of Performance Requirements, Senior Management and Board of Directors

Description: According to Section 41 and Section 43 of the Myanmar Investment Law and Rule 12 and Rule 17 of the Myanmar Investment Rules, Myanmar reserves the right to adopt or maintain any measures relating to issue the notification of prohibited, restricted and promoted investment activities with the approval of the Government of Myanmar accordingly.

Existing Measure:

- Myanmar Investment Law (2016), Section 41 and Section 43

- Myanmar Investment Rules (2017), Rule 12 and Rule 17

14. Sector: All sectors

Subsector:

Industry Classification:

Level of Government: All Levels

Obligations Concerned: National Treatment, Prohibition of Performance Requirements, Senior Management and Board of Directors

Description: Myanmar reserves the right to adopt or maintain any measure relating to permanent residents.

Existing Measure:

15. Sector: Manufacturing

Subsector:

Industry Classification:

Level of Government: Central or Regional

Obligations Concerned: National Treatment, Prohibition of Performance Requirements

Description: Myanmar reserves the right to adopt or maintain any measure with respect to the following investment activities:

1. tobacco and tobacco related products;

2. manufacturing and marketing of malt and matt liquors and non-aerated products; and

3. distilling, blending, rectifying, bottling and marketing of all kinds of spirits, alcohol, alcoholic beverages and non-alcoholic beverages.

Existing Measure:

16. Sector: Agriculture

Subsector:

Industry Classification:

Level of Government: Central or Regional

Obligations Concerned: National Treatment, Prohibition of Performance Requirements, Senior Management and Board of Directors

Description: Myanmar reserves the right to adopt or maintainany measure with respect to any agriculture activity relating to the following:

1. production and cultivating of seasonal crops;

2. contract farming;

3. production and exportation of oil seed;

4. production and cultivating of perennial crop; production of orchards; and

5. exploration, extraction and export of pearls.

Existing Measure:

17. Sector: Fishery

Subsector:

Industry Classification:

Level of Government: Central or Regional

Obligations Concerned: National Treatment, Prohibition of Performance Requirements

Description: Myanmar reserves the right to adopt or maintain any measure with respect to marine fishing, breeding and production of fish and prawns in fresh water and seawater.

Existing Measure:

18. Sector: Forestry

Subsector:

Industry Classification:

Level of Government: Central or Regional

Obligations Concerned: National Treatment, Prohibition of Performance Requirements, Senior Management and Board of Directors

Description: Myanmar reserves the right to adopt or maintain any measure with respect to the extraction of wood and teak, logging in forest land and land administered by the Government of Myanmar, sale of teak, wood and wood product within the country and abroad, and any activity relating to wood industry which uses raw timber extracted from natural forests.

Existing Measure:

- Notification No. 86/2017 of Myanmar Investment Commission

- The State-owned Economic Enterprises Law (1989)

19. Sector: Mining and Quarrying and Services incidental to Mining and Quarrying

Subsector:

Industry Classification:

Level of Government: Central or Regional

Obligations Concerned: National Treatment, Prohibition of Performance Requirements, Senior Management and Board of Directors

Description: Myanmar reserves the right to adopt or maintain any measure with respect to:

- exploration, production and sale of natural gas and petroleum;

- services relating to exploration and production of natural gas and petroleum;

- exploration, extraction and export of metals;

- exploration, extraction and export of jade and precious stones; and

- exploration, extraction and export of construction and decoration rock.

Existing Measure:

20. Sector: Mining and Quarrying and Services incidental to Mining and Quarrying

Subsector:

Industry Classification:

Level of Government: Central or Regional

Obligations Concerned: National Treatment, Prohibition of Performance Requirements Senior Management and Board of Directors

Description: Myanmar reserves the right to adopt or maintain any measure with respect to prospecting, exploration, production, purchasing, storing, processing, transportation, selling and transferring of any mineral, gemstone, metallic mineral, industrial mineral or stone pursuant to the Myanmar Mines Law and its amendment Law.

Existing Measure:

- The Myanmar Mines Law, 1994 and its amendment Law (2015)

- The State-owned Economic Enterprises Law (1989)

21. Sector: Electricity Generating

Subsector: Electricity Generating and Electricity Generating Services

Industry Classification:

Level of Government: Central or Regional

Obligations Concerned: National Treatment, Prohibition of Performance Requirements

Senior Management and Board of Directors

Description: Myanmar reserves the right to adopt or maintain any measure with respect to prospecting, exploration, production, purchasing, storing, processing, transportation, selling and transferring of any electricity generation pursuant to the State-owned Economic Enterprises Law (1989).

Existing Measure:

22. Sector: Road Transport Services

Subsector: Passenger Transportation Freight Transportation

Industry Classification:

Level of Government: Central

Obligations Concerned: National Treatment, Prohibition of Performance Requirements, Senior Management and Board of Directors

Description: Myanmar reserves the right to adopt or maintain any measure with respect to passenger transportation and freight transportation.

Existing Measure:

Article 26 b) of the Road Transport Operations Law (2016)

23. Sector: Transport

Subsector:

- Air Traffic Services (as defined in Annex (A) to the Notification No. 15/2017 of Myanmar Investment Commission)

- Givil Aviation Training Services (as defined in Annex (A) to the Notification No. 15/2017 of Myanmar Investment Commission)

- Aircraft Repair and Maintenance Services (as defined in Annex (A) to the Notification No. 15/2017 of Myanmar Investment Commission)

- Airport Hotel Services (as defined in Annex (A) to the Notification No. 15/2017 of Myanmar Investment Commission)

- Ground Handling Services (as defined in Annex (A) to the Notification No. 15/2017 of Myanmar Investment Commission)

- Selling and Marketing of Air Transport Services (as defined in Annex (A) to the Notification No. 15/2017 of Myanmar Investment Commission)

- Computer Reservation System (CRS) Services (as defined in Annex (A) to the Notification No. 15/2017 of Myanmar Investment Commission)

- Aircraft Leasing without Crew Services (CPC 73116)

- Aircraft Leasing with Crew Services (CPC 66031)

- Air Freight Forwarding Services (as defined in Annex (A) to the Notification No. 15/2017 of Myanmar Investment Commission)

- Aircraft Line Maintenance Services (as defined in Annex (A) to the Notification No. 15/2017 of Myanmar Investment Commission)

- Ramp Handling Services (as defined in Annex (A) to the Notification No. 15/2017 of Myanmar Investment Commission)

- Passenger Handling Services (as defined in Annex (A) to the Notification No. 15/2017 of Myanmar Investment Commission)

- Baggage Handling Services (as defined in Annex (A) to the Notification No. 15/2017 of Myanmar Investment Commission)

- Cargo Handling Services (as defined in Annex (A) to the Notification No. 15/2017 of Myanmar Investment Commission)

- Refuelling Services (as defined in Annex (A) to the Notification No. 15/2017 of Myanmar Investment Commission)

- Airport Security Services (as defined in Annex (A) to the Notification No. 15/2017 of Myanmar Investment Commission)

- Airport Constructions, Maintenances, Managements and Operations (CPC 53122, 53213, 54122, 54619)

- Domestic Air Transport Services (as defined in Annex (A) to the Notification No. 15/2017 of Myanmar Investment Commission) International Air Transport Services (as defined in Annex (A) to the Notification No. 15/2017 of Myanmar Investment Commission)

- Leasing aircraft related items (ISIC 7730, CPC 7312)

- Aircraft Catering Services

Industry Classification: CPG or as defined in Annex (A) to the Notifications No. 15/2017 of Myanmar Investment Commission

Level of Government: All levels

Obligations Concerned: National Treatment, Prohibition of Performance Requirements, Senior Management and Board of Directors

Description: Myanmar reserves the right to adopt and maintain any measure with respect to investments in the services mentioned above.

Existing Measure:

- Article 3 and 4 of the State-owned Economic Enterprises Law (1989);

- Notification No.15/2017 of Myanmar Investment Commission;

- Decision made by the 10/3015 Meeting of the Executive Committee of the Ministry of Transport and Communications;

- Rule 139 of the Myanmar Aircraft Rules (2018);

24. Sector: Transport

Subsector: Aviation Services

Industry Classification:

Level of Government: All levels

Obligations Concerned: National Treatment, Prohibition of Performance Requirements, Senior Management and Board of Directors

Description: Myanmar reserves the right to adopt and maintain any measure relating to new aviation services that are not regulated and/or do not exist in the territory of Myanmar at the date of entry into force of the Second Protocol.

Existing Measure:

25. Sector: Transport

Subsector:

- Supporting Service for water transport Vessel leasing without crew

- Ship demolition service

- Tow boat & tug boat service

- Conservation works and improvement works of waterways

- Service for port and waterway

- Service for salvage the sunken ship

- Dry Port service relevant with rail transport

- The construction of switchback/slipway, dockyard, wet/dry dockyard, landing and mud dock (a narrow basin at foreshore area for docking), building of jetty and landing stage and vessel landing by drainage in the river- creek boundary, bank boundary and waterfront boundary

- The construction of warehouse, soils, tanks, container yard and port related infrastructure in the bank boundary and waterfront boundary

- Construction of inland river-port

- Deep sea port and international multipurpose port

- Shipping agency service

- Shipyards capable of operating for building and repairing of ships and afloat structures

Industry Classification:

Level of Government: Central or Regional

Obligations Concerned: National Treatment, Prohibition of Performance Requirements, Senior Management and Board of Directors

Description: The above-mentioned subsectors shall be carried out with the approval of the Ministry of Transport and Communications.

Existing Measure:

The Myanmar Investment Law, Section 42 (d) Paragraph 1(d) of the Myanmar Investment Commission's Notification (15/2017)

The Constitution of the Republic of the Union of Myanmar (2008), Chapter 4, Section 188, Schedule Two

26. Sector: Distribution Services

Subsector: Retail and Wholesale Sector

Industry Classification: CPG

Level of Government: All levels

Obligations Concerned: National Treatment, Prohibition of Performance Requirements

Description: Myanmar reserves the right to adopt and maintain any measure relating to the retail and wholesale sectors as may be necessary.

Source of Measure:

The Essential Supplies and Services Law

27. Sector: Manufacturing

Subsector: Snake Anti-venom Production

Industry Classification:

Level of Government: Central or Regional

Obligations Concerned: National Treatment, Prohibition of Performance Requirements

Description: Myanmar reserves the right to adopt or maintain any measure to the snake anti-venom production.

Existing Measure:

28. Sector: Private healthcare services

Subsector: Private healthcare agency

Industry Classification:

Level of Government: Central or Regional

Obligations Concerned: National Treatment, Prohibition of Performance Requirements

Description: Private Health Care Services (except ambulance service) is permitted as a joint venture investment with Myanmar citizen in accordance with the Myanmar investment law and Private Health Care Services Law (2007).

According to Section 2 of Private Health Care Services Law (2007), private health care agency means the health care services for transportation of patient or undertaking local and foreign communication for health care as a private service.

Myanmar reserves the right to adopt or maintain any measures relating to the private healthcare services.

Existing Measure:

Private Health Care Services Law (2007)

29. Sector: All Sectors

Subsector:

Industry Classification:

Level of Government: All Levels

Obligations Concerned: National Treatment, Prohibition of Performance Requirements, Senior Management and Board of

Director

Description: Myanmar reserves the right to adopt or maintain any measure relating to Health, Education, Training, Transport, Social Security and Public Utilities.

Existing Measure:

30. Sector: Transport

Subsector:

Industry Classification:

Level of Government: All Levels

Obligations Concerned: National Treatment, Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Myanmar reserves the right to adopt or maintain any measure relating to all investment-related transport sector and subsectors.

Existing Measure:

31. Sector: All sectors

Subsector:

Industry Classification:

Level of Government: All Levels

Obligations Concerned: National Treatment, Prohibition of Performance Requirements, Senior Management and Board of Directors

Description: Myanmar reserves the right to adopt or maintain any measure relating to all investment-related service sectors and subsectors.

Existing Measure:

ANNEX 3. SCHEDULE OF RESERVATIONS AND NON-CONFORMING MEASURES FOR INVESTMENT. MALAYSIA

LIST A. EXPLANATORY NOTES

1. This List A sets out, pursuant to Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), Malaysia's existing measures that are not subject to some or all of the obligations imposed by:

(a) Article 3 (National Treatment) of Chapter 11 (Investment);

(b) Article 4 (Most-Favoured-Nation Treatment) of Chapter 11 (Investment);

(c) Article 5 (Senior Management and Board of Directors) of Chapter 11(Investment); or

(d) Article 6 (Prohibition of Performance Requirements) of Chapter 11 (Investment).

2. Each entry in this List A sets out the following elements:

(a) Sector refers to the sector for which the entry is made;

(b) Subsector, where referenced, refers to the specific subsector for which the entry is made;

(c) Level of Government indicates the level of government maintaining the listed measures;

(d) Obligations Concerned specifies the obligations referred to in paragraph 1 that, pursuant to Article 13 (Reservations and NonConforming Measures) of Chapter 11 (Investment), do not apply to the listed measures;

(e) Description sets out the non-conforming measure for which the entry is made; and

(f) Source of Measure means the laws, regulations or other measures that are the source of the non-conforming measure for which the entry is made.

A measure cited in the Source of Measure element:

(i) means the measure as amended, continued or renewed as of the date of entry into force of the Second Protocol, and

(ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure.

3. In accordance with Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), the Articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the non-conforming measure identified in the Description element of that entry.

4. For greater certainty, the Description element of each of the entries in this List A is to be interpreted in accordance with the relevant cited sources of the non- conforming measures. For greater certainty, to the extent of any conflict between the Description element and other elements in an entry, the Description element shall prevail.

5. The Schedules of other Parties shall not be used to interpret Malaysia's commitments or obligations under Chapter 11 (Investment).

1. Sector: All sectors

Subsector:

Level of Government: Central and Regional

Obligations Concerned: National Treatment, Senior Management and Board of Directors

Description: Only Malaysian nationals or permanent residents can register a sole proprietorship or partnership in Malaysia. Foreigners can register a Limited Liability Partnership (LLP), but the compliance officer shall be a citizen or permanent resident of Malaysia that resides in Malaysia.

Foreigners are not allowed to establish or join cooperative societies in Malaysia.

Source of Measures:

Registration of Businesses Act 1956 [Act 197] Limited Liability Partnerships Act 2012 [Act 743] Co-operative Societies Act 1993 [Act 502]

Sarawak Business Names Ordinance 1932 [Chapter 64] (1958 Edition)

Sarawak Business, Professions and Trades Licensing Ordinance 1955 [Chapter 33] (1958 Edition)

Sabah Trades Licensing Ordinance (Sabah Cap. 144)

Companies Act 2016 [Act 777]

General Guidelines for Registration of Limited Liability Partnership

2. Sector : All sectors

Subsector:

Level of Government : Central

Obligations Concerned: National Treatment, Senior Management and Board of Directors

Description : At least one director of a private company incorporated in Malaysia shall ordinarily reside in Malaysia by having a principal place of residence in Malaysia. At least two directors of a public company incorporated in Malaysia shall ordinarily reside in Malaysia by having a principal place of residence in Malaysia.

Source of Measures : Companies Act 2016 [Act 777]

3. Sector : Fisheries

Subsector : Marine capture fisheries

Level of Government : Central and Regional

Obligations Concerned : National Treatment, Most-Favoured-Nation Treatment

Description : No foreign fishing vessel shall load or unload any fish, fuel, or supplies, or tranship any fish, or fish or attempt to fish or conduct any techno- economic research or waters survey of any fishery, in Malaysian fisheries waters (1) unless authorised to do so.

An application for a permit to be issued in respect of a foreign fishing vessel to fish in Malaysian fisheries waters shall be made through a Malaysian agent who shall undertake legal and financial responsibility for the activities to be carried out by such vessel.

For the purposes of this entry, "fishing vessel" means any boat, craft, ship or other vessel which is used or equipped to be used for, or of a type used for:

(a) fishing; or

(b) 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 Measures : Fisheries Act 1985 [Act 317]

Lembaga Kemajuan Ikan Malaysia Act 1977 [Act 49]

Exclusive Economic Zone Act 1984 [Act 311] Continental Shelf Act 1966 [Act 83]

(1) 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.

4. Sector : Manufacturing

Subsector:

Level of Government : Central and Regional

Obligations Concerned: National Treatment

Description: Foreign equity is restricted to no more than 30 per cent for the manufacture of batik fabric and apparel of batik.

Source of Measures : Industrial Co-ordination Act 1975 [Act 156] Administrative Guidelines

5. Sector : Manufacturing

Subsector:

Level of Government : Central and Regional

Obligations Concerned: Prohibition of Performance Requirements

Description :

(a) Companies located within the Licensed Manufacturing Warehouse (LMW) and Free Industrial Zone (FIZ) are subject to export requirements.

(b) Companies engaging in petroleum refining activities are subject to export requirements.

(c) Expansion projects will be considered only for existing independent palm oil refineries which source 100 per cent from their own plantations. For Sabah and Sarawak, a manufacturing licence will only be considered for new integrated projects which source 50 per cent of crude palm oil from their own plantations. Integrated projects refer to projects with own plantations.

(d) For pineapple canning, approval will only be granted for projects which source 100 per cent supply from their own plantations.

Source of Measures :

Industrial Co-ordination Act 1975 [Act 156]

Customs Act 1967 (Revised 1980) [Act 235]

Free Zone Act 1990 [Act 438]

Petroleum Development Act 1974 [Act 144]

Pineapple Industry (Cannery Control) Regulations (Amendment) 1989

Pineapple Industrial Act 1957 (Revised 1990) [Act 427]

Administrative Guidelines

6. Sector : All sectors

Subsector:

Level of Government : Regional

Obligations Concerned : Prohibition of Performance Requirements

Description: Adoption of a given rate or amount of royalty under a license contract may be subject to approval by the relevant State authority.

Source of Measures : Policies and Ministerial Statements Administrative Guidelines

LIST B. EXPLANATORY NOTES

1. This List B sets out, pursuant to Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), the specific sectors, subsectors or activities for which Malaysia may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

(a) Article 3 (National Treatment) of Chapter 11 (Investment);

(b) Article 4 (Most-Favoured-Nation Treatment) of Chapter 11 (Investment);

(c) Article 5 (Senior Management and Board of Directors) of Chapter 11 (Investment); or

(d) Article 6 (Prohibition of Performance Requirements) of Chapter 11 (Investment).

2. Each entry in this List B sets out the following elements:

(a) Sector refers to the sector for which the entry is made;

(b) Subsector, where referenced, refers to the specific subsector for which the entry is made;

(c) Obligations Concerned specifies the obligations referred to in paragraph 1 that, pursuant to Article 13 (Reservations and Non- Conforming Measures) of Chapter 11 (Investment), do not apply to the sectors, subsectors, or activities, listed in the entry;

(d) Description sets out the scope of the sectors, subsectors or activities, covered by the entry; and

(e) Existing Measures where specified, identifies, for transparency purposes, a non-exhaustive list of existing measures that apply to the sectors, subsectors or activities covered by the entry.

3. In accordance with Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), the Articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the sectors, subsectors and activities, identified in the Description element of that entry.

4. For greater certainty, where Malaysia has more than one eniry in this List B that could apply to a measure, each entry is to be read independently, and is without prejudice to the application of any other entry to the measure.

5. The Schedules of other Parties shall not be used to interpret Malaysiaâs commitments or obligations under Chapter 11 (Investment).

6. With respect to the entries in this List B on Most-Favoured-Nation Treatment relating to bilateral or multilateral international agreements, the absence of language regarding the scope of the reservation for differential treatment resulting from an amendment of those bilateral or multilateral international agreements in force or signed after the date of

entry into force of the Second Protocol is without prejudice to Malaysia's interpretation of the scope of that reservation.

1. Sector: Land and real estate

Subsector:

Obligations Concerned: National Treatment, Most-Favoured-Nation Treatment, Prohibition of Performance Requirements

Description: Acquisitions or dealings of land or activities on land by non-citizens and juridical persons owned by foreign nationals must be approved by the relevant state authority, subject to such conditions and restrictions as may be imposed by that authority.

Existing Measures:

Federal Constitution

Land Acquisition Act 1960 [Act 486] Land Conservation Act 1960 [Act 385] National Land Code [Act 56 of 1965]

Federal Lands Commissioner Act 1957 (Revised 1988) [Act 349]

National Land Code (Penang and Malacca Titles) Act 1963 [Act 518]

Strata Titles Act 1985 [Act 318] Strata Management Act 2013 [Act 757]

Federal Lands Commissioner Act 1957 (Revised 1988) [Act 349]

Land (Group Settlement Areas) Act 1960 [Act 530]

Malay Reservations Enactment 1933 [F.M.S. Cap. 142]

Malay Reservations Enactment 1930 [Enactment 29]

Kelantan Malay Reservations Enactment 1930 [No.18 of 1930]

Kelantan Land Settlement Act 1955 (Revised 1991) [Act 460]

Perlis Malay Reservations Enactment 1935 [No. 7 of 1353]

Perlis Land Settlement Enactment 1966 [No. 16 of 1966]

Johore Malay Reservation Enactment 1936 [No. 1 of 1936]

Terengganu Malay Reservation Enactment 1360 [No. 17 of 1360]

Terengganu Settlement Enactment 1356 [No. 65 of 1356]

Malay Reservations (Selangor) (Amendment) Enactment No. 15/1961

Malay Reservations (Selangor) (Amendment) Enactment No. 7/1985

Customary Land Enactment 1926 [Cap. 215]

Customary Tenure (Lengkongan Land) Enactment 1960 [No. 4 of 1960]

Undang of Rembau (Lands) Enactment 1949 [No. 2 of 1949]

Sabah Land Ordinance [Sabah Cap. 68]

Sabah Land Acquisition Ordinance [Sabah Cap. 69]

Sarawak Land Code 1958 [Chapter 81] (1958 Edition)

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]

2. Sector: All sectors

Subsector:

Obligations Concerned: National Treatment, Most-Favoured-Nation Treatment, Senior Management and Board of Directors, Prohibition of Performance Requirements

Description: Malaysia reserves the right to adopt or maintain any measure affecting the:

(a) full or partial devolvement to the private sector of services provided in the exercise of governmental authority;

(b) divestment of its equity interests in, or the assets of, a juridical person that is wholly or partially owned by the Government of Malaysia; and

(c) privatisation of government-owned entities or assets.

Existing Measures:

Minister of Finance (Incorporation) Act 1957 [Act 375]

Companies Act 2016 [Act 777] Privatisation Master Plan Guidelines on Privatisation Bursa Listing Requirements

3. Sector: All sectors

Subsector:

Obligations Concerned: National Treatment, Most-Favoured-Nation Treatment, Senior Management and Board of Directors Prohibition of Performance Requirements

Description: Malaysia reserves the right to adopt or maintain any measure relating to Bumiputera, Bumiputera status companies, trust companies and institutions, to meet development and social economic policy objectives.

Existing Measures:

Federal Constitution

Policies and Ministerial Statements Treasury Instructions

Treasury Circulars

New Economic Policy (NEP) National Development Policy (NDP)

Bumiputera Development Action 2030 (TBP2030)

4. Sector: All sectors

Subsector:

Obligations Concerned: National Treatment

Description: 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 relating to Bumiputera or affirmative action for the socially disadvantaged.

Existing Measures

5. Sector: Mining and quarrying

Subsector: Oil and Gas

Obligations Concerned: National Treatment, Most-Favoured-Nation Treatment, Senior Management and Board of Directors, Prohibition of Performance Requirements

Description: Petroliam Nasional Berhad (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.

PETRONAS and its successor reserve the right to adopt or maintain any measure relating to the oil and gas upstream industry including related activities.

Existing Measures:

Petroleum Development Act 1974 [Act 144] Other Implementing Measures

6. Sector : All sectors

Subsector:

Obligations Concerned : Most-Favoured-Nation Treatment

Description :

1. Malaysia reserves the right to adopt or maintain any measure that accords more favourable treatment to any investor under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of the Second Protocol. (2)

Malaysia reserves the right to adopt or maintain any measure that accords differential treatment to Member States of ASEAN under any ASEAN agreement open to participation by any Member State of ASEAN, in force or signed after the date of entry into force of the Second Protocol.

2. With regard to the sectors listed below, Malaysia reserves the right to adopt or maintain any measures relating to investment that accords tights, preferences and differential treatment to countries under any international agreement in force or signed after the date of entry into force of the Second Protocol:

(a) Aviation Matters;

(b) Maritime and Port;

(c) Broadcasting;

(d) Space Transportation;

(e) Fisheries; and

(f) Financial Services.

Existing Measures:

(2) For greater certainty, this right extends to any differential treatment accorded pursuant to a subsequent review or amendment of the relevant bilateral or multilateral international agreement.

7. Sector: Explosives, weapons, ammunitions, as well as military-related equipment or devices, and similar products

Subsector:

Obligations Concerned: National Treatment, Most-Favoured-Nation Treatment, Senior Management and Board of Directors, Prohibition of Performance Requirements

Description: Malaysia reserves the right to adopt or maintain any measure affecting the arms and explosives sector.

Existing Measures:

Industrial Co-ordination Act 1975 [Act 156] Explosives Act 1957 [Act 207]

Arms Act 1960 [Act 206]

Chemical Weapons Convention Act 2005 [Act 641] Strategic Trade Act 2070 [Act 708]

8. Sector: Gaming, betting and gambling

Subsector:

Obligations Concerned: National Treatment, Most-Favoured-Nation Treatment, Senior Management and Board of Directors, Prohibition of Performance Requirements

Description: Malaysia reserves the right to adopt or maintain any measure relating to the provision of gaming, betting and gambling.

Existing Measures:

Lotteries Act 1952 [Act 288]

Common Gaming Houses Act 1953 [Act 289] Pool Betting Act 1967 (Revised 2018) [Act 809] Betting Act 1953 [Act 495]

Racing (Totalisator Board) Act 1967 [Act 494]

Racing Club (Public Sweepstakes) Act 1965 [Act 404]

Industrial Co-ordination Act 1975 [Act 156]

Customs Prohibition of Imports and Exports Orders

9. Sector: Application of atomic energy for nuclear power generation including nuclear fuel cycle and electric power generation and fuel cycle; and electric power plants based on fossil fuel or materials

Subsector:

Obligations Concerned: National Treatment, Most-Favoured-Nation Treatment, Senior Management and Board of Directors, Prohibition of Performance Requirements

Description: Malaysia reserves the right to adopt or maintain any measure relating to application of atomic energy for nuclear power generation including nuclear fuel cycle and electric power generation and fuel cycle; and electric power plants based on fossil fuel or materials.

Existing Measures:

Atomic Energy Licensing Act 1984 [Act 304] Electricity Supply Act 1990 [Act 447]

10. Sector: Manufacturing and services incidental to manufacturing

Subsector:

Obligations Concerned: National Treatment, Most-Favoured-Nation Treatment, Senior Management and Board of Directors, Prohibition of Performance Requirements

Description: Malaysia reserves the right to adopt or maintain any measure relating to the manufacture of, and services incidental to manufacturing of:

(a) rice;

(b) sugar;

(c) flour;

(d) liquor and alcoholic beverages;

(e) tobacco, manufactured tobacco substitutes, cigarettes products, including e-cigarettes, similar apparatus or devices, and components and liquids used for e-cigarettes, similar apparatus or devices;

(f) fabrics and apparels of batik;

(g) glass and glassware products;

(h) biodiesel;

(i) machinery and mechanical appliances or part thereof, including power generating machinery and machinery for a specific industry;

(j) motor vehicles including motorcycles and scooters, passenger cars and commercial vehicles;

(k) base metals and articles of base metal industry or products; and

(l) cement and cement products.

Existing Measures:

Excise Act 1976 [Act 176]

Free Zones Act 1990 [Act 438]

Industrial Co-ordination Act 1975 [Act 156] Policies and Ministerial Statements Administrative Guidelines

11. Sector: All sectors

Subsector:

Obligations Concerned: National Treatment, Most-Favoured-Nation Treatment

Description: Malaysia reserves the right to adopt or maintain any measure related to the non-internationalisation of the Ringgit which includes:

(a) the requirement for international settlement to be made in foreign currency;

(b) limitation on the access to Ringgit financing by non-residents for use outside Malaysia; and

(c) limitation on the use of the Ringgit in Malaysia by non-residents.

Existing Measures:

Central Bank of Malaysia Act 2009 [Act 701]

Financial Services Act 2013 [Act 758]

Islamic Financial Services Act 2013 [Act 759]

Foreign Exchange Policy Notices

12. Sector: Utilities in relation to gas supply, power generation, power distribution, power transmission including for renewable energy

Subsector:

Obligations Concerned: National Treatment, Most-Favoured-Nation Treatment, Senior Management and Board of Directors, Prohibition of Performance Requirements

Description: Malaysia reserves the right to adopt or maintain any measure relating to utilities in relation to gas supply, power generation, power distribution, power transmission including for renewable energy.

Existing Measures:

Electricity Supply Act 1990 [Act 447]

Gas Supply Act 1993 [Act 501]

Renewable Energy Act 2071 [Act 725]

Sarawak Electricity Ordinance [Chapter 50]

Environmental Quality Act 1974 [Act 127]

New Economic Policy (NEP)

Green Technology Master Plan Malaysia 2017- 2030

National Energy Efficiency Action Plan (NEEAP) 2015

National Renewable Energy Policy and Action Plan (NREPAP) 2009

13. Sector : All sectors

Subsector:

Obligations Concerned : National Treatment

Description : Where the constitution of a company imposes a prescribed foreign shareholding limit, the company may restrict certain entitlements with respect to shares that have exceeded the prescribed limit (3) (excess shares).

Existing Measures :

Companies Act 2016 [Act 777]

Securities Industry (Central Depositories) Act 19917 [Act 453]

Securities Industry (Central Depositories) (Foreign Ownership) Regulations 1996 [P.U.(A) 513/96]

(3) For example, a company may still grant certain entitlements i.e. dividend payment to the foreigner holding the excess shares but such foreigner may not be entitled to vote. For the purposes of this entry, the term "foreigner" can be found in the Securities indusiry (Central Depositories) (Foreign Ownership) Regulations 1996 [P.U.(A) 513/96].

14. Sector: All sectors

Subsector:

Obligations Concerned: National Treatment

Description: 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 or take-overs and mergers.

Existing Measures:

Capital Market and Services Act 2007 [Act 671] Companies Act 2016 [Act 777]

Financial Services Act 2013 [Act 758]

Islamic Financial Services Act 2013 [Act 759]

The Malaysian Code on Take-overs and Mergers 2016

15. Sector: All sectors

Subsector:

Obligations Concerned: National Treatment, Most-Favoured-Nation Treatment, Senior Management and Board of Directors

Description: Malaysia reserves the right to adopt or maintain any measure relating to employment of expatriates.

Existing Measures:

Immigration Act 1959/63 [Act 155]

Employment (Restriction) Act 1968 (Revised 2017) [Act 796]

Policies and Ministerial Statements

16. Sector : All sectors

Subsector:

Obligations Concerned : National Treatment, Most-Favoured-Nation Treatment, Senior Management and Board of Directors, Prohibition of Performance Requirements

Description : Malaysia reserves the right to adopt or maintain any measure relating to activities restricted to designated juridical persons (4) where such activities are liberalised to those other than the designated juridical persons, or in the event where such designated juridical persons no longer operate on a non-commercial basis.

Existing Measures : Industrial Co-ordination Act 1975 [Act 156] Policies and Ministerial Statements Administrative Guidelines

(4) For illustrative purposes, examples of designated juridical persons include Padiberas Nasional Berhad (BERNAS) and Kualiti Alam Sdn. Bhd.

17. Sector: All sectors

Subsector:

Obligations Concerned: National Treatment, Most-Favoured-Nation Treatment, Senior Management and Board of Directors, Prohibition of Performance Requirements

Description: Malaysia reserves the right to adopt or maintain any measure affecting the issuance of a license or permit. This may include conditions imposed, numerical limitations and non-issuance of licences.

Existing Measures:

Industrial Co-ordination Act 1975 [Act 156]

Petroleum Development Act 1974 [Act 144]

Customs Act 1967 (Revised 1980) [Act 235]

Customs Prohibition of Imports and Exports Orders Policies and Ministerial Statements

Administrative Guidelines

18.: Sector : All sectors

Subsector:

Obligations Concerned: National Treatment, Most-Favoured-Nation Treatment, Senior Management and Board of Directors, Prohibition of Performance Requirements

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

Existing Measures : Policies and Ministerial Statements Administrative Guidelines

(5) For illustrative purposes, examples of statutory bodies include the Employees Provident Fund and Lembaga Tabung Hajj.

19. Sector: Mining and quarrying

Subsector:

Obligations Concerned: National Treatment, Most-Favoured-Nation Treatment, Prohibition of Performance Requirements, Senior Management and Board of Directors

Description: Non-citizens and juridical persons owned by foreign nationals will need to seek the approval of the relevant state authority, and subject to such conditions and restrictions as may be imposed by the relevant state authority. Joint ventures with state or state-linked juridical persons may be required.

Existing Measures:

Mineral Development Act 1994 [Act 525] State Mineral Laws National Mineral Policy 2

20. Sector: Agriculture

Subsector:

Obligations Concerned: National Treatment, Most-Favoured-Nation Treatment, Senior Management and Board of Directors, Prohibition of Performance Requirements

Description: Non-citizens and juridical persons owned by foreign nationals will need to seek the approval of the relevant state authority, and are subject to such conditions and restrictions as may be imposed by the relevant state authority.

Existing Measures:

National Land Code [Act 56 of 1965]

Sarawak Land Code 1958 [Chapter 81] (1958 Edition)

Sabah Land Ordinance 1950 [Sabah Cap. 68] Town and Country Planning Act 1976 [Act 172] Plant Quarantine Act 1976 [Act 167]

Animals Act 1953 (Act 647)

Animal Welfare Enactment 2015 [Act 772]

Customs Prohibition of Imports and Exports Orders

National Agricultural Policy Administrative Guidelines

21. Sector: Forestry

Obligations Concerned: National Treatment, Most-Favoured-Nation Treatment, Senior Management and Board of Directors, Prohibition of Performance Requirements

Description: Non-citizens and juridical persons owned by foreign nationals will need to seek the approval of the relevant state authority, and are subject to such conditions and restrictions as may be imposed by the relevant state authority.

Extraction and harvesting of timber are closed to foreign investors in Peninsular Malaysia and Sabah. However, for Sarawak, local involvement and majority local control are required. Forest areas opened for such activities are subject to an Annual Allowable Cut to enable the resources to be managed sustainably.

Services incidental to extraction and harvesting of timber are closed to foreign investors in Peninsular Malaysia and Sabah. However, for Sarawak, the maximum foreign equity ownership allowed is 30 per cent.

Existing Measures:

National Forestry Act 1984 [Act 313]

Sabah Forest Enactment 1968 [Sabah No. 2 of 1968]

Sarawak Forests Ordinance 2015 [Chapter 71]

International Trade in Endangered Species Act 2008 [Act 686]

Wildlife Conservation Act 2070 [Act 716]

Malaysia Timber Industry Board (Incorporation) Act 1973 [Act 105]

Malaysia Policy on Forestry 2021 State Forestry Laws Administrative Guidelines

22. Sector: All sectors

Subsector:

Obligations Concerned: National Treatment, Most-Favoured-Nation Treatment, Senior Management and Board of Directors, Prohibition of Performance Requirements

Description: Malaysia reserves the right to adopt or maintain any measure that it considers necessary for the protection of its essential security interests.

Existing Measures:

Strategic Trade Act 2010 [Act 708]

Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 [Act 613]

Chemical Weapons Convention Act 2005 [Act 641]

Arms Act 1960 [Act 206] Explosive Act 1957 [Act 207]

Chemical Weapons Convention Regulations 2007 [P.U.(A) 361/2007]

Customs Prohibition of Imports and Exports Orders

23. Sector: All sectors

Subsector:

Obligations Concerned: National Treatment, Most-Favoured-Nation Treatment, Senior Management and Board of Directors, Prohibition of Performance Requirements

Description: Malaysia reserves the right to adopt or maintain any measure relating to investments other than those

recognised or should have been recognised by the Government of Malaysia owing to the circumstances existing at the date of entry into force of this Agreement for Malaysia.

Malaysia reserves the right to adopt or maintain any measure relating to investments which was not technically feasible at the date of entry into force of this Agreement for Malaysia.

Existing Measures:

24. Sector: All sectors

Subsector:

Obligations Concerned: Prohibition of Performance Requirements

Description: Malaysia reserves the right to adopt, maintain, impose requirements, or enforce a commitment or undertaking, in connection with transfer of technology, production process or other proprietary knowledge.

Existing Measures:

25. Sector : All sectors

Subsector:

Obligations Concerned: National Treatment, Most-Favoured-Nation Treatment, Senior Management and Board of Directors, Prohibition of Performance Requirements

Description : Malaysia reserves the right to adopt or maintain any measure relating to the Shared Prosperity Vision 2030, the New Industrial Masterplan (6) and the National Investment Aspirations (7).

Existing Measures : Shared Prosperity Vision 2030 New Industrial Masterplan Policies and Ministerial Statements

(6) Any such measure shall be implemented in a manner consistent with Malaysia's commitments under List A of this Schedule.

(7) Any such measure shall be implemented in a manner consistent with Malaysia's commitments under List A of this Schedule.

26. Sector: All Sectors

Subsector:

Obligations Concerned: National Treatment

Description: The purchase of a financial service by a resident from a financial service supplier abroad shall be subject to the requirements, restrictions and conditions imposed under the Foreign Exchange Policy Notices.

Existing Measures:

Central Bank of Malaysia Act 2009 [Act 701]

Financial Services Act 2013 [Act 758]

Islamic Financial Services Act 2013 [Act 759]

Foreign Exchange Policy Notices

ANNEX 3. SCHEDULE OF RESERVATIONS AND NON-CONFORMING MEASURES FOR INVESTMENT. THE PHILIPPINES

LIST A. EXPLANATORY NOTES

1. This List A sets out, pursuant to Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), measures that do not conform to the obligations under:

(a) Article 3 (National Treatment) of Chapter 11 (Investment);

(b) Article 4 (Most-Favoured-Nation Treatment) of Chapter 11 (Investment);

(c) Article 5 (Senior Management and Board of Directors) of Chapter 11 (Investment); and

(d) Article 6 (Prohibition of Performance Requirements) of Chapter 11 (Investment).

2. This List A and List B follow the negative list with two list approach as follows:

(a) This List A sets out commitments in relation to existing non-conforming measures which will be subject to standstill obligations but not subject to ratchet mechanism; and

(b) List B sets out policy flexibility in relation to measures in sectors, subsectors and activities.

3. The Philippines may add, withdraw or modify any of its reservations as set out in this List A for a period of 24 months from the date of entry into force of this Schedule, provided that the non-conforming measure is in existence as of the date of entry into force of the Second Protocol.

4. Each reservation shall set out the following elements, where applicable: (a) Sector refers to the sectors in which a reservation is taken; (b) Subsector, refers to specific industries, products, or 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. If the reservation does not exactly conform to the ISIC, the Philippines specified the coverage of the reservation, as necessary and appropriate;

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

(e) Type of Obligation refers to the obligation of National Treatment, Most-Favoured-Nation Treatment, Senior Management and Board of Directors, and Prohibition of Performance Requirements, as the case may be, which does not apply to the listed measure;

(f) Description of Measure refers to measures that do not conform to National Treatment, Most-Favoured-Nation Treatment, Senior Management and Board of Directors and Prohibition of Performance Requirements, for which a reservation is taken; and

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

2. In the interpretation of a reservation, all elements of a reservation shall be considered. The Description of Measure element shall prevail over all other elements.

3. These Explanatory Notes shall form part of this List A.

1. Sector : All sectors

Subsector: -

Industry Classification : -

Level of Government : All levels

Type of Obligation : National Treatment. Most-Favoured-Nation Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description of Measure :

Establishment of Domestic Corporation

(a) Number of incorporators (1) shall be natural and/or juridical persons, singly or jointly with others but not more than 15, all of legal age; and

(b) Corporate Secretary shall be a citizen and resident of the Philippines.

(1) A corporation with a single stockholder is considered a One Person Corporation, Provided, That only a natural person, trust, or an estate may form a One Person Corporation.

Participation of foreign investors in entities engaged in partially nationalized activities and public utilities

For public utility enterprises or corporations engaging in partially nationalized activities, the President and all the executive and managing officers of such corporation or association must be citizens of the Philippines. The participation of foreign investors in the governing body of said enterprise shall be limited to their proportionate share in its capital.

Establishment of Cooperative

No foreign equity is allowed.

Domestic and Export Enterprise

Micro and small domestic market enterprises are reserved to Philippine nationals, however, the Philippines may allow up to a maximum of 40 per cent foreign equity in micro and small domestic market enterprises, subject to compliance with requirements, terms and conditions.

A non-Philippine national not otherwise disqualified by law may do business or invest in a domestic enterprise up to 100 per cent of its capital, provided:

(a) it is investing in a domestic market enterprise in areas outside the Foreign Investment Negative List under the Foreign Invesiments Act of 1991; or

(b) itis investing in an export enterprise whose products and services do not fall within Lists Aand B of the Foreign Investment Negative List under the Foreign Investments Act of 1991.

Provided, further, that, as required by existing laws, the country or state of the applicant must also allow Filipino citizens and corporations to do business therein.

Note:

"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 60 per cent 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 Philippines under the Revised Corporation Code of which 100 per cent 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 60 per cent of the fund will accrue to the benefit of the 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 60 per cent of the capital stocks outstanding and entitled to vote of both corporations must be owned and held by citizens of the Philippines and at least 60 per cent of the members of the Board of Directors of both corporations must be citizens of the Philippines, in order that the corporations shall be considered a Philippine national.

Individuals or entities that do not meet the aforementioned qualifications are considered as "non-Philippine nationals".

"Export enterprise" shall mean an enterprise wherein a manufacturer, processor or service (including tourism) enterprise exports 60 per cent or more of its output, or wherein a trader purchases products domestically and exports 60 per cent or more of such purchases.

Designation of Resident Agent (2)

A foreign corporation shall be required to file a written power of attorney designating either an individual residing in the Philippines or a domestic corporation lawfully transacting business in the Philippines, on whom any summons and other legal processes may be served.

(2) An individual resident agent must be of good moral character and of sound financial standing. In case of a domestic corporation who will act as a resident agent, it must likewise be of sound financial standing and must show proof that it is in good standing as certified by the Securities and Exchange Commission.

Branches and Regional Operating Headquarters

Foreign Enterprises may establish Regional Operating Headquarters provided they shall register the same with the appropriate government agency and shall be subject to relevant rules and regulations.

Source of Measure :

- The 1987 Philippine Constitution

- Republic Act (R.A.) No. 11232, the Revised Corporation Code of the Philippines

- Commonwealth Act No. 108, An Act fo Punish Acts of Evasion of Laws on the Nationalization of Certain Rights, Franchises or Privileges, as amended by Presidential Decree No. 715, otherwise known as "The Anti-Dummy Law", as may be amended

- RA No. 11647, An Act Promoting Foreign Investments, Amending Thereby R.A. No. 7042, Otherwise Known As The âForeign Invesiments Act of 1997,â as Amended, and for Other Purposes

- RA No. 11659, An Act Amending Commonwealth Act No. 146, Otherwise Known as the Public Service Aci, as Amended

- RA. No. 9520, the Philippine Cooperative Code of 2008

- RA. No. 6977, the Magna Carta for Micro, Smail and Medium Enterprises (MSMEs), as amended by R.A. No. 8289 and R.A. No. 9501

- RA No. 9178, the Barangay Micro Business Enterprises Act of 2002

- RA. No. 8756, An Act Providing for the Terms, Conditions and Licensing Requirements of Regional or Area Headquarters, Regional Operating Headquarters, and Regional Warehouses of Multinational Companies, Amending for the Purposes Certain Provisions of Executive Order No. 226, the Omnibus Investments Code of 1987

- Securities and Exchange Commission Issuances and Opinions

2. Sector: All sectors

Subsector: -

Industry Classification :-

Level of Government: All levels

Type of Obligation: National Treatment

Description of Measure:

The Philippines protects the nationâs marine wealth in its archipelagic waters, territorial sea and exclusive economic zone, and reserves its use and enjoyment exclusively to Filipino citizens.

Small-scale utilization of natural resources is allowed only to Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fish workers in rivers, lakes, bays and lagoons.

Source of Measure:

The 1987 Philippine Constitution

- R.A. No. 7160, the Local Government Code of 1991

- RA No. 7942, the Philippine Mining Act of 1995

- RA. No. 7076, the Peopleâs Small-Scale Mining Act of 1991

- RA. No. 8550, the Philippine Fisheries Code of 1998, as amended by R.A. No. 10654, An Act to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, Amending Republic Act No. 8550, Otherwise Known as "The Philippine Fisheries Code of 1998," and for Other Purposes

- Presidential Decree No. 705, s. 1975, the Revised Forestry Code of the Philippines

3. Sector: Fisheries and Aquaculture

Subsector: -

Industry Classification: ISIC 050 Fishing, aquaculture and service activities incidental to fishing

Level of Government: All levels

Type of Obligation: National Treatment. Most-Favoured-Nation Treatment

Description of Measure:

The use and exploitation of the fishery and aquatic resources in Philippine waters shall be reserved exclusively to Filipinos.

Municipal Fishing

All fishery activities in municipal waters shall be utilized by municipal fisherfolk and their cooperatives or organizations who are listed as such in the registry of municipal fisherfolk.

Commercial Fishing

No commercial fishing vessel license shall be issued except to citizens of the Philippines, partnerships or to associations, cooperatives or corporations duly registered in the Philippines at least 60 per cent of the capital stock of which is owned by Filipino citizens, subject to requirements and compliance with certain conditions.

Foreign owned vessels are not allowed to conduct fishing operations in all Philippine waters.

Note: There is a moratorium on the issuance of commercial fishing vessel and gear licenses and other clearances.

Fishpond

No fishpond lease agreements may be issued for public lands that may be declared available for development primarily except to citizens of the Philippines, or fisherfolk cooperatives or associations. In the absence of such citizens or fisherfolk cooperatives of associations, corporations duly incorporated in the Philippines at least 60 per cent of the capital stock of which is owned by Filipino citizens may be granted fishpond lease agreement subject to requirements and compliance with certain conditions.

Aquaculture

Aquaculture is reserved for citizens of the Philippines and corporations or associations duly incorporated under the laws of the Philippines where at least 60 per cent of the capital stock or interest belongs to citizens of the Philippines, subject to requirements and compliance with certain conditions.

Source of Measure

- R.A No. 8550, the Philippine Fisheries Code of 1998, as amended by R.A. No. 10654

- Presidential Decree No. 704 (May 16, 1975), the Fisheries Decree of 1975

- R.A. No. 7160, the Local Government Code of 1991

- Administrative Issuances

4. Sector: Mining and Quarrying

Subsector: Salt Production

Industry Classification: ISIC 1422 Extraction of salt

Level of Government: All levels

Type of Obligation: National Treatment. Most-Favoured-Nation Treatment. Senior Management and Board of Directors

Description of Measure

Only Filipino citizens of legal age, a corporation, association or cooperative duly constituted under the laws of the Philippines, 60 per cent of the capital of which is owned by Filipino citizens may enter into a Salt Production Sharing Agreement with the Philippine Govemment, subject to compliance with requirements and terms and conditions.

Source of Measure

- The 1987 Philippine Constitution

- Department of Environment and Natural Resources Administrative Order No. 1998- 67, as amended

5. Sector: Mining and Quarrying

Subsector: Small Scale Mining

Industry Classification:

Level of Government: All levels

Type of Obligation: National Treatment

Description of Measure:

Small-scale mining is reserved to Filipino citizens who, individually or in the company of other Filipino citizens, voluntarily form a cooperative duly licensed by the Philippine Government. The processing of mineral ores and minerals they produced is reserved to Filipino citizens.

Source of Measure

- The 1987 Philippine Constitution

- R.A. No. 7942, the Philippine Mining Act of 1995

- R.A. No. 7076, the People's Small-Scale Mining Act of 1997

- RA. No. 7586, the National Integrated Protected Areas System of 1992

- RA. No. 7160, the Local Government Code of 1991

- Administrative Issuances

6. Sector: Manufacturing

Subsector: Defense-related manufacturing and repair activities, manufacture of firecrackers and other pyrotechnic devices, and dangerous drugs

Industry Classification: ISIC Division 24, Manufacture of chemicals and chemical products

ISIC 242 Manufacture of other chemical products n.e.c.

ISIC Group 2927, Manufacture of arms and ammunitions

ISIC Division 35, Manufacture of other transport equipment

Level of Government: All levels

Type of Obligation: National Treatment. Most-Favoured-Nation Treatment. Prohibition of Performance Requirements

Description of Measure:

Defense-related activities, such as_ the manufacture, repair, storage or distribution of firearms, ammunition, lethal weapons, military ordinance, explosives, pyrotechnics and similar materials, shall be limited only to Filipino citizens, corporation, association or cooperative duly constituted under the laws of the Philippines, 60 per cent of the capital of which is owned by Filipino citizens, subject to prior clearance and authorization from the Philippine Government.

A license or permit to manufacture or to deal in wholesale or retail of firecrackers and pyrotechnic devices shall be issued only to: (a) Filipino citizens of good moral character; or (b) entities with 100 per cent capitalization owned by Filipino citizens.

Manufacture of dangerous drugs is limited only to Filipino citizens, corporation, association or cooperative duly constituted under the laws of the Philippines, 60 per cent of the capital of which is owned by Filipino citizens, subject to prior clearance and authorization from the Philippine Government.

Source of Measure

- The 1987 Philippine Constitution

- RA. No. 11647, An Act Promoting Foreign Investments, Amending Thereby R.A. No. 7042, Otherwise Known as the "Foreign Investments Act of 1991," as Amended, and for Other Purposes

- RA. No. 9165, the Comprehensive Dangerous Drugs Act of 2002

- R.A. No. 7183, An Act Regulating the Sale, Manufacture, Distribution and Use of Firecrackers and other Pyrotechnic Devices

7. Sector: Manufacturing

Subsector: Atomic Energy Facility

Industry Classification: ISIC Division 29 Manufacture of machinery and equipment n.e.c.

Level of Government: All levels

Type of Obligation: National Treatment. Most-Favoured-Nation Treatment. Prohibition of Performance Requirements

Description of Measure:

No license to acquire, own or operate any atomic energy facility shall be issued to an alien, or any corporation or other entity which is owned or controlled by an alien, a foreign corporation, or a foreign goverment, subject to compliance requirements and terms and conditions. A corporation or entity is not owned or controlled by an alien, a foreign corporation or a foreign government if at least 60 per cent of its capital stock is owned by Filipino citizens.

Note:

"Atomic energy facility" means any equipment or device which the Philippine Government may determine from time to time, by regulation, to be capable of producing or utilizing atomic energy material in such quantity or in such manner as to be of significance to the national interest or to the health and safety of the public.

Source of Measure

- RA. No. 5207, the Atomic Energy Regulatory and Liability Act of 1968

- Presidential Decree No. 1484, Amending Certain Sections of Republic Act Numbered Fifty-Two Hundred and Seven Enltitled "An Act Providing for the Licensing and Regulation of Atomic Energy Facilities and Materials, Establishing the Rules on Liability for Nuclear Damage, and for Other Purposes"

8. Sector: Manufacturing

Subsector: Mass Media, Printing and Publishing

Industry Classification: ISIC Division 22

Level of Government: All levels

Type of Obligation: National Treatment

Description of Measure:

The ownership and management of mass media shall be limited to citizens of the Philippines, or to corporations or associations wholly owned and managed by such citizens.

Note:

"Mass Media" refers to the print medium of communication, which includes all newspapers, periodicals, magazines, joumals, and publications and all advertising therein, and billboards, neon signs and the like, and the broadcast medium of communication, which includes radio and television broadcasting in all their aspects and all other cinematographic or radio promotions and advertising.

Source of Measure:

- The 1987 Philippine Constitution

- Presidential Decree No. 1018, Limiting the Ownership and Management of Mass Media to Citizens of the Philippines and for Other Purposes

- Presidential and Administrative Issuances

8. Sector: All sectors

Subsector: -

Industry Classification :-

Level of Government: All levels

Type of Obligation: National Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description of Measure:

Any employer who desires to engage an alien for employment in the Philippines shall obtain approval of the government and be subject to compliance with certain conditions relating to the following: (1) duration; (2) employment position; (3) non-availability of a local person; (4) understudy training for Filipinos; and (5) percentage of employment of foreign nationals vis-a-vis the total workforce.

Source of Measure

-The 1987 Philippine Constitution

- RA. No. 11232, the Revised Corporation Code of the Philippines

- Commonwealth Act No. 108, An Act fo Punish Acts of Evasion of Laws on the Nationalization of Certain Rights, Franchises or Privileges, as amended by Presidential Decree No. 715, otherwise known as "The Anti-Dummy Law", as may be amended

- RA No. 11647, An Act Promoting Foreign Investments, Amending Thereby R.A. No. 7042, Otherwise Known as the "Foreign Invesiments Act of 1991," as Amended, and for Other Purposes

- Presidential No. 442, the Labor Code of the Philippines

- RA No. 7916, The Special Economic Zone of 1995, as amended

- RA. No. 8756, An Act Providing for the Terms, Conditions and Licensing Requirements of Regional or Area Headquarters, Regional Operating Headquarters, and Regional Warehouses of Multinational Companies, Amending for the Purpose Certain Provisions of Executive Order No. 226, the Omnibus Investments Code of 1987

- Securities and Exchange Commission Issuances and Opinions

10. Sector: Manufacturing

Subsector: -

Industry Classification :-

Level of Government: All levels

Type of Obligation: National Treatment. Most-Favoured-Nation Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description of Measure

The processing of the following products is limited only to Filipino citizens, or corporations or associations at least 60 per cent of whose capital is owned by Filipino citizens, subject to compliance of requirements, terms and conditions:

1. copper wires;

2. copper bars, sheets and strips;

3. brass, bronze and other alloys of copper;

4. nickel pig iron; and

5. ferronickel.

Source of Measure:

- The 1987 Philippine Constitution

- RA. No. 7942, the Philippine Mining Act of 1995

- Executive Order No. 79, Series of 2012, Institutionalizing and Implementing Reforms in the Philippine Mining Sector Providing Policies and Guidelines to Ensure Environmental Protection and Responsible Mining in the Utilization of Mineral

Resources

- Executive Order No. 226, the Omnibus Investments Code of 1987, as amended

- Presidential and Administrative Issuances

11. Sector: All sectors

Subsector -

Industry Classification :-

Level of Government: All levels

Type of Obligation: Prohibition of Performance Requirements

Description of Measure

The adoption of a given rate or amount of royalty under a license contract is subject to approval, terms and conditions and compliance requirements imposed, by the relevant government agency under Philippine laws and regulations.

Source of Measure: Administrative Issuances

LIST B. EXPLANATORY NOTES

1. This List B sets out, pursuant to Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), measures that the Philippines may maintain existing, or adopt new or more restrictive measures that do not conform to the obligations under:

(a) Article 3 (National Treatment) of Chapter 11 (Investment);

(b) Article 4 (Most-Favoured-Nation Treatment) of Chapter 11 (Investment);

(c) Article 5 (Senior Management and Board of Directors) of Chapter 11 (Investment); and

(d) Article 6 (Prohibition of Performance Requirements) of Chapter 11 (Investment).

2. This List B and List A follow the negative list with two list approach as follows:

(a) List A sets out commitments in relation to existing non-conforming measures which will be subject to standstill obligations but not subject to ratchet mechanism; and

(b) This List B sets out policy flexibility in relation to measures in sectors, subsectors and activities.

3. Each reservation shall set out the following elements, where applicable:

(a) Sector refers to the sectors for which a reservation is taken;

(b) Subsector refers to specific industries, products, or 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. If the reservation does not exactly conform to the ISIC, the Philippines specified the coverage of the reservation, as necessary and appropriate;

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

(e) Type of Obligation refers to the obligation of National Treatment, Most-Favoured-Nation Treatment, Senior Management and Board of Directors and Prohibition of Performance Requirements, as the case may be, which does not apply to the listed measure;

(f) Description of Measure refers to measures that do not conform to National Treatment, Most-Favoured-Nation Treatment, Senior Management and Board of Directors and Prohibition of Performance Requirements, for which a reservation is taken; and

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

4. In the interpretation of a reservation, all elements of a reservation shall be considered. The Description of Measure element shall prevail over all other elements.

5. These Explanatory Notes shall form part of this List B.

1. Sector: All sectors

Subsector: -

Industry Classification :

Level of Government: All levels

Type of Obligation: National Treatment. Most-Favoured-Nation Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description of Measure:

The Philippines reserves the right to adopt or maintain any measure relating to the ownership, conservation, exploration, development, protection and utilization of land, water and natural resources, which shall be under the full control and supervision of the Philippines.

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development and utilization of minerals, petroleum and other mineral oils based on real contributions to the economic growth and general welfare of the country. In such agreements, the Philippines shall promote the development and use of local scientific and technical resources.

Source of Measure: The 1987 Philippine Constitution

2. Sector: All sectors

Subsector: -

Industry Classification :-

Level of Government: All levels

Type of Obligation: National Treatment. Most-Favoured-Nation Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description of Measure:

The Philippines reserves the right to adopt any measure on certain areas of investment, when the national interest dictates, upon recommendation of the economic and planning agency, where such measures are necessary and would not constitute arbitrary or unjustifiable discrimination or a_ disguised restriction on foreign investment.

In the grant of rights, privileges and concessions covering the national economy and patrimony, the Philippines shall give preference to qualified Filipinos. Further, the Philippines reserves the right to adopt or maintain any measure relative to the grant of franchise, certificate or any other form of authorization for the operation of a public utility, where such measures are necessary and would not constitute arbitrary or unjustifiable discrimination or a disguised restriction on foreign investment.

The Philippines shall regulate and exercise authority over foreign investments within its national jurisdiction and in accordance with its national goals and priorities, where such measures are necessary and would not constitute arbitrary or unjustifiable discrimination, or a disguised restriction on foreign investment.

Source of Measure: The 1987 Philippine Constitution

3. Sector: All sectors

Subsector: -

Industry Classification : -

Level of Government: All levels

Type of Obligation: National Treatment. Most-Favoured-Nation Treatment. Senior Management and Board of Directors.

Prohibition of Performance Requirements

Description of Measure:

The Philippines reserves the right to adopt or maintain any measure or mechanism relating to the local govemment units (3), the autonomous regions, in the Cordilleras, and the autonomous region in Muslim Mindanao and the enforcement and protection of the rights of Cultural Communities or Indigenous Peoples on their ancestral domains and on indigenous knowledge systems and practices (4).

Source of Measure

- The 1987 Philippine Constitution

- RA. No. 8731, The Indigenous Peoplesâ Rights Act of 1997

- R.A. No. 7160, the Local Government Code of 1991

- Executive Order No. 220, s. 1987, Creating a Cordillera Administrative Region, Appropriating Funds Therefor and for Other Purposes

- RA. No. 11054, the Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao

- National Commission on __ Indigenous Peoples (NCIP) Administrative Order No. 3, Series of 2012, The Revised Guidelines on the Exercise of Free and Prior Informed Consent (FPIC) and Related Processes

- Executive Orders and Administrative Issuances

(3) Measures and mechanisms of local government units include general welfare, provision of basic services and facilities, generation of resources and creation of revenues within their respective territorial jurisdictions.

(4) These are systems, institutions, mechanisms and technologies comprising a unique body of knowledge evolved through time that embody pattems of relationships between and among peoples and between peoples, their lands and resource environment, including such spheres of relationships which may include social, political, cultural, economic, religious spheres, and which are the direct outcome of the indigenous peoples, responses to certain needs consisting of adaptive mechanisms which have allowed indigenous peoples to survive and thrive within their given socio-cultural and biophysical conditions.

4. Sector: All sectors

Subsector: -

Industry Classification : -

Level of Government: All levels

Type of Obligation: National Treatment

Description of Measure:

The Philippines reserves the right to adopt or maintain any measure relating to registration of foreign investment (equity and debt) and foreign loans with the Bangko Sentral ng Pilipinas. (5)

Source of Measure

- The 1987 Philippine Constitution R.A. No. 7653, The New Central Bank Act

- R.A. No. 7160, the Local Government Code of 1991

- R.A. No. 4860, Foreign Borrowings Act of 1966, as amended by R.A. No. 8182, the Official Development Assistance Act of 1996 and R.A. No. 8555

- R.A. 11647, An Act Promoting Foreign Investments, Amending Thereby R.A. No. 7042, Otherwise Known as the "Foreign Invesiments Act of 1991," as Amended, and for Other Purposes

- R.A. No. 245, An Act Authorizing the Secretary of Finance to Borrow to Meet the Public Expenditure, as amended

- R.A. No. 8799, The Securities Regulation Code

- Administrative Issuances, including Bangko Sentral ng Pilipinas Issuances (e.g., Manual of Regulations on Foreign Exchange Transactions, as amended, Manual of Regulations for Banks and Non-Bank Financial Institutions)

(5) 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 financial institutions. 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 authorized financial institutions, 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 or govemment financial institutions, or by authorized financial institutions; or (ii) granted by local banks and directly funded or collateralized by offshore loans or deposits.

5. Sector : All sectors

Subsector: -

Industry Classification : -

Level of Government : All levels

Type of Obligation : National Treatment. Most-Favoured-Nation Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description of Measure :

The Philippines reserves the right to adopt or maintain any measure or mechanism relating to privatization programs of government assets and divestment of assets requirement in iron and steel, pioneer (6) activities and public-private partnership programs.

Source of Measure :

- The 1987 Philippine Constitution

- RA No. 11647, An Act Promoting Foreign Investments, Amending Thereby R.A. No. 7042, Otherwise Known as the âForeign Invesiments Act of 1991,â as Amended, and for Other Purposes

- Executive Order No. 226, fhe Omnibus Investments Code of 1987, as amended

- RA. No. 9184, the Government Procurement Reform Act

- RA. No. 7718, An Act Amending Certain Sections of R.A. No. 6957, Entitled "An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for Other Purposes"

- RA. No. 9136, the Electric Power Industry Reform Act of 2001

- Presidential Decree No. 194, s. 1973, 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 and its Implementing Rules and Regulations

- Executive Orders and Administrative Issuances

(6) Pioneer Enterpriseâ shall mean a registered enterprise (1) engaged in the manufacture, processing or production, and not merely in the assembly or packaging of goods, products, commodities or raw materials that have not been or are not being produced in the Philippines on a commercial scale or (2) which uses a design, formula, scheme, method, process or system of production or transformation of any element, substance or raw materials into another raw material or finished goods which is new and untried in the Philippines or (3) engaged in the pursuit of agricultural, forestry and mining activities and/or services including the industrial aspects of food processing whenever appropriate, pre-determined by the Board, in consultation with the appropriate Department, to be feasible and highly essential to the attainment of the national goal, in relation to a declared specific national food and agricultural program for self-sufficiency and other social benefits of the project or (4) which produces non-conventional fuels or manufactures equipment which utilize non-conventional sources of energy or uses or converts to coal or other non-conventional fuels or sources of energy in its production, manufacturing or processing operations. Provided, That the final product in any of the foregoing instances, involves or will involve substantial use and processing of domestic raw materials, whenever available; taking into account the risks and magnitude of investment: Provided, further, That the foregoing definitions shall not in any way limit the rights

and incentives granted to less-developed-area enterprises.

6. Sector : All sectors

Subsector: -

Industry Classification : -

Level of Government : All levels

Type of Obligation : Most-Favoured-Nation Treatment

Description of Measure :

The Philippines reserves the right to adopt or maintain any measure or mechanism relating to:

(a) preferential treatment accorded to investors or their investments under any existing bilateral, regional or international arrangements or any forms of economic or regional cooperation of which the Philippines is a party; (7) and

(b) any existing or future preferential treatment accorded to investors or their investments in any agreement or arrangement between or among Member States of ASEAN.

The Philippines reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral intemational agreement in force or signed after the date of entry into force of this Agreement involving:

(a) mining;

(b) fisheries; or

(c) forestry.

Source of Measure :

- Administrative Policies

- International agreements or arrangements

(7) For greater certainty, this right extends to any preferential treatment accorded pursuant to a subsequent review or amendment of the relevant bilateral or multilateral international agreement.

7. Sector: Forestry and Manufacturing

Subsector: Forestry, logging and wood processing

Industry Classification: - ISIC Section 0200 - Forestry, logging and related service activities

- ISIC Section 201 - Sawmilling and planing of wood

- ISIC Section 202 - Manufacture of products of wood, cork, straw and plaiting materials

Level of Government: All levels

Type of Obligation: National Treatment. Most-Favoured-Nation Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description of Measure:

The Philippines reserves the right to adopt or maintain any measure relating to any activity within any forest and grazing land, or establish, install, add and operate any wood or forest products processing plant, unless the person is duly authorized under a license agreement, license, lease or permit, subject to compliance with terms and conditions.

Source of Measure

- The 1987 Philippine Constitution

- Presidential Decree No. 705, the Revised Forestry Code of the Philippine, as amended

- R.A. No. 7160, the Loca! Government Code of 1991

- RA. No. 11054, the Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao

- Executive Order No. 220, s. 1987, Creating a Cordillera Administrative Region, Appropriating Funds Therefor and for Other Purposes

- Executive Orders and Administrative Issuances

8. Sector: Fisheries and Aquaculture

Subsector: -

Industry Classification: ISIC 050 Fishing, aquaculture and service activities incidental to fishing

Level of Government: All levels

Type of Obligation: National Treatment. Most-Favoured-Nation Treatment. Prohibition of Performance Requirements

Description of Measure:

The Philippines reserves the right to adopt or maintain any measure relating to the exportation or importation of fisheries and aquaculture species.

For a foreign entity or individual, Filipino citizens affiliated with a foreign institution, or a Filipino citizen with foreign funding that will conduct a scientific research on aquatic wildlife, there is a need to identify a local institution as a research collaborator or counterpart and a letter of consent of the Head of the local institution.

Source of Measure

- RA. No. 8550, The Philippine Fisheries Code of 1998, as amended

- Presidential Decree 704, the Fisheries Decree of 1975

- Muslim Mindanao Act No. 86, the ARMM Fisheries and Aquatic Code of 1999

- R.A. No. 7160, the Loca! Government Code of 1991

- RA. No. 11054, the Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao

- Executive Order No. 220, s. 1987, Creating a Cordillera Administrative Region, Appropriating Funds Therefor and for Other Purposes

- Fisheries Administrative Orders and Issuances

9. Sector: Manufacturing

Subsector: -

Industry Classification : -

Level of Government: All levels

Type of Obligation: National Treatment. Most-Favoured-Nation Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description of Measure:

The Philippines reserves the right to adopt and implement any measure on rationalization programs (8) for certain manufacturing industries whose operation may result in dislocation, overcrowding or inefficient use of resources, thus impeding economic growth.

Source of Measure:

- Executive Order No. 226, the Omnibus Investments Code of 1987, as amended

(8) Illustrative Example: The Comprehensive Automotive Resurgence Strategy (CARS) Program under E.O. 182, to augment and enhance policy and directions of existing motor vehicle development programs towards ensuring a resurgent automotive industry that supports innovation, technology transfer, environmental protection and small and medium enterprises development.

10. Sector: Mining and Quarrying

Subsector: -

Industry Classification :

Level of Government: All levels

Type of Obligation: National Treatment. Most-Favoured-Nation Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description of Measure:

The Philippines reserves the right to adopt or maintain any measure or mechanism relating to exploration, development and utilization of mineral resources.

Source of Measure:

- The 1987 Philippine Constitution

- RA No. 7942, the Philippine Mining Act of 1995

- Executive Order No. 79, Institutionalizing and Implementing Reforms in the Philippine Mining Sector Providing Policies and Guidelines to Ensure Environmental Protection and Responsible Mining in the Utilization of Mineral Resources

- RA. No. 7586, the National Integrated Protected Areas System Act of 1992

- Proclamation No. 1250, (9 June 1998), Exclusion of Mineral Resource-Rich Areas of Cagraray Island, Albay from the Bicol Region Tourism Master Plan

- Executive Order 211, s. 1987, Prescribing the Interim Procedures in the Processing and Approval of Applications for the Exploration, Development and Utilization of Minerals

- Presidential Decree No. 2027, s. 1986, Granting Tax Relief to Distressed Copper Mining Companies

- Proclamation No. 297, s. 2002, Excluding a Certain Area from the Operation of Proclamation No. 369 dated February 27, 1931, and Declaring the same as Mineral Reservation and as Environmentally Critical Area

- Proclamation No. 183, s. 2002, Revoking Proclamation No. 66, Series of 1999, Declaring The Lahar-Affected Rivers and Embankment Areas in the Provinces of Pampanga, Tarlac and Zambales as Environmentally Critical Areas and as Mineral Reservation under the Direct Supervision and Control of the Department of Environment and Natural Resources

- Letter of Instruction No. 1387 s. 1984

- RA No. 5092, Geothermal Energy, Natural Gas and Methane Gas Law

- Presidential Decree No. 87, The Off Exploration and Development Act of 1972

- Presidential Decree No. 972, The Coal Development Act of 1976

- Department of Environment and Natural Resources (DENR) Administrative Order No. 2010-21, (28 June 2010) Revised Implementing Rules and Regulations of R.A. 7942, otherwise known as the Philippine Mining Act of 1995

- R.A. No. 7160, the Loca! Government Code of 1991

- RA. No. 11054, the Organic Law for the Bangsamoro Autonomous Region in Muslim Mindanao

- Executive Order No. 220, s. 1987, Creating a Cordillera Administrative Region, Appropriating Funds Therefor and for Other Purposes

- Department of Energy Issuances

- DENR Administrative Orders, Memorandum Orders and Memorandum Circulars

- Mines and Geosciences Bureau Memorandum Circulars

11. Sector: Agriculture

Subsector: Rice and Corn Industry

Industry Classification: ISIC 0111, Growing of cereals and other crops n.e.c.

ISIC 153, Manufacture of grain mill products, starches and starch products, and prepared animal feeds

Level of Government: All levels

Type of Obligation: National Treatment. Most-Favoured-Nation Treatment. Prohibition of Performance Requirements

Description of Measure:

An alien, association, partnership or corporation, owned in whole or in part by foreigners, may engage in the rice and com industry, subject to the following conditions:

(a) There is an urgent need for foreign investment in the undertaking and that the same will not pose a clear and present danger of promoting monopolies or combination in restraint of trade.

(b) The alien, association, corporation or partnership shall have the necessary financial capability and technical competence.

(c) The alien, association, corporation or partnership shall submit a development plan acceptable to the Philippine Govemment.

In connection with the foreign equity participation, at least 60 per cent thereof shall be transferred to Filipino citizens over a 30-year divestment period, which shall start from the actual operation of the business in the Philippines.

Foreign investors shall fully develop the land leased to them for rice and corn production and culture over a period as established in their development plan, provided such period shall not exceed four years; provided, further, that the Philippine Government may grant a grace period on a case-to-case basis.

Source of Measure:

- Presidential Decree No. 194, s. 1973, 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 and its Implementing Rules and Regulations

- RA. No. 8435, the Agriculture and Fisheries Modernization Act of 1997

- Executive Orders and Administrative Issuances

12. Sector: All sectors

Subsector: -

Industry Classification :-

Level of Government: All levels

Type of Obligation: National Treatment. Most-Favoured-Nation Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description of Measure:

The Philippines reserves the right to adopt or maintain any measure or mechanism relating to:

(a) investments other than those recognized or other than those that should have been recognized by the Philippine Government owing to the circumstances on the date of entry into force of this Agreement; and

(b) investments which were not technically feasible on the date of entry into force of this Agreement.

Source of Measure: -

13. Sector: All sectors

Subsector: -

Industry Classification :-

Level of Government: All levels

Type of Obligation: National Treatment. Most-Favoured-Nation Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description of Measure:

The Philippines reserves the right to adopt or maintain any measure or mechanism that it considers necessary for the protection of its essential security interests.

Source of Measure: -

14. Sector: All sectors

Subsector: -

Industry Classification : -

Level of Government: All levels

Type of Obligation: Prohibition of Performance Requirements

Description of Measure:

The Philippines reserves the right to adopt or maintain any measure or mechanism relating to technology transfer, production processes or other proprietary knowledge.

Source of Measure: -

15. Sector: All sectors

Subsector: -

Industry Classification : -

Level of Government: All levels

Type of Obligation: National Treatment. Most-Favoured-Nation Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description of Measure:

The Philippines reserves the right to adopt or maintain any measure relating to investments in all services sectors and subsectors.

Source of Measure: -

16. Sector: All sectors

Subsector: -

Industry Classification :

Level of Government: All levels

Type of Obligation: National Treatment. Most-Favoured-Nation Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description of Measure:

The Philippines reserves the right to adopt or maintain any measure affecting or relating to electronic commerce, where such measure is necessary and would not constitute arbitrary or unjustifiable discrimination or a_ disguised restriction on foreign investment.

Source of Measure: -

17. Sector: All sectors

Subsector: -

Industry Classification : -

Level of Government: All levels

Type of Obligation: National Treatment. Most-Favoured-Nation Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements.

Description of Measure

The Philippines reserves the right to adopt or maintain any measure affecting or relating to investment in a public service in the interest of national security or investment in strategic industries which may threaten territorial integrity and the safety, security and well-being of Filipino citizens.

Source of Measure: -

18. Sector: All sectors

Subsector: -

Industry Classification : -

Level of Government: All levels

Type of Obligation: National Treatment. Most-Favoured-Nation Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements.

Description of Measure:

The Philippines reserves the right to adopt or maintain measures relating to or affecting treatment of a permanent resident of a Party or its investment.

Source of Measure: -

ANNEX 3. SCHEDULE OF RESERVATIONS AND NON-CONFORMING MEASURES FOR INVESTMENT. THAILAND

LIST A. EXPLANATORY NOTES

1. This List A sets out, pursuant to Article 13 (Reservations and Non- Conforming Measures) of Chapter 11 (Investment), ThailanD's existing measures that are not subject to some or all of the obligations imposed by:

(a) Article 3 (National Treatment) of Chapter 11 (Investment);

(b) Article 4 (Most-Favoured-Nation Treatment) of Chapter 11 (Investment);

(c) Article 5 (Senior Management and Board of Directors) of Chapter 11 (Investment); or

(d) Article 6 (Prohibition of Performance Requirements) of Chapter 11 (Investment).

2. Each entry in this List A sets out the following elements:

(a) Sector refers to the sector for which an entry is made;

(b) Subsector, where referenced, refers to the specific subsector for which the entry is made;

(c) Industry Classification, where referenced, refers to the activity covered by the entry, according to the International Standard Industrial Classification (ISIC) Revision 3, the Central Product Classification (CPC), or as expressly otherwise described in that entry;

ISIC. Rev. 3 means the International Standard Industrial Classification of All Economic Activities as set out in the Statistical Papers, Series M, No.4, ISIC Rev. 3, Statistical Office of the United Nations, New York, 1989; and

CPC means the Provisional Central Product Classification as set out in the Statistical Papers, Series M, No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991.

(d) Level of Government indicates the level of government maintaining the listed measures;

(e) Obligation Concerned specifies the obligations referred to in Paragraph 1 that pursuant to Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), do not apply to the listed measure;

(f) Description sets out the non-conforming measure for which the entry is made; and

(g) Source of Measure means the laws, regulations or other measures that are the source of the non-conforming measure for which the entry is made. A measure cited in the Source of Measure element:

(i) means the measure as amended, continued or renewed as of the date of entry into force of the Second Protocol, and

(ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure.

3. In accordance with Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), the Articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the non-conforming measure identified in the Description element of that entry.

4. For greater certainty, the Description element of each of the entries in this List A is to be interpreted in accordance with the relevant cited sources of the non- conforming measures. For greater certainty, to the extent of any conflict between the Description element and other elements in an entry, the Description element shall prevail.

5. The Schedules of other Parties shall not be used to interpret Thailand's commitments or obligations under Chapter 11 (Investment).

6. Thailand may add, withdraw or modify any of its reservations as set out in this List A for a period of 24 months from the date of entry into force of this Schedule, provided that relevant non-conforming measure is in existence as of the date of entry into force of the Second Protocol. Any such addition, withdrawal or modification will be submitted to the Depositary who will notify the other Parties, including the relevant laws and regulations. Such reservation shall be deemed to form part of this Schedule upon such notification.

7. These Explanatory Notes form an integral part of this List A.

1. Sector: Manufacturing

Subsector: Playing cards

Industry Classification: -

Level of Government: All levels

Obligations Concerned: National Treatment. Senior Management and Board of Directors

Description: No natural person or juridical person is allowed to produce or import playing cards, except receiving approval from the Director General of Excise Department.

Source of Measure:

- Playing Cards Act B.E. 2486 (1943), as amended, and its subsidiary legislations

- Excise Act B.E. 2560 (2017), as amended, and its subsidiary legislations

2. Sector: Manufacturing

Subsector: Manufacturing of notes and minting

Industry Classification: -

Level of Government: All levels

Obligations Concerned: National Treatment. Senior Management and Board of Directors

Description:

Only the Bank of Thailand has the right and authority to print, manage, and issue the notes of the Government of Thailand

under the law governing the Bank of Thailand.

Only the Ministry of Finance has the right and authority to mint and put coins into circulation.

No person shall make, issue, use, or put into circulation any material or token for money except by authorisation from the Minister of Finance.

Source of Measure: Currency Act B.E. 2501 (1958), as amended

3. Sector: Manufacturing

Subsector: Manufacturing of lottery

Industry Classification: -

Level of Government: All levels

Obligation Concerned: National Treatment. Senior Management and Board of Directors

Description: Only the Government Lottery Office is authorised to produce, manage, and distribute the lottery in Thailand.

Source of Measure: The Government Lottery Office Act B.E. 2517 (1974), as amended

4. Sector : Agriculture

Subsector : Onion seed propagation

Industry Classification : -

Level of Government : All levels

Obligation Concerned : National Treatment

Description : Foreign equity participation must not exceed 49 per cent of registered capital of a business in onion seed propagation.

Source of Measure : Foreign Business Act B.E. 2542 (1999), as amended, and its subsidiary legislations

5. Sector: Fishery

Subsector: Culture of tuna in deep sea cage and indigenous breeding of spiny lobsters

Industry Classification: -

Level of Government: All levels

Obligation Concerned: National Treatment

Description: Foreign equity participation must not exceed 51 per cent of registered capital of a business in the culturing of tuna in deep sea cage and indigenous breeding of spiny lobsters: Panulirus versicolor, P. homarus, P. ornatus, P. longipes, P. penicilatus, and P. polyphagus.

Source of Measure: Foreign Business Act B.E. 2542 (1999), as amended, and its subsidiary legislations

6. Sector : Mining and Quarrying

Subsector : Marble mining

Industry Classification : -

Level of Government : All levels

Obligation Concerned : National Treatment

Description : Foreign equity participation must not exceed 49 per cent of registered capital of a business in marble mining and is subject to government concession.

Source of Measure : Foreign Business Act B.E. 2542 (1999), as amended, and its subsidiary legislations

7. Sector: Oil and gas related extraction

Subsector: -

Industry Classification: -

Level of Government: All levels

Obligation Concerned: National Treatment

Description: Foreign equity participation must not exceed 49 per cent of registered capital of a business in oil and gas related extraction and is subject to government concession.

Source of Measure: Foreign Business Act B.E. 2542 (1999), as amended, and its subsidiary legislations

8. Sector : Manufacturing

Subsector : Manufacturing of tobacco products

Industry Classification : -

Level of Government : All levels

Obligation Concerned : National Treatment

Description : Only the Tobacco Authority of Thailand is allowed to produce tobacco products.

Source of Measure : Tobacco Authority of Thailand Act B.E. 2567 (2018), as amended

9. Sector : Fishery

Subsector: -

Industry Classification : ISIC 0500

Level of Government : All levels

Obligation Concerned : National Treatment

Description : A foreigner (1) or fishing vessel with foreign flag is not allowed to apply for a fishing licence or to fish within Thailandâs territorial waters, contiguous zone, and Exclusive Economic Zone.

Source of Measure :

- Emergency Decree on Fisheries B.E. 2558 (2015)

- Act Governing the Right to Fish within Thai Waters B.E. 2482 (1939)

- Thai Vessels Act B.E. 2481 (1938)

(1) For the purposes of this entry, the definition of "foreigner" shall be in accordance with the Foreign Business Act B.E. 2542 (1999).

10. Sector: Agriculture

Subsector: Cattle farming

Industry Classification: -

Level of Government: All levels

Obligation Concerned: National Treatment

Description: Foreign equity participation must not exceed 49 per cent of registered capital of a business in cattle farming.

Source of Measure:

Foreign Business Act B.E. 2542 (1999), as amended, and its subsidiary legislations

LIST B. EXPLANATORY NOTES

1. This List B sets out, pursuant to 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), the specific sectors, subsectors, or activities for which Thailand may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

(a) Article 3 (National Treatment) of Chapter 11 (Investment);

(b) Article 4 (Most-Favoured-Nation Treatment) of Chapter 11 (Investment);

(c) Article 5 (Senior Management and Board of Directors) of Chapter 11 (Investment); or

(d) Article 6 (Prohibition of Performance Requirements) of Chapter 11 (Investment).

2. Each entry in this List B sets out the following elements:

(a) Sector refers to the sector for which the entry is made;

(b) Subsector, where referenced, refers to the specific subsector for which the entry is made;

(c) Industry Classification, where referenced, refers to the activity covered by the entry according to the International Standard Industrial Classification (ISIC) Revision 3, the Central Product Classification (CPC), or as expressly otherwise described in that entry;

ISIC Rev. 3 means the International Standard Industrial Classification of All Economic Activities as set out in the Statistical Papers, Series M, No.4, ISIC Rev. 3, Statistical Office of the United Nations, New York, 1989; and

CPC means the Provisional Central Product Classification as set out in the Statistical Papers, Series M, No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991.

(d) Level of Government indicates the level of government maintaining the listed measures;

(e) Obligation Concerned specifies the obligations referred to in Paragraph 1 that, pursuant to Article 13 (Reservations and Non- Conforming Measures) of Chapter 11 (Investment), do not apply to the sectors, subsectors, or activities listed in the entry;

(f) Description sets out the scope of the sectors, subsectors, or activities covered by the entry; and

(g) Existing Measures, where specified, identifies, for transparency purposes, a non-exhaustive list of existing measures that apply to the sectors, subsectors, or activities covered by the entry.

3. In accordance with Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), the Articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the sectors, subsectors and activities identified in the Description element of that entry.

4. For greater certainty, where Thailand has more than one entry in this List B that could apply to a measure, each entry is to be read independently, and is without prejudice to the application of any other entry to the measure.

5. For greater certainty, the Description element of each of the entries in this List B is to be interpreted in accordance with the relevant cited sources of the non- conforming measures. For greater certainty, to the extent of any conflict between the Description element and other elements in an entry, the Description element shall prevail.

6. The Schedules of other Parties shall not be used to interpret Thailandâs commitments or obligations under Chapter 11 (Investment).

7. These Explanatory Notes form an integral part of this List B.

1. Sector: All sectors

Subsector: -

Industry Classification: -

Level of Government: All levels

Obligation Concerned: National Treatment. Senior Management and Board of Directors. Prohibition of Performance

Requirements

Description:

In the case where the Head of the National Council for Peace and Order is of opinion that it is necessary for the benefit of reform in any field and to strengthen public unity and harmony, or for the prevention, disruption, or suppression of any act which undermines public peace and order or national security, the Monarchy, national economy or administration of State affairs, whether that act emerges inside or outside Thailand, the Head of the National Council for Peace and Order shall have the powers to make any order to disrupt or suppress regardless of the legislative, executive, or judicial force of that order. In this case, that order, act or any performance in accordance with that order is deemed to be legal, constitutional and conclusive, and it shall be reported to the National Legislative Assembly and the Prime Minister without delay.

In the event of the occurrence of an emergency situation and the Prime Minister considers that it is appropriate to use the force of administrative officials or police officers, civil officials or military officers to jointly provide assistance, prevent, remedy, suppress, withhold the emergency situation, rehabilitate or provide assistance to the people, the Prime Minister, upon the approval of the Council of Ministers, is empowered to declare an emergency situation applicable to the whole country or in some area or locality as necessary for the situation.

Existing Measures

- Constitution of the Kingdom of Thailand B.E. 2560 (2017)

- Martial Law B.E. 2457 (1914), as amended

- Emergency Decree on Public Administration in Emergency Situation B.E. 2548 (2005), as amended

- Internal Security Act B.E. 2551(2008), as amended

2. Sector : Agricultural

Subsector: -

Industry Classification : -

Level of Government : All levels

Obligation Concerned : National Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description :

Thailand reserves the right to adopt or maintain any measure with respect to an investor or investment in any activity related to agriculture except:

- onion seed propagation

- Foreign equity participation must not exceed 49 per cent of registered capital as specified in Entry 4 of List A; and

- cattle farming - Foreign equity participation must not exceed 49 per cent of registered capital as specified in Entry 10 of List A

Existing Measures: -

3. Sector: Fishery

Subsector: -

Industry Classification: -

Level of Government: All levels

Obligation Concerned: National Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description:

Thailand reserves the right to adopt or maintain any measure with respect to an investor or investment in any activity

related to fishery except:

- culture of tuna in deep sea cage: Foreign equity participation must not exceed 51 per cent of registered capital as specified in Entry 5 of List A; and

- indigenous breeding of spiny lobsters: Panulirus versicolor, P. homarus, P. ornatus, P.longipes, P. penicilatus, and P. polyphagus: Foreign equity participation must not exceed 51 per cent of registered capital as specified in Entry 5 of List A.

Existing Measures: -

4. Sector : Forestry

Subsector: -

Industry Classification : -

Level of Government : All levels

Obligation Concerned : National Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description : Thailand reserves the right to adopt or maintain any measure with respect to an investor or investment in any activity related to forest plantation and the forest industry.

Existing Measures :

- Foreign Business Act B.E. 2542 (1999), as amended, and its subsidiary legislations

- Natural Reserved Forest Act B.E. 2507 (1964), as amended

- Commercial Forest Plantation Act B.E. 2535 (1992), as amended

5. Sector: Mining and Quarrying, and Energy

Subsector: -

Industry Classification: -

Level of Government: All levels

Obligation Concerned: National Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description:

Thailand reserves the right to adopt or maintain any measure with respect to an investor or investment in any activity related to mining and quarrying, and energy. except:

- marble mining: Foreign equity participation must not exceed 49 per cent of registered capital as specified in Entry 6 of List A; and

- oil and gas related extraction: Foreign equity participation must not exceed 49 per cent of registered capital as specified in Entry 7 of List A.

Existing Measures: -

6. Sector : Manufacturing

Subsector: -

Industry Classification : -

Level of Government : All levels

Obligation Concerned : National Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description : Thailand reserves the right to adopt or maintain any measure with respect to an investor or investment in all

manufacturing sectors except for subsectors below, a foreigner (2) is allowed to obtain up to 100 per cent of registered capital:

- Manufacture of motor vehicle (ISIC 3410);

- Manufacture of parts and accessories for motor vehicles and their engines (ISIC 3430);

- Manufacture of furniture (ISIC 3610), except product of wood carving furniture;

- Manufacture of finishing textiles (ISIC 1712), except any activity relating to production, weaving or printing of Thai silk;

- Manufacture of preparation and spinning of textile fibers; weaving of textiles (ISIC 1711), except any activity relating to production, weaving or printing of Thai silk;

- Manufacture of plastics products (ISIC 2520);

- Manufacture of electric LED lamps and lightings;

- Manufacture of printed circuit boards (ISIC Rev. 4 - 2610 Manufacture of electronic components and boards);

- Manufacture of domestic appliances (ISIC 2930);

- Manufacture of office, accounting and computing machinery (ISIC 3000);

- Manufacture of electric motors, generators and transformers (ISIC 3110);

- Manufacture of electric lamps and lighting equipment (ISIC 3150);

- Manufacture of television and radio receivers, sound or video recording or teproducing apparatus, and associated goods (ISIC 3230);

- Manufacture of sports goods (ISIC 3693);

- Manufacture of industrial robots for multiple uses (Part of ISIC 2929 manufacture of other special-purpose machinery); Manufacture of insulated wire and cable (ISIC 3130);

- Manufacture of peripheral units (Parts of ISIC 3000 Manufacture of office, accounting and computing machinery); Manufacture of luggage, handbags and the like, saddlery and harness (ISIC 1912); Manufacture of watches and clocks (ISIC 3330);

- Manufacture of dairy products (ISIC 1520); Manufacture of starches and starch products (ISIC 1532);

- Manufacture of macaroni (part of ISIC 1544);

- Manufacture of food processing Manufacture of agricultural machinery (part of ISIC 2921);

- Manufacture of medical and surgical equipment and orthopaedic appliances (ISIC 3311);

- Manufacture of industrial process control equipment (ISIC 3313);

- Manufacture of aircraft and spacecraft (ISIC 3530);

- Manufacture of green food packaging

Existing Measures: -

(2) For the purposes of this entry, the definition of "foreigner" shall be in accordance with the Foreign Business Act B.E. 2542 (1999).

7. Sector: All new sectors

Subsector: -

Industry Classification: -

Level of Government: All levels

Obligation Concerned: National Treatment. Senior Management and Board of Directors. Prohibition of Performance

Requirements

Description: Thailand reserves the right to adopt or maintain any measure relating to a sector or subsector which is specified as "not elsewhere classified (n.e.c.)" in ISIC Revision 3 at the date of entry into force of the Second Protocol for Thailand.

Existing Measures: -

8. Sector: All Sectors (3)

Subsector: -

Industry Classification: -

Level of Government: All levels

Obligation Concerned: Most-Favoured-Nation Treatment

Description:

Thailand reserves the right to adopt or maintain any measure that accords more favourable treatment to an investor or investment under any international agreement or arrangement in force or signed prior to the date of entry into force of the Second Protocol.

For greater certainty, this extends to:

(a) any preferential treatment accorded pursuant to a subsequent review or amendment of the relevant international agreements or any forms of economic or regional cooperation with any Party or non-Party; and

(b) any existing or future preferential treatment accorded pursuant to any agreement or arrangement between or among Member States of ASEAN.

Thailand reserves the right to adopt or maintain any measure that accords more favourable treatment to an investor or investment under any international agreement or arrangement in force or signed after the date of entry into force of the Second Protocol in the following sectors:

- agriculture except farming of livestock;

- fishery and maritime matters; and

- forestry.

Thailand reserves the right to adopt or maintain any measure and treatment relating to procedures for the resolution of investment disputes between investors and _ states provided for in other international investment treaties and other trade agreements.

Existing Measures

(3) For greater certainty, all sectors include all new sectors.

9. Sector : All Sectors

Subsector: -

Industry Classification : -

Level of Government : All levels

Obligation Concerned : National Treatment

Description : A foreign national or a domestic company which is deemed foreigner (4) is not allowed to purchase or own land in Thailand. However, it may lease or hire land and own building.

Thailand reserves the right to adopt or maintain any measure in relation to acquisition or usage of land in Thailand, including the development or usage of land or the type of activities which may be conducted on land in accordance with its land zoning, land usage, urban planning, development control, conservation, and preservation policies as well as policies

relating to environmental protection, nature reserves, and national parks.

Existing Measures :

- The Land Code

- Civil and Commercial Code

- Hire of Immovable Property for Commerce and Industry Act BE. 2542 (1999), as amended

- Agricultural Land Reform Act B.E. 2518 (1975), as amended

- Land Lease for Agriculture Act (No. 2) B.E. 2559 (2016), as amended

- Act Promulgating the Land Code B.E. 2497 (1954), as amended

- Regulations of the Agricultural Land Reform Executive Committee on Rules, Procedures and Conditions for the Selection of Farmers Eligible to Acquire Land from Agricultural Land Reform B.E. 2535 (1992)

- Regulations of the Agricultural Land Reform Executive Committee on Rules, Procedures and Conditions for Granting Permission and Being Complied with by the Recipients of the Granting in Respect of Utilization on Land or Immovable Property for Activities, which Support or are Related to Agricultural Land Reform B.E. 2541 (1998)

(4) For the purposes of this entry, the definition of "foreigner" shall be in accordance with the Foreign Business Act B.E. 2542 (1999).

10. Sector: All sectors

Subsector: -

Industry Classification: -

Level of Government: All levels

Obligation Concerned: National Treatment. Senior Management and Board of Directors

Description:

Thailand reserves the right to adopt or maintain any measure with respect to:

1. devolution to the private sector of any investment in the exercise of government authority at the date of entry into force of the Second Protocol;

2. the privatisation of an entity or asset owned wholly or partially by the government; and

3. divestment of an asset through transfer or disposal of equity interests or assets owned wholly or partially by the government.

Existing Measures: -

11. Sector: All sectors

Subsector: -

Industry Classification: -

Level of Government: All levels

Obligation Concerned: National Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description: Thailand reserves the right to adopt or maintain any measure with respect to an investor or investment relating to portfolio investments.

Existing Measures: -

12. Sector: All sectors

Subsector: -

Industry Classification: -

Level of Government: All levels

Obligation Concerned: National Treatment. Most-Favoured-Nation Treatment

Description:

Thailand reserves the right to adopt or maintain any measure with respect to an investor or investment relating to foreign exchange transactions by non-resident and any measure relating to transactions in, and holdings of, local currency by non-resident, for the prevention of Thai Baht speculation.

Note: 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 forwards.

Existing Measures: -

13. Sector: All sectors

Subsector: -

Industry Classification: -

Level of Government: All levels

Obligation Concerned: National Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description: Thailand reserves the right to adopt or maintain any measure with respect to small and medium enterprises.

Existing Measures:

- Investment Promotion Act B.E. 2520 (1977), as amended, and its subsidiary legislations, regulations and announcements issued thereunder

- Small and Medium Enterprises Promotion Act B.E. 2543 (2000) and as amended B.E. 2561 (2018), as amended, and its Ministerial regulations, subsidiary legislations, and announcements

- National Competitiveness Enhancement for the Targeted Industries Act B.E. 2560 (2017), as amended, and its subsidiary legislations, regulations and announcements issued thereunder

14. Sector: All sectors

Subsector: -

Industry Classification: -

Level of Government: All levels

Obligation Concerned: National Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description: Thailand reserves the right to adopt or maintain any measure that accords preferences or provides favourable treatment to any minority person or disadvantaged person.

Existing Measures: -

15. Sector : Industrial estate

Subsector :

- Establishment or expansion of an industrial estate

- Land entitlement in industrial estate area

Industry Classification : -

Level of Government : All levels

Obligation Concerned : National Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements.

Description : Thailand reserves the right to adopt or maintain any measure with respect to industrial estate.

An applicant for Joint Development of an Industrial Estate Establishment Project with the Industrial Estate Authority of Thailand (IEAT) shall possess the following qualifications:

- being a Thai juridical person;

- having evidence of ownership or possession tight in the land intended for an Industrial Estate Project, or evidence showing acquisition of ownership or possession right in the land, with consent from the land owner, to be developed as an industrial estate.

If the business operator, which is a foreigner (5), dissolves or transfers its business to another person, the business operator shall dispose such land for which permission has been granted to hold the ownership under this Notification to the IEAT or the business transferee, as the case may be, within three years from the date of such dissolution or business transfer. If the business operator fails to do so, the Director-General of the Land Department shall dispose such land together with its component part to IEAT or other persons in accordance with the Land Code.

Regarding the rules for consideration of the number of foreigners who are skilled workers or experts to stay in Thailand and work in industrial estate, the IEAT shall consider granting permission for the business operator to bring a foreigner to stay in Thailand according to the number and for the period of work in an industrial estate, by taking into account business category, registered capital, number of Thai workers, and business areas of the business operator.

Existing Measures:

- The Industrial Estate Authority of Thailand Act B.E. 2552 (1979), as amended, including its regulations, notifications, and administrative guidelines

- Promotion and Conservation of National Environmental Quality Act B.E. 2535 (1992), as amended, including its regulations, notifications, and administrative guidelines

- Factory Act B.E. 2535 (1992), as amended, including its regulations, notifications, and administrative guidelines

- Eastern Economic Corridor Act B.E. 2567 (2078), and as amended

(5) For the purposes of this entry, the definition of "foreigner" shall be found in accordance with the Foreign Business Act B.E. 2542 (1999).

16. Sector: All sectors

Subsector: -

Industry Classification: -

Level of Government: Local

Obligation Concerned: National Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description: Thailand reserves the right to adopt or maintain any measure with respect to an investor or investment relating to environment, health, or culture.

Existing Measures: -

17. Sector: All sectors

Subsector: -

Industry Classification: -

Level of Government: All levels

Obligation Concerned: Prohibition of Performance Requirements

Description: Thailand reserves the right to adopt or maintain any measure with respect to an investor or investment relating to the government requirements on technology transfer, production process or other proprietary knowledge.

Existing Measures: -

18. Sector: All sectors

Subsector: -

Industry Classification: -

Level of Government: All levels

Obligation Concerned: Prohibition of Performance Requirements

Description: Thailand reserves the right to adopt or maintain any measure with respect to an investor or investment relating to the government requirements on royalty with regard to taxation.

Existing Measures: -

19. Sector : All sectors

Subsector: -

Industry Classification : -

Level of Government : All levels

Obligation Concerned : National Treatment

Description : In order to operate business in Thailand, a foreigner (6) shall obtain a licence or certificate from the Department of Business Development, and comply with conditions set forth in the Foreign Business Act B.E. 2542 (1999) (7) and subsidiary legislations.

A foreigner must meet a minimum capital requirement which is stipulated in Ministerial Regulation prescribing the Minimum Capital and Period for Bringing or Remitting the Minimum Capital into Thailand B.E. 2562 (2019).

Minimum capital required to be registered at commencement of the business under the Lists attached to the Foreign Business Act B.E. 2542 (7999) shall not be less than that prescribed by the Ministerial Regulations, which in no case shall be less than three million Thai Baht.

In all other cases, minimum capital required to be registered at the commencement of the business operation shall not be less than that prescribed by the Ministerial Regulations and shall in no case be less than two million Thai Baht.

Existing Measures :

- Foreign Business Act B.E. 2542 (1999), as amended, and its subsidiary legislations

- Ministerial Regulations prescribing the Minimum Capital and Period for Bringing or Remitting the Minimum Capital into Thailand B.E. 2562 (2019)

(6) For the purposes of this entry, the definition of "foreigner" shall be found in accordance with the Foreign Business Act B.E. 2542 (1999).

(7) For illustrative purposes,"conditions set forth in the Foreign Business Act B.E. 2542 (1999)" may include the ratio of the capital to loans and the number of foreign directors who must have a domicile in Thailand.

20. Sector : All sectors

Subsector: -

Industry Classification : -

Level of Government : All levels

Obligation Concerned : National Treatment Senior Management and Board of Directors Prohibition of Performance Requirements

Description : A foreigner (8) must meet criteria and requirements in Section V of the Foreign Business Act B.E. 2542 (1999), where it is stipulated that in granting permission to a foreigner for the operation of business under this Act, regard shall be had to advantageous and disadvantageous effects on national safety and security, economic and social development of the country, public order or good morals, national values in arts, culture, traditions and customs, natural resources conservation, energy, environmental preservation, consumer protection, sizes of undertakings, employment, technology transfer, and research and development.

Existing Measures : Foreign Business Act B.E. 2542 (1999), as amended, and its Ministerial Regulations

(8) For the purposes of this entry, the definition of "foreigner" shall be in accordance with the Foreign Business Act B.E. 2542 (1999).

21. Sector: All Services sectors

Subsector: -

Industry Classification: -

Level of Government: All levels

Obligation Concerned: National Treatment. Most-Favoured-Nation Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description: Thailand reserves the right to adopt or maintain any measure relating to investment in service sectors.

Existing Measures: -

22. Sector: All sectors

Subsector: -

Industry Classification: -

Level of Government: All levels

Obligation Concerned. National Treatment. Most-Favoured-Nation Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description: Thailand reserves the right to adopt or maintain any measure under Investment Promotion Act B.E. 2520 (1977), as amended, and its subsidiary legislations, regulations and announcements and National Competitiveness Enhancement for the Targeted Industries Act B.E. 2560 (2017), as amended, and its subsidiary legislations, regulations and announcements.

Existing Measures:

- Investment Promotion Act B.E. 2520 (1977), as amended, and its subsidiary legislations, regulations and announcements issued thereunder

- National Competitiveness Enhancement for the Targeted Industries Act B.E. 2560 (2017), as amended, and its subsidiary legislations, regulations and announcements issued thereunder

23. Sector: All sectors

Subsector: -

Industry Classification: -

Level of Government: All levels

Obligation Concerned: National Treatment. Most-Favoured-Nation Treatment. Senior Management and Board of Directors.

Prohibition of Performance Requirements

Description: Thailand reserves the right to adopt or maintain any measure with respect to permanent residents.

Existing Measures: -

ANNEX 3. SCHEDULE OF RESERVATIONS AND NON-CONFORMING MEASURES FOR INVESTMENT. VIET NAM

LIST A. EXPLANATORY NOTES

1. This List A sets out, pursuant to Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), measures that Viet Nam may maintain existing measures that do not conform with obligations imposed by:

(a) Article 3 (National Treatment) of Chapter 11 (Investment);

(b) Article 5 (Senior Management and Board of Directors) of Chapter 11 (Investment); or

(c) Article 6 (Prohibition of Performance Requirements) of Chapter 11 (Investment).

2. Each reservation in this List A shall set out the following elements, where applicable:

(a) Sector refers to the sector or sectors for which the reservation is taken;

(b) Subsector refers to specific industries/products/activities for which the reservation is taken;

(c) Level of Government refers to the level of government adopting or maintaining the measure for which a reservation is taken;

(d) Obligations Concemed refers to the obligations of National Treatment, Senior Management and Board of Directors and Prohibition of Performance Requirements, as the case may be, which do not apply to the listed measures;

(e) Description element sets out the non-conforming measure for which the reservation is made. The obligations under Obligations Concerned element do not apply to the non-conforming measure identified in the Description element of that reservation;

(f) Source of Measure element provides non-binding reference to the non-conforming measures for which the reservation is made for the purposes of transparency and illustration only and shall not be interpreted as an additional binding explanation of such measure.

3. In accordance with Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), the Articles of this Agreement specified in the Obligations Concemed element of an entry do not apply to the non-conforming measure identified in the Description element of that entry.

4. In the interpretation of a reservation, all elements of a reservation shall be considered, including the relevant cited sources of the non-conforming measures. For greater certainty, to the extent of any conflict between the Description element and other elements in an entry, the Description element shall prevail.

5. The Schedules of other Parties shall not be used to interpret Viet Nam's commitments or obligations under Chapter 11 (Investment).

6. Viet Nam may add, withdraw or modify any of its reservations as set out in this List A for a period of 24 months from the date of entry into force of this Schedule, provided that relevant non-conforming measures are in existence as of the date of entry into force of this Second Protocol. Any such addition, withdrawal or modification will be submitted to the Depositary who will notify the other Parties, including the relevant laws and regulations. Such non-conforming measure shall be deemed to form part of this Schedule and shall take effect upon such notification.

7. These Explanatory Notes shall form part of this List A.

1. Sector : All sectors

Sub-sector: -

Level of Government : All levels

Obligations Concerned: National Treatment. Senior Management and Board of Directors. Prohibition of Performance

Requirements

Description : National Treatment, Senior Management and Board of Directors, and Prohibition of Performance Requirements may not apply to conditions imposed in investment licenses pennits/certificates that were issued before the entry into force of this Second Protocol (1).

Source of Measure :

- Decree No. 194/2013/ND-CP dated 21/11/2013

- Decree No. 31/2021/ND-CP dated 26/03/2021

(1) For illustrative purposes, the condition may be the investors' commitment to transferring the invested assets to the Government of Viet Nam on a non-compensable basis at the time of termination of their projects.

2. Sector: Manufacturing

Sub-sector: Aircraft Manufacture Industry

Level of Govemment: All levels

Obligations Concerned: National Treatment

Description: Foreign investment in the manufacture of aircraft may not be permitted except through a joint venture or the purchase of shares in an enterprise. Foreign equity shall not exceed 49 per cent of the total equity of such joint venture or enterprise.

Source of Measure: Decision No. 22/2021/QD-TTg dated 02/07/2021

3. Sector: Manufacturing

Sub-sector: Manufacture of railway rolling stock, spare parts, wagon and coach

Level of Govemment: All levels

Obligations Concerned: National Treatment

Description: Foreign investment in the manufacture of railway rolling stock, spare parts, wagon and coach may not be permitted except through a joint venture or the purchase of shares in an enterprise. Foreign equity shall not exceed 49 per cent of the total equity of such joint venture or enterprise.

Source of Measure:

- Decision No. 214/QD-TTg dated 10/02/2015

- Decision No. 22/2021/QD-TTg dated 02/07/2021

LIST B. EXPLANATORY NOTES

1. This List B sets out, pursuant to Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), measures that Viet Nam may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

(a) Article 3 (National Treatment) of Chapter 11 (Investment);

(b) Article 5 (Senior Management and Board of Directors) of Chapter 11 (Investment); or

(c) Article 6 (Prohibition of Performance Requirements) of Chapter 11 (Investment).

2. Each reservation in this List B shall set out the following elements, where applicable:

(a) Sector refers to the sector or sectors for which the reservation is taken;

(b) Subsector refers to specific industries/products/activities for which the reservation is taken;

(c) Level of Government refers to the level of government adopting or maintaining the measure for which a reservation is

taken;

(d) Obligations Concemed refers to the obligations of National Treatment, Senior Management and Board of Directors and Prohibition of Performance Requirements, as the case may be, which do not apply to the listed measures;

(e) Description element sets out the non-conforming measure for which the reservation is made. The obligations under Obligations Concerned element do not apply to the non-conforming measure identified in the Description element of that reservation;

(f) Existing Measure element provides non-binding reference to the non- conforming measures for which the reservation is made for the purposes of transparency and illustration only and shall not be interpreted as an additional binding explanation of such measure.

3. In accordance with Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), the Articles of this Agreement specified in the Obligations Concemed element of an entry do not apply to the sectors, subsectors and activities identified in the Description element of that entry.

4. For greater certainty, where Viet Nam has more than one entry in this List B that could apply to a measure, each entry is to be read independently, and is without prejudice to the application of any other entry to the measure.

5. In the interpretation of a reservation, all elements of a reservation shall be considered, including the relevant cited sources of the non-conforming measures. For greater certainty, to the extent of any conflict between the Description element and other elements in an entry, the Description element shall prevail.

6. The Schedules of other Parties shall not be used to interpret Viet Nam's commitments or obligations under Chapter 11 (Investment).

7. These Explanatory Notes shall form part of this List B.

1. Sector: All Sectors

Sub-sector : -

Level of Govemment: All levels

Obligations Concerned: National Treatment. Senior Management and Board of Directors

Description: Viet Nam reserves the right to adopt or maintain any measures relating to portfolio investment.

Existing Measure:

- Law on Investment

- Law on Securities

2. Sector: All Sectors

Sub-sector: -

Level of Govemment: All levels

Obligations Concerned: National Treatment. Senior Management and Board of Directors

Description: Viet Nam reserves the rights to adopt or maintain any measure relating to investment procedures, such as procedures relating to investment registration certificate or approval in principle of investment projects, and foreign exchange management procedures.

Existing Measure:

- Law on Investment

- Law on Enterprises

- Ordinance on Foreign Exchange Control

3. Sector: All Sectors

Sub-sector: -

Level of Govemment: All levels

Obligations Concerned: National Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description: Viet Nam reserves the right to adopt or maintain any measure relating to State-Owned Enterprises 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.

Existing Measure: -

4. Sector: All Sectors

Sub-sector: -

Level of Govemment: All levels

Obligations Concerned: National Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description: Viet Nam reserves the right to adopt or maintain any measure relating to 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.

Existing Measure: -

5. Sector : All Sectors

Sub-sector: -

Level of Government : All levels

Obligations Concerned: National Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description : Viet Nam reserves the right to adopt or maintain any measure relating to land, properties, and natural resources (2) associated with land, including but not limited to land acquisition, land ownership (3), land allocation, land lease, policy on the usage of land, land plans and planning, term of land use, rights and obligations of land users.

Existing Measure :

- Law on Land

- Law on Minerals

- Law on Cultural Heritage

- Law on Real Estate Business

- Law on Investment

(2) Natural resources found in land belong to the Government of Viet Nam.

(3) For illustrative purposes, foreign organizations and individuals cannot own land. The Government of Viet Nam can allocate land or lease land for them in line with the duration of their investment project subject to approval of a competent State body in accordance with Viet Nam's law and regulations.

6. Sector: All Sectors

Sub-sector: -

Level of Govemment: All levels

Obligations Concerned: National Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description: Viet Nam reserves the rights to adopt or maintain any measure relating to treatments granted to MSMEs.

Existing Measure: Law on Supporting Small and Medium-sized Enterprises

7. Sector: Manufacturing

Sub-sector:

- Production of firecrackers, including fireworks;

- Production of sky-lanterms;

- Remanufacturing or refurbishing of information and communication technology (ICT) products;

- Production of cigarettes and cigars;

- Production of tobacco production;

- Production of liquor, alcoholic beverages;

- Manufacturing and assembling of buses and transport vehicles of more than 29 seats;

- Production of gold.

Level of Govemment: All levels

Obligations Concerned: National Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description: Viet Nam reserves the right to adopt or maintain any measure relating to the above-mentioned sub-sectors.

Existing Measure:

- Law on Investment

- Law on Environment Protection

- Law on the State Bank of Viet Nam

- Decree No. 31/2021/ND-CP dated 26/03/2021

8. Sector: All Sectors

Sub-sector: -

Level of Govemment: All levels

Obligations Concerned: National Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description: Viet Nam reserves the right to adopt or maintain any measure relating to maintaining food security.

Existing Measure: -

9. Sector: Mining & Quarrying

Sub-sector: Oil and Gas

Level of Govemment: All levels

Obligations Concerned: National Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description: Viet Nam reserves the right to adopt or maintain any measure relating to oil and gas.

Existing Measure:

- Law on Investment

- Law on Minerals

- Law on Oil and Gas

10. Sector: Mining & Quarrying, except oil and gas, non- metallic minerals and minerals as common construction material

Sub-sector: -

Level of Govemment: All levels

Obligations Concerned: National Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description: Viet Nam reserves the right to adopt or maintain any measure relating to mining & quarrying, including but not limited to the following subsectors:

- Survey, exploration and exploitation of minerals;

- 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 Govemment of Viet Nam;

- Mineral activities related to the special, toxic, rare and precious minerals including basic geological investigation, prospecting, exploration, exploitation and processing;

- Exploring, mining and processing of important minerals, including but not limited to marine minerals.

Existing Measure

- Law on Minerals

- Law on Investment

11. Sector: Fishery and Aquaculture

Sub-sector: -

Level of Govemment: All levels

Obligations Concerned: National Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description: Viet Nam reserves the right to adopt or maintain any measure relating to fishery and aquaculture within Viet Nam's sovereignty and jurisdictional waters as defined in accordance with the United Nations Convention on the Law of the Sea done at Montego Bay on 10 December 1982 (UNCLOS).

Existing Measure:

- Law on Investment

- Law on Fishery

12. Sector: Forestry and Hunting

Sub-sector: -

Level of Govemment: All levels

Obligations Concerned: National Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description: Viet Nam reserves the right to adopt or maintain any measure relating to forestry and hunting.

Existing Measure:

- Law on Forestry

- Law on Protection and Development of Forest

- Law on Biodiversity

13. Sector: Agriculture

Sub-sector: 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).

Level of Govemment: All levels

Obligations Concerned: National Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description: Viet Nam reserves the right to adopt or maintain any measure relating to the above-mentioned subsectors.

Existing Measure:

- Law on Crop Production

- Law on Husbandry

14. Sector: Power Development

Sub-sector: -

Level of Govemment: All levels

Obligations Concerned: National Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description: Viet Nam reserves the right to adopt or maintain any measure relating to power development, including but not limited to, generation, transmission and distribution.

Existing Measure:

- Law on Electricity

15. Sector: All Sectors

Sub-sector: -

Level of Govemment: All levels

Obligations Concerned: National Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description: Viet Nam reserves the right to adopt or maintain any measure relating to sectors that do not exist in the territory of Viet Nam at the date of entry into force of this Second Protocol.

Viet Nam reserves the right to adopt or maintain any measure relating to sectors other than those recognised by the Govemment of Viet Nam at the date of entry into force of this Second Protocol.

Any sector classified explicitly in Viet Nam Standard Industry Classification (VSIC) at the date of entry into force of this Second Protocol should have been recognised by the Govemment of Viet Nam at that time.

For greater certainty, sector/sub-sector/activity that are not specifically described in VSIC at the date of entry into force of this Second Protocol, such as sector/sub-sector/activity not elsewhere classified in VSIC, shall be deemed not be recognised by the Government of Viet Nam.

Existing Measure: -

16. Sector : Manufacturing

Sub-sector :

- Production of industrial explosive devices;

- Cement production;

- Production of ready mixed concrete, stone crushing;

- Automobile assembly and manufacture;

- Motorcycle assembly and manufacture.

Level of Government : All levels

Obligations Concerned: National Treatment. Prohibition of Performance Requirements

Description : Investment in these subsectors shall be subject to planning of the Govemment which may give preferences to local investors. (4)

Existing Measure :

- Law on Mineral

- Decree No. 31/2021/ND-CP dated 26/03/2021

- Decision No 71/2018/ND-CP dated 15/05/2018

- Decision No. 02/2007/QD-BCT dated 29/08/2007

(4) 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.

17. Sector: All Sectors

Sub-sector: -

Level of Govemment: All levels

Obligations Concerned: National Treatment. Prohibition of Performance Requirements

Description: Viet Nam reserves the right to adopt or maintain any measure relating to establishment and operation of co-operatives, union of co- operatives, households and sole-proprietorship.

Existing Measure:

- Law on Cooperative

- Decree No. 193/2013/ND-CP dated 21/11/2013

18. Sector: -

Sub-sector: Traditional Markets

Level of Govemment: All levels

Obligations Concerned: National Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description: Viet Nam reserves the right to adopt or maintain any measure relating to traditional markets.

Existing Measure: -

19. Sector: All Sectors

Sub-sector: -

Level of Govemment: All levels

Obligations Concerned: National Treatment. Senior Management and Board of Directors

Description: Viet Nam 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 in, take-overs of, and mergers of a public-listed company.

Existing Measure:

- Law on Securities

- Ordinance on Foreign Exchange Control

- Decree No. 155/2020/ND-CP dated 31/12/2020

20. Sector: All Sectors

Sub-sector: -

Level of Govemment: All levels

Obligations Concerned: National Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description: Viet Nam reserves the right to adopt or maintain any measure conferring rights or privileges to the socially, economically and geographically disadvantaged groups and ethnic minorities.

Existing Measure: -

21. Sector: All Sectors

Sub-sector: -

Level of Govemment: All levels

Obligations Concerned: National Treatment. Senior Management and Board of Directors

Description: Viet Nam reserves the right to adopt or maintain any measure relating to the establishment of commercial presence of foreign enterprises and investors in Viet Nam in the form of branch.

Existing Measure: -

22. Sector: All Sectors

Sub-sector: -

Level of Govemment: All levels

Obligations Concerned: National Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description: Viet Nam reserves the right to adopt or maintain any measure relating to national defence and security.

Existing Measure: -

23. Sector: All Sectors

Sub-sector: -

Level of Govemment: All levels

Obligations Concerned: National Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description: Viet Nam reserves the right to adopt or maintain any measure with respect to the defence industry.

Existing Measure:

- Ordinance on Defence Industry dated 26/01/2008 and its implementing regulations.

24. Sector: All Sectors

Sub-sector: -

Level of Govemment: All levels

Obligations Concerned: National Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description: Viet Nam reserves the right to adopt or maintain any measure relating to weapon, explosives and supporting tools.

Existing Measure:

- Law on Management and use of weapons, explosives and supporting tools

25. Sector: All Sectors

Sub-sector: -

Level of Govemment: All levels

Obligations Concerned: National Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description: Viet Nam reserves the right to adopt or maintain any measure relating to the renewable energy and atomic energy.

Existing Measure:

- Law on Atomic Energy

- Decree No. 31/2021/ND-CP dated 26/03/2021

- Decision No. 2068/QD-TTg dated 25/11/2015

26. Sector: All Sectors

Sub-sector: -

Level of Govemment: All levels

Obligations Concerned: National Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description: Viet Nam reserves the right to adopt or maintain any measure relating to river ports, sea ports and airports.

Existing Measure:

- Lawn Viet Nam Civil Aviation

- Viet Nam Maritime Code

27. Sector: All Sectors

Sub-sector: -

Level of Govemment: All levels

Obligations Concerned: National Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description: Viet Nam reserves the right to adopt or maintain any measure relating to cultural heritage, belief and religion.

Existing Measure:

- Law on Cultural Heritage

- Law on Belief and Religion

28. Sector : Mining and Quarrying

Sub-sector : Non-metallic minerals and minerals as common construction materials

Level of Government : All levels

Obligations Concerned : National Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description : Viet Nam reserves the right to adopt any measure relating to the above sub-sector, except processing of non-metallic minerals (5), and minerals as common construction material.

Existing Measure : Law on Mineral

(5) For greater certainty, non-metallic minerals and minerals as common construction material shall be defined as in Viet Nam's law and regulations. Non-metallic minerals do not include water, hot water mineral and mineral water.

29. Sector: -

Sub-sector: Publishing, Printing, Press, News-gathering Agencies, Mass Media, Radio and Television Broadcasting, in any form

Level of Government: All levels

Obligations Concerned: National Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description: Viet Nam reserves the right to adopt or maintain any measure relating to the above sub-sectors.

Existing Measure:

Decree No. 31/2021/ND-CP dated 26/03/2021

30. Sector: All Sectors

Sub-sector: -

Level of Govemment: All levels

Obligations Concerned: Prohibition of Performance Requirements

Description: Viet Nam reserves the right to adopt any measure relating to requirements on transfer of technology.

Existing Measure

31. Sector: All Sectors

Sub-sector: -

Level of Govemment: All levels

Obligations Concerned: Prohibition of Performance Requirements

Description: Royalty

Viet Nam reserves the right to adopt or maintain any measure with respect to requirements on royalty relating to health, taxation, national defence and security, public interest.

Viet Nam reserves the right to adopt or maintain any measure with respect to requirements on royalty when Viet Nam holds shares, interest or benefits in a person who is a party to the license contract, under which the royalty is related.

Viet Nam reserves the right to adopt or maintain any measure with respect to requirements on royalty under a license contract, between or among related parties (6).

(6) Related parties shall be as defined under the laws and regulations of Viet Nam.

Existing Measure

32. Sector : All Sectors

Sub-sector: -

Level of Government : All levels

Obligations Concerned : National Treatment. Senior Management and Board of Directors

Description : Viet Nam reserves the rights to adopt or maintain any measure in relation to the employment of expatriates. Restrictions (7) may be imposed on the number or ratio, minimum wages, duration and type of expatriates employed.

Existing Measure :

- Labour Code

- Law on Enterprises

(7) For illustrative purpose, the restriction may include but not limited to: - In the case of managers, executives and specialists, at least 20 per cent of the total number of them shall be Vietnamese nationals. However, a minimum of three non-Vietnamese managers, executives and specialists shall be permitted per enterprise; - The legal representative of an enterprise shall reside permanently in Viet Nam.

33. Sector: All Sectors

Sub-sector: -

Level of Govemment: All levels

Obligations Concerned: National Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description: Viet Nam reserves the right to adopt or maintain any measure relating to investment in all services sectors and sub-sectors.

Existing Measure: -

34. Sector: -

Sub-sector : Manufacture of spacecraft or parts thereof

Level of Government : All levels

Obligations Concerned: National Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description : Viet Nam reserves the right to adopt or maintain any measure relating to investment in the above- mentioned sub-sectors.

Existing Measure: -

35. Sector: -

Sub-sector: Space transport of freights or passengers

Level of Govemment: All levels

Obligations Concerned: National Treatment. Senior Management and Board of Directors. Prohibition of Performance Requirements

Description: Viet Nam reserves the right to adopt or maintain any measure relating to investment in the above-mentioned sub-sectors.

Existing Measure: -

ANNEX 3. SCHEDULE OF RESERVATIONS AND NON-CONFORMING MEASURES FOR INVESTMENT AND SERVICES. AUSTRALIA

LIST A. EXPLANATORY NOTES

1. This List A sets out, pursuant to Article 12 (Schedules of Non-Conforming Measures) of Chapter 8 (Trade in Services) and Article 13 (Reservations and Non- Conforming Measures) of Chapter 11 (Investment), Australia's existing measures that are not subject to some or all of the obligations imposed by:

(a) Article 4 (National Treatment) of Chapter 8 (Trade in Services) or Article 3 (National Treatment) of Chapter 11

(Investment);

(b) Article 5 (Market Access) of Chapter 8 (Trade in Services);

(c) Article 9 (Most-Favoured-Nation Treatment) of Chapter 8 (Trade in Services) or Article 4 (Most-Favoured-Nation Treatment) of Chapter 11 (Investment);

(d) Article 10 (Local Presence) of Chapter 8 (Trade in Services);

(e) Article 5 (Senior Management and Board of Directors) of Chapter 11 (Investment); or

(f) Article 6 (Prohibition of Performance Requirements) of Chapter 11 (Investment).

2. Each entry in this List A sets out the following elements:

(a) Sector refers to the sector for which the entry is made;

(b) Subsector where referenced, refers to the specific subsector for which the entry is made;

(c) Level of Government indicates the level of government maintaining the listed measures;

(d) Obligations Concerned specifies the obligations referred to in Paragraph 1 that, pursuant to Article 12 (Schedules of Non-Conforming Measures) of Chapter 8 (Trade in Services) and Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), do not apply to the listed measures;

(e) Description sets out the non-conforming measure for which the entry is made; and

(f) Source of Measure means the laws, regulations or other measures that are the source of the non-conforming measure for which the entry is made. A measure cited in the Source of Measure element:

(i) means the measure as amended, continued or renewed as of the date of entry into force of the Second Protocol, and

(ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure.

3. In accordance with Article 12 (Schedules of Non-Conforming Measures) of Chapter 8 (Trade in Services) and Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), the Articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the non-conforming measure identified in the Description element of that entry.

4. A measure that is reserved against Article 10 (Local Presence) of Chapter 8 (Trade in Services) need not be reserved against Article 4 (National Treatment) of Chapter 8 (Trade in Services).

5. For greater certainty, the Description element of each of the entries in this List A is to be interpreted in accordance with the relevant cited sources of the non- conforming measures.

6. The Schedules of other Parties shall not be used to interpret Australia's commitments or obligations under Chapter 8 (Trade in Services) or Chapter 11 (Investment).

7. Commitments on measures with respect to or relating to trade in financial services are undertaken subject to the limitations and conditions set forth in Chapter 8 (Trade in Services), Annex 8A (Financial Services), Chapter 11 (Investment), these Explanatory Notes and this List A.

8. Without prejudice to other means of prudential regulation, Australia reserves the right to require licensing or registration of financial service suppliers and of financial instruments.

1. Sector : All Sectors

Subsector: -

Level of Government : Central

Obligations Concerned : National Treatment (Trade in Services and Investment) Market Access Most-Favoured-Nation Treatment (Trade in Services and Investment) Senior Management and Boards of Directors

Description : Trade in Services and Investment

1. The following investments (1) (2) are subject to approval by the Australian Government and may also require notification

(3) to the Australian Government:

(a) a proposed investment by a foreign person (4) in an entity or Australian business valued above AUD310 million (6);

(b) a proposed direct investment by a foreign government investor (5) of any interest regardless of value;

(c) a proposed investment by a foreign person of five per cent or more in the media sector, regardless of the value of the investment;

(d) a proposed acquisition by a foreign person of an interest in developed commercial landâ where the value of the interest is more than AUD310 million (8), unless the land meets the conditions for the lower developed commercial land threshold of AUD67 million. (9) (10)

Investments may be refused, subject to orders, or approved, subject to conditions. Foreign persons that do not comply with the Foreign Investment Framework may be subject to civil and criminal penalties.

For greater certainty, where an investment could qualify for the application of one or more of the above screening thresholds, approval and/or notification requirements apply from the lowest applicable threshold.

Separate or additional requirements may apply to measures subject to other entries in this List A and to sectors, subsectors or activities subject to List B.

2. The acquisition of a stake in an existing (11) financial sector company by a foreign investor, or entry into an arrangement by a foreign investor, that would lead to an unacceptable shareholding situation or to practical control (12) of an existing financial sector company, may be refused or be subject to certain conditions (13).

Source of Measure: Australia's Foreign Investment Framework, which comprises Australia's Foreign Investment Policy; Foreign Acquisitions and Takeovers Act 1975 (Cth); Foreign Acquisitions and Takeovers Regulation 2015 (Cth); Foreign Acquisitions and Takeovers Fees Imposition Act 2015 (Cth); Foreign Acquisitions and Takeovers Fees Imposition Regulations 2020 (Cth); Financial Sector (Shareholdings) Act 1998 (Cth); and Ministerial Statements.

(1) The terms in this entry shall be interpreted in accordance with Australia's Foreign Investment Framework as at the date of entry into force of the Second Protocol.

(2) "Investment" means activities covered by Part II of Foreign Acquisitions and Takeovers Act 1975 (Cth) or, where applicable, Ministerial Statements on foreign investment policy. Funding arrangements that include debt instruments having quasi-equity characteristics will be treated as direct foreign investment.

(3) The Foreign Acquisitions and Takeovers Fees imposition Act 2015 (Cth) and the Foreign Acquisitions and Takeovers Fees Imposition Regulations 2020 (Cth) set the fees for foreign investment applications and notices. Fees are indexed annually on 1 July.

(4) For the purposes of this entry, the term âforeign personâ has the meaning set out in the Foreign Acquisitions and Takeovers Act 1975 (Cth) and the Foreign Acquisitions and Takeovers Regulation 2015 (Cth).

(5) This is the figure as at 1 January 2023. To be indexed annually on 1 January.

(6) The term "foreign government investor" has the meaning set out in the Foreign Acquisitions and Takeovers Act 1975 (Cth) and Foreign Acquisitions and Takeovers Regulation 2015 (Cth).

(7) The term "developed commercial land"means commercial land that is not vacant within the meaning of the Foreign Acquisitions and Takeovers Act 1975 (Cth) and Foreign Acquisitions and Takeovers Regulation 2015 (Cth).

(8) This is the figure as at 1 January 2023. To be indexed annually on 1 January.

(9) This is the figure as at 1 January 2023. To be indexed annually on 1 January.

(10) The conditions for the lower threshold are those set out in the Foreign Acquisitions and Takeovers Act 1975 (Cth) and Foreign Acquisitions and Takeovers Regulation 2015 (Cth).

(11) For the purposes of this entry, "existing" means in existence at the time the investment is proposed or made.

(12) "Unacceptable shareholding situation" and "practical control" have the meaning set out in the Financial Sector (Shareholdings) Act 1998 (Cth).

(13) Ministerial statements on foreign investment policy including the Treasurer's Press Release No. 28 of 9 April 1997.

2. Sector: All Sectors

Subsector: -

Level of Government: Regional

Obligations Concerned: National Treatment (Trade in Services and Investment). Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence. Prohibition of Performance Requirements. Senior Management and Boards of Directors

Description: Trade in Services and Investment

All. existing non-conforming measures at the regional level of government.

Source of Measure

All existing non-conforming measures at the regional level of government.

3. Sector: All Sectors

Subsector: -

Level of Government: Central

Obligations Concerned: National Treatment (Trade in Services and Investment). Senior Management and Boards of Directors

Description: Trade in Services and Investment

At least one director of a private company must be ordinarily resident in Australia.

At least two directors of a public company must be ordinarily resident in Australia.

At least one secretary of a private company (if such a private company appoints one or more secretaries) must be ordinarily resident in Australia.

At least one secretary of a public company must be ordinarily resident in Australia.

Source of Measure:

Corporations Act 2001 (Cth)

Corporations Regulations 2007 (Cth)

4. Sector: Professional Services

Subsector: -

Level of Government: Central

Obligations Concerned: National Treatment (Trade in Services). Most-Favoured-Nation Treatment (Trade in Services)

Description: Trade in Services

In order to register to practise in Australia, patent attorneys must have been employed for at least two continuous years, or a total of two years within five continuous years, in Australia or New Zealand, or in both countries, in a position or positions that provided the applicant with required experience in Australia's and New Zealand's patent attorney regime.

Source of Measure:

Patents Act 1990 (Cth)

Patent Regulations 1997 (Cth)

5. Sector: Professional Services

Subsector: -

Level of Government: Central

Obligations Concerned: National Treatment (Trade in Services). Most-Favoured-Nation Treatment (Trade in Services)

Description: Trade in Services

To practise as a migration agent in Australia a person must be an Australian citizen or permanent resident or a citizen of New Zealand with a special category visa.

Source of Measure:

Migration Act 1958 (Cth)

6. Sector: Professional Services

Subsector:

Level of Government: Central

Obligations Concerned: Local Presence

Description: Trade in Services

A person who is not ordinarily resident in Australia may be refused registration as a company auditor or liquidator.

At least one partner in a firm providing auditing services must be a registered company auditor who is ordinarily resident in Australia.

Source of Measure: Corporations Act 2007 (Cth)

7. Sector: Professional Services

Subsector: -

Level of Government: Central

Obligations Concerned: Local Presence

Description: Trade in Services

To act as a customs broker in Australia, service suppliers must supply the service in and from Australia.

Source of Measure: Customs Act 1907 (Cth)

8. Sector: Fishing and services incidental to fishing

Subsector: -

Level of Government: Central

Obligations Concerned: National Treatment (Trade in Services and Investment)

Description: Trade in Services and Investment

Foreign fishing vessels (14) seeking to undertake fishing activity, including any activity in support of or in preparation for any fishing activity or the processing, carrying or transhipment of fish, in the Australian Fishing Zone must be authorised.

Where foreign fishing vessels are authorised they may be subject to a levy (15)

Source of Measure:

Fisheries Management Act 19917 (Cth)

Foreign Fishing Licences Levy Act 1991 (Cth)

(14) For the purposes of this entry, a "foreign fishing vessel" is one that does not meet the definition of an Australian boat under the Fisheries Management Act 1997 (Cth), that is, an Australian-flagged boat (not owned by a foreign resident) or a boat owned by an Australian resident or corporation and built, and whose operations are based, in Australia.

(15) The levy charged will be in accordance with the Foreign Fishing Licences Levy Act 1991 (Cth) or any amendments thereto.

9. Sector: Communication Services

Subsector:

Level of Government: Central

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Senior Management and Boards of Directors

Description: Trade in Services and Investment

Aggregate foreign equity is restricted to no more than 35 per cent of shares of Telstra. Individual or associated group foreign investment is restricted to no more than five per cent of shares.

The Chairperson and a majority of directors of Telstra must be Australian citizens and Telstra is required to maintain its head office, main base of operations and place of incorporation in Australia.

Source of Measure:

Telstra Corporation Act 1991 (Cth)

10. Sector : Health Services

Subsector: -

Level of Government : Central

Obligations Concerned: National Treatment (Trade in Services and Investment). Senior Management and Boards of Directors

Description : Trade in Services and Investment

The votes attached to significant foreign shareholdings (16) may not be counted in respect of the appointment, replacement or removal of more than one-third of the directors of Commonwealth Serum Laboratories (CSL) who hold office at a particular time.

The head office, principal facilities used by CSL and any CSL subsidiaries used to produce products derived from human plasma collected from blood or plasma donated by individuals in Australia must remain in Australia.

Two-thirds of the directors of the board of CSL and the Chairperson of any meeting must be Australian citizens. CSL must not seek incorporation outside of Australia.

Source of Measure : Commonwealth Serum Laboratories Act 1967 (Cth)

(16) For the purposes of this entry, "significant foreign shareholding" means a holding of voting shares in CSL in which a foreign person has a relevant interest, if the foreign person has relevant interests in at least five per cent of the voting shares in CSL.

11. Sector : Transport Services

Subsector: -

Level of Government : Central

Obligations Concerned : National Treatment (Trade in Services and Investment). Local Presence

Description : Trade in Services and Investment

Every ocean carrier who provides international liner cargo shipping services to or from Australia must, at all times, be represented by a natural person who is resident in Australia.

Only a person (17) affected by a registered conference agreement or by a registered non- conference ocean carrier with substantial market power may apply to the Australian Competition and Consumer Commission (ACCC) to examine whether conference members, and non-conference operators with substantial market power, are hindering other shipping operators from engaging efficiently in the provision of outward liner cargo services to an extent that is reasonable. For greater certainty, matters which are relevant to the determination of "reasonable" include Australia's national interest and the interests of Australian shippers.

Source of Measure : Competition and Consumer Act 2010 (Cth)

(17) Section 10.48 and 10.58 of Part X of the Competition and Consumer Act 2010 (Cth) list the categories of persons to whom this entry will apply.

12. Sector: Transport Services

Subsector: -

Level of Government: Central

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Senior Management and Boards of Directors

Description: Trade in Services and Investment

Total foreign ownership of individual Australian international airlines (other than Qantas) is restricted to a maximum of 49 per cent. Furthermore, it is required that:

- at least two-thirds of the board members must be Australian citizens;

- the Chairperson of the board must be an Australian citizen;

- the airline's head office must be in Australia; and

- the airline's operational base must be in Australia.

Source of Measure:

Air Navigation Act 1920 (Cth)

Ministerial Statements

13. Sector: Transport Services

Subsector: -

Level of Government: Central

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Senior Management and Boards of Directors

Description: Trade in Services and Investment

Total foreign ownership of Qantas Airways Ltd is restricted to a maximum of 49 per cent. In addition:

- the head office of Qantas must always be located in Australia;

- the majority of Qantas' operational facilities must be located in Australia;

- at all times, at least two-thirds of the directors of Qantas must be Australian citizens;

- at a meeting of the board of directors of Qantas, the director presiding at the meeting (however described) must be an Australian citizen; and

-Qantas is prohibited from taking any action to become incorporated outside Australia.

Source of Measure: Qantas Sale Act 1992 (Cth)

14. Sector: Transport Services

Subsector: -

Level of Government: Central

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access

Description: Trade in Services and Investment

The following functions and services are reserved to provision by the statutory authority, Airservices Australia: airspace management, air traffic flow information, air traffic control, traffic and flight information, navigation services, aeronautical information, and aerodrome rescue and fire- fighting services.

Source of Measure:

Ait Services Act 1995 (Cth) Air Services Regulations 1995 (Cth)

Public Governance, Performance and Accountability Act 2013 (Cth)

15. Sector : Communication Services

Subsector: -

Level of Government : Central

Obligations Concerned : National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment)

Description : Trade in Services and Investment

Australia Post, a wholly-owned government entity, has the exclusive right to issue postage stamps and carry letters within Australia, whether the letters originated within or outside Australia. This includes:

- the collection within Australia of letters for delivery within Australia; and

- the delivery of letters within Australia. This entry does not include:

- the carriage of a letter weighing more than 250 grams;

- the carriage of a letter within Australia for a charge or fee that is at least four times the rate of postage that is current at the time for the carriage within Australia of a standard postal article by ordinary post (18); and

- other exceptions to the reserved services set out in section 30 of the Australian Postal Corporation Act 1989 (Cth).

Australia Post also has certain rights, powers and immunities ascribed only to it, such as the use and access to public land for the provision of postal and courier services.

Source of Measure : Australian Postal Corporation Act 1989 (Cth)

(18) As specified in accordance with the Australian Postal Corporation Act 1989 (Cth) and its subordinate legislation and regulations or any amendments thereto.

16. Sector : All Sectors

Subsector: -

Level of Government : Central. Regional

Obligations Concerned : Prohibition of Performance Requirements (19)

Description : Investment

A design that has been registered or disclosed in a filed design application may be used by an Australian government (or a person authorised by an Australian government) and, if it is used, any agreement or licence fixing the terms on which a person other than that government may use the design may be inoperative with respect to the government use unless the agreement or licence has been approved by that government.

Source of Measure : Designs Act 2003 (Cth)

(19) Applies only in relation to Article 6.1(h) (Prohibition of Performance Requirements) of Chapter 11 (Investment).

17. Sector: Financial Services

Subsector: -

Level of Government: Central

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access

Description: Trade in Services and Investment

A foreign bank located overseas is able to offer its services to Australian enterprises, but is not allowed to raise deposit funds in Australia or undertake business within Australia unless itis an authorised bank (or establishes a money market corporation, subsidiary, etc.).

Foreign banks located overseas may only raise funds in Australia through the issue of debt securities provided those securities are offered or traded in parcels of not less than AUD500,000 and the securities and any associated information memoranda clearly state the issuing bank is not authorised under the Banking Act 7959 (Cth) in Australia.

To undertake banking business in Australia an entity must be a body corporate and authorised as an authorised deposit-taking institution (ADI).

Foreign deposit-taking institutions (including foreign banks) may only operate a banking business in Australia through locally incorporated deposit-taking subsidiaries or authorised branches (foreign ADIs), or through both structures.

A branch of a foreign bank that is authorised as a deposit-taking institution in Australia (foreign ADI) is not permitted to accept initial deposits (and other funds) from individuals and non-corporate institutions of less than AUD250,000.

A representative office of a foreign bank is not permitted to undertake any banking business, including advertising for deposits, in Australia. Such a representative office is only permitted to act as a liaison point.

Source of Measure:

Banking Act 1959 (Cth)

Payment Systems (Regulation) Act 1998 (Cth)

18. Sector: Financial Services

Subsector: -

Level of Government: Central

Obligations Concerned: National Treatment (Trade in Services and Investment)

Description: Trade in Services and Investment

Liabilities of the Commonwealth Bank, previously Commonwealth Government-owned, are covered by transitional guarantee arrangements.

Source of Measure: Commonwealth Banks Act 1959 (Cth)

19. Sector: Financial Services

Subsector: Life insurance services

Level of Government: Central

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment)

Description: Trade in Services and Investment

Approval of non-resident life insurers is restricted to subsidiaries incorporated under Australian law.

Source of Measure: Life Insurance Act 1995 (Cth)

LIST B. EXPLANATORY NOTES

1. This List B sets out, pursuant to Article 12 (Schedules of Non-Conforming Measures) of Chapter 8 (Trade in Services) and Article 13 (Reservations and Non- Conforming Measures) of Chapter 11 (Investment), the specific sectors, subsectors or activities for which Australia may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

(a) Article 4 (National Treatment) of Chapter 8 (Trade in Services) or Article 3 (National Treatment) of Chapter 11 (Investment);

(b) Article 5 (Market Access) of Chapter 8 (Trade in Services);

(c) Article 9 (Most-Favoured-Nation Treatment) of Chapter 8 (Trade in Services) or Article 4 (Most-Favoured-Nation Treatment) of Chapter 11 (Investment);

(d) Article 10 (Local Presence) of Chapter 8 (Trade in Services);

(e) Article 5 (Senior Management and Board of Directors) of Chapter 11 (Investment); or

(f) Article 6 (Prohibition of Performance Requirements) of Chapter 11 (Investment).

2. Each entry in this List B sets out the following elements:

(a) Sector refers to the sector for which the entry is made;

(b) Subsector where referenced, refers to the specific subsector for which the entry is made;

(c) Obligations Concemed specifies the obligations referred to in Paragraph 1 that, pursuant to Article 12 (Schedules of Non-Conforming Measures) of Chapter 8 (Trade in Services) and Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), do not apply to the sectors, subsectors or activities listed in the entry;

(d) Description sets out the scope of the sector, subsector or activities covered by the entry; and

(e) Existing Measures where specified, identifies, for transparency purposes, a non-exhaustive list of existing measures that apply to the sectors, subsectors or activities covered by the entry.

3. In accordance with Article 12 (Schedules of Non-Conforming Measures) of Chapter 8 (Trade in Services) and Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), the Articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the sectors, subsectors and activities identified in the Description element of that entry.

4. For greater certainty, where Australia has more than one entry in this List B that could apply to a measure, each entry is to be read independently, and is without prejudice to the application of any other entry to the measure.

5. The Schedules of other Parties shall not be used to interpret Australiaâs commitments or obligations under Chapter 8 (Trade in Services) or Chapter 11 (Investment).

6. Commitments on measures with respect to or relating to trade in financial services are undertaken subject to the limitations and conditions set forth in Chapter 8 (Trade in Services), Annex 8A (Financial Services), Chapter 11 (Investment), these Explanatory Notes and this List B.

7. Without prejudice to other means of prudential regulation, Australia reserves the right to require licensing or registration of financial service suppliers and of financial instruments.

8. For the avoidance of doubt, in relation to education services, nothing in Chapter 8 (Trade in Services) or Chapter 11 (Investment) shall interfere with:

(a) the ability of individual education and training institutions to maintain autonomy in admissions policies (including in relation to considerations of equal opportunity for students and recognition of credits and degrees), in setting tuition rates and in the development of curricula or course content;

(b) non-discriminatory accreditation and quality assurance procedures for education and training institutions and their programmes, including the standards that must be met;

(c) government funding, subsidies or grants, such as land grants, preferential tax treatment and other public benefits, provided to education and training institutions; or

(d) the need for education and training institutions to comply with non-discriminatory requirements related to the establishment and operation of a facility in a particular jurisdiction.

1. Sector: All Sectors

Subsector: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Prohibition of Performance Requirements

Description: Trade in Services and Investment (20)

Australia reserves the right to adopt or maintain any measure with respect to a proposed acquisition by a foreign person (21) of an interest in Australian land (22), other than developed commercial land or land that is used wholly and exclusively for a primary production business.

Existing Measures:

Australia's Foreign Investment Framework, which comprises Australia's Foreign Investment Policy; Foreign Acquisitions and Takeovers Act 1975 (Cth); Foreign Acquisitions and Takeovers Regulation 2015 (Cth); Foreign Acquisitions and Takeovers Fees Imposition Act 2015 (Cth); Foreign Acquisitions and Takeovers Fees Imposition Regulations 2020 (Cth); Financial Sector (Shareholdings) Act 1998 (Cth); and Ministerial Statements.

(20) The terms in this entry shall be interpreted in accordance with Australia's Foreign Investment Framework, as at the date of entry into force of the Second Protocol.

(21) The term "foreign person" has the meaning set out in the Foreign Acquisitions and Takeovers Act 1975 (Cth) and Foreign Acquisitions and Takeovers Regulation 2015 (Cth).

(22) The terms "Australian land" and "interest in Australian land" have the meaning set out in the Foreign Acquisitions and Takeovers Act 1975 (Cth) and Foreign Acquisitions and Takeovers Regulation 2015 (Cth).

2. Sector: All Sectors

Subsector: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Prohibition of Performance Requirements. Senior Management and Boards of Directors

Description: Trade in Services and Investment (23)

Australia reserves the right to adopt or maintain any measure with respect to the proposed acquisition by a foreign person (24) of an interest in agricultural land (25), where the cumulative value of agricultural land owned by the foreign person alone or together with associates, including the proposed acquisition, is above AUD15 million. Australia reserves the right to adopt or maintain any measure with respect to the proposed acquisition by a foreign person of an interest in an agribusiness (26) where the cumulative value of the interest held by the foreign person in that agribusiness, alone or together with associates, including the proposed acquisition, is above AUD67 million.

Existing Measures:

Australia's Foreign Investment Framework, which comprises Australia's Foreign Investment Policy; Foreign Acquisitions and Takeovers Act 1975 (Cth); Foreign Acquisitions and Takeovers Regulations 2015 (Cth); Foreign Acquisitions and Takeovers Fees Imposition Act 2015 (Cth); Foreign Acquisitions and Takeovers Fees Imposition Regulations 2020 (Cth); Financial Sector (Shareholdings) Act 1998 (Cth); and Ministerial Statements.

(23) The terms in this entry shall be interpreted in accordance with Australia's Foreign Investment Framework, as at the date of entry into force of the Second Protocol.

(24) The term "foreign person" has the meaning set out in the Foreign Acquisitions and Takeovers Act 1975 (Cth) and Foreign Acquisitions and Takeovers Regulation 2015 (Cth).

(25) The term "agricultural land" has the meaning set out in the Foreign Acquisitions and Takeovers Act 1975 (Cth) and Foreign Acquisitions and Takeovers Regulation 2015 (Cth).

(26) The term "agribusiness" has the meaning set out in the Foreign Acquisitions and Takeovers Act 1975 (Cth) and Foreign Acquisitions and Takeovers Regulation 2015 (Cth).

3. Sector: All Sectors

Subsector: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Boards of Directors

Description: Trade in Services and Investment

Australia reserves the right to adopt or maintain any measure that it considers necessary for the protection of its essential security interests.

Existing Measures: -

4. Sector: All Sectors

Subsector: -

Obligations Concerned: Market Access. Most-Favoured-Nation Treatment (Trade in Services)

Description: Trade in Services

Australia reserves the right to adopt or maintain any measure with respect to the supply of a service by the presence of natural persons, subject to the provisions of Chapter 9 (Movement of Natural Persons).

Existing Measures: -

5. Sector: All Sectors

Subsector: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access Local Presence Prohibition of Performance Requirements. Senior Management and Boards of Directors

Description: Trade in Services and Investment

Australia reserves the right to adopt or maintain any measure that accords preferences to any Indigenous person or organisation or providing for the favourable treatment of any Indigenous person or organisation.

For the purpose of this reservation, an Indigenous person means a person of the Aboriginal and Torres Strait Islander peoples.

Existing Measures:

Legislation and ministerial statements at all levels of government including Australia's foreign investment framework, and the Native Title Act 1993 (Cth).

6. Sector: All Sectors

Subsector: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Prohibition of Performance Requirements. Senior Management and Boards of Directors

Description: Trade in Services and Investment

Australia reserves the right to adopt or maintain any measure with respect to:

(a) the devolution to the private sector of services provided in the exercise of governmental authority at the time of entry into force of the Second Protocol; and

(b) the privatisation of government owned entities or assets.

Existing Measures: -

7. Sector: All Sectors

Subsector: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Boards of Directors

Description: Trade in Services and Investment

Australia reserves the right to adopt or maintain any measure (27) with respect to the provision of law enforcement and correctional services, and the following services (28) to the extent that they are social services established or maintained for a public purpose:

- income security or insurance;

- social security or insurance;

- social welfare;

- public education;

- public training;

- health (29);

- child care;

- public utilities;

- public transport; and

- public housing.

Existing Measures: -

(27) For greater certainty, measures adopted or maintained with respect to the provision of services covered by this entry include measures for the protection of personal information relating to health and children.

(28) For the avoidance of doubt, this includes any measure with respect to: the collection of blood and its components, the distribution of blood and blood-related products, including plasma derived products, plasma fractionation services, and the procurement of blood and blood related products and services.

(29) For greater certainty, the subsidies programmes under Australia's Pharmaceutical Benefits Scheme and Medicare Benefits Scheme, or successor programmes, are not subject to Chapter 8 (Trade in Services) consistent with Article 2 (Scope) or Chapter 11 (Investment) consistent with Article 2 (Scope).

8. Sector: Communications Services; Recreational, Cultural and Sporting Services

Subsector: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Boards of Directors

Description: Trade in Services and Investment

Australia reserves the right to adopt or maintain any measure with respect to:

(a) the creative arts (30), cultural heritage (31) and other cultural industries, including audio- visual services, entertainment services and libraries, archives, museums and other cultural services; and

(b) broadcasting and audio-visual services, including measures with respect to planning, licensing and spectrum management, and including:

(i) services offered in Australia; and

(ii) international services originating from Australia.

Existing Measures:

Broadcasting Services Act 1992 (Cth) Radiocommunications Act 1992 (Cth)

Income Tax Assessment Act 1936 (Cth)

Income Tax Assessment Act 1997 (Cth) Screen Australia Act 2008 (Cth) Australia Council Act 2013 (Cth)

Broadcasting Services (Australian Content and Childrenâs Television) Standards 2020

Broadcasting Services (Australian Content in Advertising) Standard 2018

Broadcasting Services (Events) Notice (No.1) 2010

ABC Codes of Practice

SBS Codes of Practice

Commercial Radio Codes of Practice and Guidelines

Community Radio Broadcasting Codes of Practice

Subscription Narrowcast Radio Codes of Practice

Open Narrowcasting Codes of Practice and the associated Narrowcasting for Radio Guidelines

International Co-Production Programs

(30) "Creative arts" include: the performing arts - including theatre, dance and music - visual aris and craft, literature, film, television, video, radio, creative on-line content, indigenous traditional practice and contemporary cultural expression, and digital interactive media and hybrid arts work which uses new technologies to transcend discrete art form divisions.

(31) "Cultural heritage" includes: ethnological, archaeological, historical, literary, artistic, scientific or technological moveable or built heritage, including the collections which are documented, preserved and exhibited by museums, galleries, libraries, archives and other heritage collecting institutions.

9. Sector: Distribution Services

Subsector: -

Obligations Concerned: Market Access

Description: Trade in Services

Australia reserves the right to adopt or maintain any measure with respect to wholesale and retail trade services of tobacco products, alcoholic beverages, or firearms.

Existing Measures: -

10. Sector: Education Sector

Subsector: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Boards of Directors

Description: Trade in Services and Investment

Australia reserves the right to adopt or maintain any measure with respect to primary education.

Existing Measures: -

11. Sector: Gambling and Betting

Subsector: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access Local Presence Prohibition of Performance Requirements. Senior Management and Boards of Directors

Description: Trade in Services and Investment

Australia reserves the right to adopt or maintain any measure with respect to gambling and betting.

Existing Measures:

Legislation and Ministerial Statements, including the Interactive Gambling Act 2007 (Cth).

12. Sector: Maritime Transport

Subsector: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access Local Presence Prohibition of Performance Requirements. Senior Management and Boards of Directors

Description: Trade in Services and Investment

Australia reserves the right to adopt or maintain any measure with respect to maritime cabotage services and offshore transport services. (32)

Australia reserves the right to adopt or maintain any measure with respect to the registration of vessels in Australia.

Existing Measures

Customs Act 1907 (Cth) Fair Work Act 2009 (Cth)

Seafarers' Rehabilitation and Compensation Act 1992 (Cth)

Occupational Health and Safety (Maritime Industry) Act 1993 (Cth)

Shipping Registration Act 1987 (Cth) Shipping Registration Regulations 1981 (Cth) Income Tax Assessment Act 1936 (Cth)

Coastal Trading (Revitalising Australian Shipping) Act 2072 (Cth)

Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Act 2012 (Cth)

Shipping Reform (Tax Incentives) Act 2012 (Cth).

(32) For the purposes of this entry, "cabotage" is defined as the transportation of passengers or goods between a port located in Australia and another port located in Australia and traffic originating and terminating in the same port located in Australia. "Offshore transport" refers to shipping services involving the transportation of passengers or goods between a port located in Australia and any location associated with or incidental to the exploration or exploitation of natural resources of the continental shelf of Australia, the seabed of the Australian coastal sea and the subsoil of that seabed.

13. Sector: Transport Services

Subsector: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Senior Management and Boards of Directors

Description: Trade in Services and Investment

Australia reserves the right to adopt or maintain any measure with respect to investment in federal leased airports.

Existing Measures:

Airports Act 1996 (Cth)

Airports (Ownership-interests in Shares) Regulations 1996 (Cth)

Airports Regulations 1997 (Cth)

14. Sector : All Sectors

Subsector: -

Obligations Concerned : Most-Favoured-Nation Treatment (Trade in Services and Investment)

Description : Trade in Services and Investment

Australia reserves the right to adopt or maintain any measure that accords more favourable treatment to any service supplier or investor under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of the Second Protocol. (33) Australia reserves the right to adopt or maintain any measure that accords more favourable treatment to any service supplier or investor taken as part of a process of economic integration or trade liberalisation between the parties to the Australia New Zealand Closer Economic Relations Trade Agreement done at Canberra on 28 March 1983 (ANZCERTA). (34)

Australia reserves the right to adopt or maintain any measure that accords more favourable treatment to any service supplier or investor of a Pacific Islands Forum member state under any international agreement in force or signed after the date of entry into force of the Second Protocol.

Australia reserves the right to adopt or maintain any measure that accords more favourable treatment to any service supplier or investor under any bilateral or multilateral international agreement in force or signed after the date of entry into force of the Second Protocol involving:

(a) aviation;

(b) fisheries; or

(c) maritine matters, including salvage.

Existing Measures: -

(33) For greater certainty, this right extends to any differential treatment accorded pursuant to a subsequent review or amendment of the relevant bilateral or multilateral international agreement.

(34) For the avoidance of doubt, this includes measures adopted or maintained under any existing or future protocol to that agreement.

15. Sector: Agriculture

Subsector:

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Boards of Directors

Description: Trade in Services and Investment

Australia reserves the right to adopt or maintain any measure with respect to marketing boards or similar arrangements.

Existing Measures: -

16. Sector: All Sectors

Subsector: -

Obligations Concerned: Market Access

Description: Trade in Services

1. Australia reserves the right to adopt or maintain any measure at the regional level of government, except:

(a) for the sectors and subsectors, and subject to the limitations and conditions, listed in Appendix A to this List B; and

(b) as provided in Paragraph 2 of this entry.

2. With respect to financial services, Australia reserves the right to adopt or maintain any measure at the regional level of government that is not inconsistent with Australia's revised Services Offer of 31 May 2005 in the World Trade Organization Doha Development Agenda negotiations (WTO Document TN/S/O/AUS/Rev.1).

Existing Measures: -

17. Sector : Services Related to Air Transportation

Subsector: -

Obligations Concerned : National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Boards of Directors

Description : Trade in Services and Investment

Australia reserves the right to adopt or maintain any measure with respect to the services listed in Article 2.3(e)(iv) to (vi) (Scope) of Chapter 8 (Trade in Services), except for:

(a) specialty air services, meaning any specialised commercial operation using an aircraft whose primary purpose is not the transportation of goods or passengers, such as aerial fire-fighting, flight training, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services;

(b) ground handling services (35), meaning the supply at an airport, on a fee or contract basis, of the following services: airline representation, administration and supervision; passenger handling; baggage handling; ramp services; catering, except the preparation of the food; air cargo and mail handling; fuelling of an aircraft; aircraft servicing and cleaning; surface transport; and flight operations, crew administration and flight planning; or

(c) airport operation services, meaning the supply of air terminal, airfield and other airport infrastructure operation services on a fee or contract basis. Airport operation services do not include air navigation services.

Existing Measures: -

(35) Ground handling services do not include: self-handling; security; line maintenance; aircraft repair and maintenance; or management or operation of essential centralised airport infrastructure, such as de-icing facilities, fuel distribution systems, baggage handling systems and fixed intra-airport transport systems.

18. Sector : Financial Services

Subsector: -

Obligations Concerned : Market Access

Description : Trade in Services

Australia reserves the right to adopt or maintain any measure imposing non-discriminatory limitations on juridical form for juridical persons supplying financial services and constituted under the laws of Australia. For example, partnerships and sole proprietorships are generally not acceptable juridical forms for authorised depository institutions in Australia. (36)

Existing Measures: -

(36) This entry is not itself intended to affect, or otherwise limit, a choice by a financial service supplier of another Party between branches or subsidiaries.

19. Sector: Financial Services

Subsector: Obligations Concerned. National Treatment (Trade in Services and Investment)

Description: Trade in Services and Investment

Australia reserves the right to adopt or maintain any measure with respect to the guarantee by government of government-owned entities whose operations include the provision of financial services, including guarantees related to the privatisation of such entities.

Existing Measures: -

20. Sector: Financial Services

Subsector: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment)

Description: Trade in Services and Investment

Australia reserves the right to adopt or maintain any measure regarding solicitation in its territory.

Existing Measures: -

21. Sector: Financial Services

Subsector: Banking and other financial services (excluding insurance and insurance-related services)

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Senior Management and Boards of Directors

Description: Trade in Services and Investment

Except as provided in this entry, Australia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(i), (t)(ii) and (t)(iv) (Definitions) of Chapter 8 (Trade in Services) for banking and other financial services.

Subject to any limitations set out elsewhere in Australiaâs schedule to Part A or Part B, Australia shall permit a financial service supplier of another Party to supply, via cross-border supply as defined in Article 1(t)(i) (Definitions) and under terms and conditions that accord national treatment, the following services: provision and transfer of financial information and financial data processing as referred to in Article 2(b)(xv) (Definitions) of Annex 8A (Financial Services) and advisory and other auxiliary services, excluding intermediation, relating to banking and other financial services as referred to in Article 2(b)(xvi) (Definitions) of Annex 8A (Financial Services).

In relation to the following services Australia shall ensure a financial service supplier of another Party organised in the territory of that Party, upon obtaining an Australian financial services licence and any other necessary authorisations, or exemptions therefrom, in accordance with prescribed Australian laws and regulations, may undertake:

(a) securities related transactions on a wholesale basis between and among financial institutions and other entities;

(b) the following services to a collective investment scheme (37) located in Australia: (38)

i. investment advice; and ii. portfolio management services, excluding:

A. trustee services; and

B. custodial services and execution services that are not related to managing a collective investment scheme.

Australia shall permit its residents to purchase in the territory of any other Party the financial services indicated in Article 2(b)(v) to (xvi) (Definitions) of Annex 8A (Financial Services).

Existing Measures: -

(37) For the purposes of this entry, "collective investment scheme" means a "managed investment scheme" as defined under section 9 of the Corporations Act 2007 (Cth), other than a managed investment scheme operated in contravention of subsection 601ED (5) of the Corporations Act 2007 (Cth), or an entity that: (a) carries on a business of investment in securities, interests in land, or other investments; and (o) in the course of carrying on that business, invests funds subscribed, whether directly or indirectly, after an offer or invitation to the public (within the meaning of section 82 of the Corporations Act 2001 (Cth)) made on terms that the funds subscribed would be invested.

(38) For greater certainty, Australia may require a collective investment scheme or a person of Australia involved in the operation of the scheme located in Australia to retain ultimate responsibility for the management of the collective investment scheme.

22. Sector: Financial Services

Subsector: Insurance and insurance-related services

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Senior Management and Boards of Directors

Description: Trade in Services and Investment

Except as provided in this entry, Australia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(i), (t)(ii) and (t)(iv) (Definitions) of Chapter 8 (Trade in Services) for insurance and insurance-related services.

Australia shall permit a financial service supplier of another Party to supply, via cross-border supply as defined in Article 1(t)(i) (Definitions) of Chapter 8 (Trade in Services) and under terms and conditions that accord national treatment, whether as a principal, through an intermediary or as an intermediary, the following services:

(a) insurance of risks relating to:

(i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods and any liability arising therefrom; and

(ii) goods in international transit;

(b) reinsurance and retrocession and the services auxiliary to insurance as referred to in Article 2(b)(iv) (Definitions) of Annex 8A (Financial Services); and

(c) insurance intermediation, such as brokerage and agency as referred to in Article 2(b)(iii) (Definitions) of Annex 8A (Financial Services).

Australia shall permit its residents to purchase in the territory of another Party the financial services indicated in Subparagraphs (a) to (c) of this entry.

Existing Measures: -

23. Sector: Financial Services

Subsector: -

Obligations Concerned: Prohibition of Performance Requirements

Description: Investment

Australia reserves the right to adopt or maintain any measure with respect to financial services.

Existing Measures: -

APPENDIX A. AUSTRALIA'S MARKET ACCESS COMMITMENTS - REGIONAL (STATE AND TERRITORY) LEVEL

For the purposes of this Appendix:

- the 1), 2) and 3) inscribed in the "Limitations on Market Access" column refers to the modes for the supply of a service as defined in Article 1(t)(i) to (iii) (Definitions) of Chapter 8 (Trade in Services);

- * means unbound due to lack of technical feasibility;

- ** indicates that the service specified constitutes only a part of the total range of activities covered by the Customs Procedure Code (CPC) concordance.

Unless otherwise stated all CPC references correspond to the Provisional Central Product Classification (Statistical Papers Series M No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991).

Modes of Supply: 1) Cross-border Supply 2) Consumption abroad 3) Commercial presence

Sector or Subsector	**Limitations on Market Access**
1. BUSINESS SERVICES	
A. Professional Services	
a) Legal services (39)	
- Legal advisory and representational services in domestic law (host-country law)	(1) None (2) None (3) None
- Legal advisory services in foreign law and international law and (in relation to foreign and international law only) legal arbitration and conciliation/mediation services.	(1) None (2) None (3) Natural persons practising foreign law may only join a local law firm as a consultant and may not enter into partnership with or employ local lawyers in South Australia
b) Accounting, auditing and bookkeeping services (CPC 862); c) Taxation services (CPC 863); d) Architectural services (CPC 8671); e) Engineering services (CPC 8672); f) Integrated engineering services (CPC 8673); g) Urban planning and landscape architectural services (CPC 8674); h) Dental services (CPC 93123); i) Veterinary services (CPC 932)	(1) None (2) None (3) None

(39) For the purposes of this commitment: "legal advisory services" includes provision of advice to and consultation with clients in matters, including transactions, relationships and disputes, involving the application or interpretation of law; participation with or on behalf of clients in negotiations and other dealings with third parties in such matters; and preparation of documents governed in whole or in part by law, and the verification of documents of any kind for purposes of and in accordance with the requirements of law. Does not include advice, consultation and documentation services performed by service suppliers entrusted with public functions, such as notary services, or services provided by patent or trademarks attorneys. "legal representational services" includes preparation of documents intended to be submitted to courts,

administrative agencies, and other duly constituted official tribunals in matters involving the application and interpretation of law; and appearance before courts, administrative agencies, and other duly constituted Official triounals in matters involving the application and interpretation of the specified body of law. (Note: The inclusion of representational services before administrative agencies and other duly constituted official tribunals within the context of legal services does not necessarily mean that a licensed lawyer must supply such services in all cases. The precise scope of services subject to licensing requirements is subject to the discretion of the relevant regulatory authority.) Does not include documentation services performed by service suppliers entrusted with public functions, such as notary services, or services provided by patent or trademarks attorneys. "legal arbitration, conciliation and mediation services" means preparation of documents to be submitted to, preparation for and appearance before, an arbitrator, conciliator or mediator in any dispute involving the application and interpretation of law. Does not include arbitration, conciliation and mediation services in disputes for which the law has no bearing which fall under services incidental to management consulting. As a sub-category, international legal arbitration, conciliation or mediation services refer to the same services when the dispute involves parties from two or more countries. "domestic law (host country law)" means the law of Australia. "foreign law" means the law of the territories of WTO Members and other countries other than the law of Australia. "international law" includes law established by international treaties and conventions, as well as customary law. For the purposes of these definitions: "arbitration" is taken to mean a process in which the parties to a dispute present arguments and evidence to a dispute resolution practitioner (the arbitrator) who makes a determination. "mediation" is taken to mean a process in which the parties to a dispute, with the assistance of a dispute resolution practitioner (the mediator), identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The mediator has no advisory or determinative role in regard to the content of the dispute or the outcome of its resolution, but may advise on or determine the process of mediation whereby resolution is attempted. "conciliation" is taken to mean a process in which the parties to a dispute, with the assistance of a dispute resolution practitioner (the conciliator), identify the issues in dispute, develop options, consider alternatives and endeavour to reach an agreement. The conciliator may have an advisory role on the content of the dispute or the outcome of its resolution, but not a determinative role. The conciliator may advise on or determine the process of conciliation whereby resolution is attempted, and may make suggestions for terms of settlement, give expert advice on likely settlement terms, and may actively encourage the participants to reach an agreement.

B. Computer and Related Services (CPC 84) (40)	(1) None (2) None (3) None
C. Research and Development (R&D) Services	
a) R&D Services on Natural Sciences (CPC 851); b) R&D Services on Social Sciences and Humanities (CPC 852); c) Interdisciplinary R&D Services (CPC 853)	(1) None (2) None (3) None
D. Real Estate Services	
a) Involving own or leased property (CPC 821); b) On a fee or contract basis (CPC 822)	(1) None, except commercial presence required; (2) None, except commercial presence required; (3) None
E. Rental or Leasing Services without Operators	
a) Relating to ships (CPC 83103**) (41) b) Relating to aircraft (CPC 83104) c) Relating to other transport equipment (CPC 83101-2, 83105) d) Relating to other machinery and equipment (CPC 83106-9)	(1) None (2) None (3) None

(40) For greater certainty, Entry 8 of this List applies to measures relating to content for computer and related services (CPC 84).

(41) For greater certainty, this excludes maritime cabotage services and offshore transport services in accordance with Entry 12 of this List.

F. Other Business Services	

a) Advertising services (CPC 87110, 87120**, 87190) (42) b) Market research and public opinion polling services (CPC 864) c) Management consulting services (CPC 865) d) Services related to management consulting (CPC 86601, 86609)* (43) e) Technical testing and analysis services (CPC 8676) f) Services incidental to agriculture, hunting and forestry (CPC 8811**, 8812**, 8814**) (44) g) Services incidental to fishing (CPC 882**)(45) h) Services incidental to mining and site preparation work for mining (CPC 883, 5115) i) Services incidental to manufacturing (CPC 884, 885, except 88442) j) Services incidental to energy distribution (CPC 887**) (46)	(1) None (2) None (3) None
k) Placement and supply services of personnel (CPC 872)	(1) Unbound (2) None (3) None
l) Investigation and security (CPC 873) m) Related scientific and technical consulting services (CPC 8675) n) Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment) (CPC 633, 8861-8866)	(1) None (2) None (3) None
o) Building-cleaning services (CPC 874)	(1) Unbound (2) None (3) None
p) Photographic services (CPC 875) s) Convention services (CPC 87909**) (47) t) Other: - Telephone answering services (CPC 87903) - Duplicating services (CPC 87904) - Translation and interpretation services (CPC 87905) - Mailing list compilation and mailing services (CPC 87906) - Interior design (CPC 87907) (48)	(1) None (2) None (3) None

(42) Covers services by advertising agencies in creating and placing advertising in periodicals, newspapers, radio and television for clients; outdoor advertising; media representation i.e. sale of time and space for various media; distribution and delivery of advertising material or samples. For greater certainty, this does not include production, broadcast or screening of advertisements for radio, television or cinema in accordance with Entry 8 of this List.

(43) Excludes arbitration and conciliation services.

(44) Provision of advice and guidance relating to crop and livestock management on consultancy basis. Includes specialised consultancy services only, related to forestry activities, timber evaluation, forest management or planning. Does not include logging.

(45) Consists of specialised consultancy services only, related to marine or freshwater fisheries, fish hatchery services. Does not include fishing.

(46) Covers consultancy services related to the transmission and distribution on a fee or contract basis of electricity, gaseous fuels and steam and hot water to household, industrial, commercial and other users.

(47) Activities of establishments engaged in provision of planning, organising, managing and marketing services for conventions and similar events (including catering and beverage services).

(48) Specialised consultancy services related to the post-construction design and fitting out of interior living and working spaces. Includes purchase of necessary goods.

2. COMMUNICATION SERVICES	
C. Telecommunications Services. Covers the following subsectors from the Services Sectoral Classification List used by the WTO Secretariat in MTN.GNS/W/120 dated 10 July 1991 and related CPC codes (7521, 7522, 7523, 7529**):	
a) Voice telephone services b) Packet-switched data transmission services c) Circuit-switched data transmission services d) Telex services e) Telegraph services f) Facsimile services g) Private leased circuit services 0) Other: - Digital Cellular services - Paging services - Personal Communications Services - Trunked Radio System Services - Mobile Data Services	(1) None (2) None (3) None
h) Electronic mail (CPC 7523**) i) Voice mail (CPC 7523**) j) On-line information and database retrieval (CPC 7523**) k) Electronic data interchange (EDI) (CPC 7523**) l) Enhanced/value-added facsimile services, including store and retrieve (CPC 7523**) m) Code and protocol conversion (CPC 7523**)	(1) None (2) None (3) None
D. Audiovisual services	
e) Sound recording services (49) f) Other - audiovisual post-production services (50)	(1) None except unbound in relation to measures relating to Australian content (2) Unbound (3) Unbound

(49) Covers sound recording services, live recording services and sound recording originals. Does not include reproduction of audio recordings, or providing a sound recording studio or sound recording equipment.

(50) Covers audiovisual editing services, transfers and duplication of masters services, colour correction and digital restoration services, visual effects services, animation services, captioning, titling and subtitling services, sound editing and design services, and other audiovisual post-production services such as format conversion and compression services.

CONSTRUCTION AND RELATED ENGINEERING SERVICES	
A. General construction work for buildings (CPC 512) B. General construction work for civil engineering (CPC 513) C. Installation and assembly work (CPC 514, 516) D. Building completion and finishing work (CPC 517) E. Other: - Pre-erection work at construction sites (CPC 511 excluding site preparation for mining - CPC 5115) - Special trade construction work (CPC 515) - Renting services related to equipment for construction or demolition of buildings or civil engineering works, with operator (CPC 518)	(1) Unbound* (2) None (3) None
4. DISTRIBUTION SERVICES	
A. Commission agents' services (CPC 62113-62118)(51) B. Wholesale trade services (CPC 6223- 6228) (52)	(1) None (2) None (3) None
	(1) Unbound,

C. Retailing services (CPC 631, 63212, 6322-5, 6329, 61112, 6113, 6121) (53)	except for mail order (2) None (3) None
D. Franchising (CPC 8929)	D. Franchising (CPC 8929)
5. EDUCATIONAL SERVICES	
B. Secondary education services (CPC 922**) (54) C. Higher education services (CPC 923**) (55) E. Other education services (CPC 929**)(56)	(1) None (2) None (3) None

(51) For greater certainty, this excludes tobacco and alcoholic beverages, and excludes firearms in accordance with Entry 9 of this List.

(52) For greater certainty, this excludes wholesale trade services of unmanufactured tobacco, tobacco products and alcoholic beverages, and excludes firearms in accordance with Entry 9 of this List.

(53) Australia's commitments in relation to these services extend to cover the following services not listed in relevant CPC classifications: inventory management of goods, assembling, sorting and grading of goods, breaking bulk, re-distribution and delivery services for retailing. Does not cover dispensing of pharmaceuticals. For greater certainty, this excludes retailing services of alcoholic beverages, tobacco products and firearms in accordance with Entry 9 of this List.

(54) Covers general as well as technical and vocational education at the secondary level in private institutions.

(55) Covers provision of private tertiary education services including at university level.

(56) Covers tuition and testing in English and other languages. Tuition in cuisine and traditional therapies (including massage, acupuncture), music, dance and martial arts.

6. ENVIRONMENTAL SERVICES (57)	
A. Wastewater management (CPC 9401)(58) B. Waste management (CPC 9402, 9403) (59) D. Other: - Protection of ambient air and climate (CPC 9404) (60) - Remediation and clean-up of soil and water (CPC 9406**)(61)- Noise and vibration abatement (CPC 9405) (62) - Protection of biodiversity and landscape (CPC 9406**)(63) - Other environmental and ancillary services (CPC 9409)(64)	(1) None (2) None (3) None

(57) Australia's commitments on environmental services exclude the provision of water for human use, including water collection, purification and distribution through mains.

(58) This covers removal, treatment and disposal of household, commercial and industrial sewage and other waste waters including tank

emptying and cleaning, monitoring, removal and treatment of solid wastes.

(59) This covers hazardous and non-hazardous waste collection, treatment and disposal (including incineration, composting and landfill); linen sanitation and treatment and clinical waste disposal services supplied to hospitals; sweeping and snow removal, and other sanitation services.

(60) This covers services at power stations or industrial complexes to remove air pollutants; monitoring of mobile emissions and implementation of control systems or reduction programmes.

(61) Australia's commitments under CPC 9406** combine to cover the entirety of CPC 9406 services. This covers cleaning-up systems in situ or mobile, emergency response, clean-up and longer-term abatement of spills and natural disasters; and rehabilitation programmes (e.g. recovery of mining sites) including monitoring.

(62) This covers monitoring programmes, and installation of noise reduction systems and screens.

(63) Australia's commitments under items CPC 9406** combine to cover the entirety of CPC 9406 services. This covers ecology and habitat protection and promotion of forests and promoting sustainable forestry.

(64) This covers other environment protection services, including services related to environmental impact assessment.

8. HEALTH RELATED AND SOCIAL SERVICES	
A. Hospital services - Private hospital services (CPC 93110**)(65)	(1) Unbound* (2) None (3) None, except that measures in the form of economic needs tests, limitations on the number of services operations and types of legal entity may apply
B. Other human health services	
- Other human health services (CPC 93199**) (66)	(1) Unbound* (2) None (3) None
- Ayurveda, naturopathy, Unani, Siddha and homeopathy services	(1) None (2) None (3) None
9. TOURISM AND TRAVEL RELATED SERVICES	
A. Hotels and restaurants (CPC 641, 642, 643)	(1) Unbound* (2) None (3) None
B. Travel agencies and tour operator services (CPC 7471)	(1) None, except commercial presence required (2) None (3) None
C. Tourist guide services	(1) None (2) None (3) None

(CPC 7472)	

(65) Covers delivery of services under the direction of registered medical doctors to patients in hospital institutions that are not funded, owned or operated by or on behalf of the federal government or a State or Territory government in Australia.

(66) Covers podiatry and chiropody services. Includes podiatry services carried out in health clinics, and in residential health facilities other than hospitals, as well as in own consulting rooms, patients' homes or elsewhere.

10. RECREATIONAL, CULTURAL AND SPORTING SERVICES	
B. News agency services (CPC 962) D. Sporting and other recreational services - Sporting services (CPC 9641) - Other recreational services (CPC 96491 and 96499) (67)	(1) None (2) None (3) None

(67) Covers recreation park and beach services, and yoga services.

11. TRANSPORT SERVICES	
A. Maritime transport services	
International transport (freight and passengers) (CPC 7211 and 7212)(68)	(1) Liner Shipping, Bulk, tramp and other international shipping, including international passenger transportation: None (2) None (3) a) Establishment of registered company for the purpose of operating a fleet under the national flag of Australia: None b) Other forms of commercial presence for the supply of international maritime transport services (as defined in Note on Maritime Transport Services): None
Maritime auxiliary services	
- International rental of vessels with crew (69) (as defined in Note on Maritime Transport Services)	(1) None (2) None (3) None
- Maritime cargo handling services (as described in Note on Maritime Transport Services)	(1) Unbound* (2) None (3) None, except licences or concessions are granted by port authorities. Public utility concession or licensing procedures may apply in the case of the occupation of the public domain for the conduct of these activities.
- Storage and warehousing services (CPC 742)	(1) Unbound* (2) None (3) None
- Maritime freight forwarding services (as defined in Note on Maritime Transport Services)	(1) None (2) None (3) None

- Customs clearance services (as described in Note on Maritime Transport Services)	(1) Unbound* (2) None (3) None
- Pre-shipment inspection (as defined in Note on Maritime Transport Services) - Maritime agency services (as described in Note on Maritime Transport Services)	(1) None (2) None (3) None
C. Air Transport Services	
d) Aircraft repair and maintenance services (CPC 8868)(70)	(1) Unbound* (2) None (3) None
- Ground handling services (71) None	(1) Unbound* (2) None (3) None
- Airport operation services (72)	(1) Unbound* (2) None (3) None
- Selling and marketing of air transport services (73)	(1) None, except: a) Commercial presence required for services covered by Travel agencies and tour operator services (CPC 7471) Retailing services (CPC 631, 63212, 6322- 6325, 6329, 61112, 6113, 6121) are unbound except for mail order (2) None (3) None
- Computer reservation systems (CPC 7523**)(74)	

(68) For greater certainty, this excludes maritime cabotage and offshore transport services in accordance with Entry 12 of this List.

(69) For greater certainty, this excludes maritime cabotage and offshore transport services in accordance with Entry 12 of this List.

(70) This covers establishments mainly engaged in periodic maintenance and repair (routine and emergency) of airframes (including wings, doors, control surfaces) avionics, engines and engine components, hydraulics, pressurisation and electrical systems and landing gear. Includes painting, other fuselage surface treatments and repair of flight-deck (and other) transparencies. Further includes rotary and glider aircraft.

(71) Covers the supply at an airport, on a fee or contract basis, of the following: airline representation, administration and supervision; passenger handling; baggage handling; ramp services; catering (except the preparation of the food); air cargo and mail handling; fuelling of an aircraft; aircraft servicing and cleaning; surface transport; and flight operations, crew administration and flight planning. Ground handling services do not include self-handling; security; line maintenance; aircraft repair and maintenance; or management or operation of essential centralised airport infrastructure such as de-icing facilities, fuel distrioution systems, baggage handling systems, and fixed intra-airport transport systems.

(72) Covers the supply of air terminal, airfield and other airport infrastructure operation services on a fee or contract basis. Airport operation services do not include air navigation services.

(73) This commitment confirms, without extending, the application to air transport services of the specific commitments made elsewhere in this Appendix in the following sections, subject to all limitations, exceptions and qualifications set out in those sections: Travel agencies and tour operator services (CPC7471); Market research and public opinion polling services (CPC 864); Advertising services (CPC 87110, 87120**); Distribution: Commission agents' services (CPC 62113-62118); Wholesale trade services (CPC 6223-6228); Retailing services (CPC 631, 63212, 6322-6325, 6329, 61112, 6113, 6121); and Franchising (CPC 8929). For the purposes of this commitment, "selling and marketing of air transport services" is defined as in Article 8.1(m) (Definitions), except that the aspects of "marketing" covered by this commitment are limited to market research, advertising and distribution.

(74) Activities of establishments engaged in providing and maintaining computer reservation to other enterprises engaged in the provision of travel agency services, including transport and accommodation booking, tour and travel wholesaling/retailing - to establishments engaged in providing reservation services (such as travel agencies). Computer reservation systems services related to air carriers include the provision of information on air carrier schedules, space availability and tariffs.

E. Rail Transport Services	
b) Freight transportation (CPC 7112); c) Pushing and towing services (CPC 7113); and e) Supporting services for rail transport services (CPC743).	(1) None (2) None (3) Below track: most rail-track networks in Australia are government-owned although much is leased to private operators. There are no restrictions on the right to establish new networks but access to public land may not be guaranteed. Above track (rail transport services (such as trains) that operate over the rail-track infrastructure): none except that access to rail infrastructure is allocated under pro- competitive principles for safety, efficiency and the long term interests of users.
F. Road Transport Services	
a) Passenger transportation (CPC 71213, 71214, 7122) (75)	(1) Unbound (2) None (3) None
b) Freight transportation (CPC 7123) c) Rental of commercial vehicles with operator (CPC 7124)	(1) None (2) None (3) None
G. Pipeline Transport Services	
a) Transportation of fuels (CPC 7131) b) Transportation of other goods (CPC 7139)	(1) None (2) None (3) None
H. Services auxiliary to all modes of transport	
a) Cargo-handling	

services in relation to rail, road and air transport only (CPC None 741 **)(76) b) Storage and warehouse services (CPC 742 excluding maritime) (77)	(1) Unbound* (2) None (3) None
c) Freight transport agency services (CPC 748 excluding maritime) (78((3) d) Other supporting and auxiliary transport services (CPC 749 excluding maritime) (79)	(1) None (2) None (3) None

(75) Does not include regular urban bus services.

(76) Note also that maritime cargo handling services are dealt with under "Maritime Services".

(77) Australia's commitment in relation to these services extends to cover the following services in addition to those listed in CPC 742: distribution centre services and materials handling and equipment services such as container station and depot services (excluding maritime).

(78) Australia's commitment in relation to these services extends to cover the following services in addition to those listed in CPC 748: customs agency services and load scheduling services (excluding maritime).

(79) Australia's commitment in relation to these services extends to cover the following services in addition to those listed under CPC 749: container leasing and rental services (excluding maritime).

NOTE ON MARITIME TRANSPORT SERVICES

Definitions

1. Multimodal Transport Operator: the person on whose behalf the bill of lading/multimodal document evidencing a contract of multimodal carriage of goods is issued and who is responsible for the carriage of goods pursuant to the contract of carriage.

2. Other Forms of Commercial Presence for the Supply of International Maritime Transport Services: for the purposes of this Appendix, means the ability for international maritime transport service suppliers of other Parties to undertake locally all activities which are necessary for the supply to their customers of a partially or fully integrated transport service, within which the maritime transport constitutes a substantial element. This commitment shall not be construed as limiting in any manner the commitments undertaken under the cross-border mode of delivery.

These activities include:

- marketing and sales of maritime transport and related services through direct contact with customers, from quotation to invoicing, these services being those operated or offered by the service supplier itself or by service suppliers with which the service seller has established standing business arrangements;

- the acquisition, on their own account or on behalf of their customers (and the resale to their customers) of any transport and related services, including inward transport services by any mode, particularly inland waterways, road and rail,

necessary for the supply of the integrated service;

- the preparation of documentation concerning transport documents, customs documents, or other documents related to the origin and character of the goods transported;

- the provision of business information by any means, including computerised information systems and electronic data interchange (subject to the provisions of the Annex on Telecommunications of GATS);

- the setting up of any business arrangements (including participation in the stock of a company) and the appointment of personnel recruited locally (or, in the case of foreign personnel, subject to Australia's commitments listed in Annex 4 (Schedule of Specific Commitments on the Movement of Natural Persons)) with any locally established shipping agency; and

- acting on behalf of the companies, organising the call of the ship or taking over cargoes when required.

3. International Rental of Vessels with Crew: rental or leasing services of all types of sea-going vessels with crew (such as tankers, bulk dry cargo vessels, cargo and freight vessels) for the purpose of international trade.

4. Maritime Cargo Handling Services: activities exercised by stevedore companies, including terminal operators, but not including the direct activities of dockers, when this workforce is organised independently of the stevedoring of terminal operator companies. The activities covered include the organisation and supervision of: the loading or discharging of cargo to or from a ship; the lashing or unlashing of cargo; and, the reception or delivery and safekeeping of cargoes in the wharf area before shipment or after discharge.

The organisation and supervision includes the arrangements for (1) engaging skilled labour (dockers), (2) using all the necessary equipment for on-board or shore use and the appropriate storage space, whether by ownership, rental or otherwise, (3) the checking of parcels and markings, the weighing and measuring of cargo (upon request of the owner), and (4) the administrative duties as well as the responsibility related to the services.

Container terminal operators can furthermore be appointed for stuffing/stripping containers and e.g. the survey and supply of electricity to containers.

5. Maritime Freight Forwarding Services: the organisation and monitoring of shipment operations on behalf of shippers, through the acquisition of transport and related services, preparation of documentation and provision of business information.

6. Customs Clearance Services: activities consisting in carrying out on behalf of another Party customs formalities concerning import, export or through-transport of cargoes, whether this is the main activity of the service provider or a usual complement of its main activity.

7. Pre-shipment Inspection: all services performed on a fee or contract basis involved in the verification of the quality, quantity, price (including currency exchange rate and financial terms), or the customs classification of goods to be exported. Does not include customs or quarantine inspection.

8. Maritime Agency Services: activities consisting in representing, within a given geographic area, as an agent, the business interests of one or more shipping line or shipping companies, for the following purposes:

- marketing and sales of maritime transport and related services, from quotation to invoicing, and issuance of bills of lading on behalf of the companies; acquisition and resale of the necessary related services, preparation of documentation, and provision of business information; and

- acting on behalf of the companies organising the call of the ship or taking over cargoes when required.

LIST C. ADDITIONAL COMMITMENTS - CHAPTER 8 (TRADE IN SERVICES) AUSTRALIA

This List C sets out, pursuant to Article 6 (Additional Commitments), Australia's additional commitments with respect to measures affecting trade in services, not subject to scheduling under Article 4 (National Treatment), Article 5 (Market Access), Article 9 (Most-Favoured Nation Treatment) or Article 10 (Local Presence).

Description of additional commitment

Sector: Maritime Transport Services

Services at Australian ports are made available to international maritime transport suppliers on reasonable and non-discriminatory terms and conditions. The following is an indicative, but not exhaustive, list of services at Australian ports:

pilotage, towing and tug assistance; provisioning, fuelling and watering; garbage collection and ballast waste disposal; Port Captain's services; navigation aids; shore-based operational services essential to ship operations, including communications, water and electrical supplies; emergency repair facilities; anchorage, berth and berthing services.

Where road, rail and related auxiliary services are not fully covered in Appendix A (Australia's Market Access Commitments - Regional (State and Territory) Level) of List B a multimodal transport operator shall have the ability, on reasonable and non-discriminatory terms and conditions, to rent, hire or charter trucks, railway carriages, ships and related equipment for the purpose of onward forwarding of international cargoes carried by sea, or have access to and use of these forms of transport services for the purpose of providing multimodal transport services.

ANNEX 3. SCHEDULE OF RESERVATIONS AND NON-CONFORMING MEASURES FOR INVESTMENT AND SERVICES BRUNEI DARUSSALAM

LIST A. EXPLANATORY NOTES

1. This List A sets out, pursuant to Article 12 (Schedules of Non-Conforming Measures) of Chapter 8 (Trade in Services) and Article 13 (Reservations and Non- Conforming Measures) of Chapter 11 (Investment), Brunei Darussalam's existing measures that are not subject to some or all of the obligations imposed by:

(a) Article 4 (National Treatment) of Chapter 8 (Trade in Services) or Article 3 (National Treatment) of Chapter 11 (Investment);

(b) Article 9 (Most-Favoured-Nation Treatment) of Chapter 8 (Trade in Services) or Article 4 (Most-Favoured-Nation Treatment) of Chapter 11 (Investment);

(c) Article 5 (Market Access) of Chapter 8 (Trade in Services);

(d) Article 10 (Local Presence) of Chapter 8 (Trade in Services);

(e) Article 5 (Senior Management and Board of Directors) of Chapter 11 (Investment); or

(f) Article 6 (Prohibition of Performance Requirements) of Chapter 11 (Investment).

2. Each entry in this List A sets out the following elements:

(a) Sector refers to the sector for which the entry is made;

(b) Subsector, where referenced, refers to the specific subsector for which the entry is made;

(c) Obligations Concerned specifies the obligations referred to in Paragraph 1 that, pursuant to Article 12 (Schedules of Non-Conforming Measures) of Chapter 8 (Trade in Services) and Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), do not apply to the listed measures;

(d) Description sets out the non-conforming measure for which the entry is made; and

(e) Source of Measure identifies the laws, regulations or other measures that are the source of the non-conforming measure for which the entry is made. A measure cited in this element:

(i) means the measure as amended, continued or renewed as of the date of entry into force of this Second Protocol, and

(ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure.

3. In accordance with Article 12 (Schedules of Non-Conforming Measures) of Chapter 8 (Trade in Services) and Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), the Articles specified in the Obligations Concerned element of an entry do not apply to the non-conforming measures identified in the Description element of that entry.

4. A measure that is reserved against Article 10 (Local Presence) of Chapter 8 (Trade in Services) need not be reserved against Article 4 (National Treatment) of Chapter 8 (Trade in Services).

5. The Schedules of other Parties shall not be used to interpret Brunei Darussalam's commitments or obligations under Chapter 8 (Trade in Services) or Chapter 11 (Investment).

6. Commitments under Chapter 8 (Trade in Services) with respect to financial services are undertaken subject to the limitations and conditions set forth in these explanatory notes and this List A.

7. For Brunei Darussalam's commitments under Article 5 (Market Access) of Chapter 8 (Trade in Services), juridical persons supplying financial services constituted under the laws, regulations and guidelines of Brunei Darussalam are subject to non-discriminatory limitations on juridical forms.(1)

8. All financial institutions offering Islamic financial products and services shall be subject to the Shariah requirements as determined by the laws, regulations and guidelines of Brunei Darussalam and any supervisory bodies, with respect to their administration and business dealings concerning Islamic products and any matters connected thereto.

9. Brunei Darussalam reserves the right to require a foreign bank branch that is systemically important to be locally incorporated in Brunei Darussalam subject to the following prerequisites:

(a) such measure is imposed in a reasonable, objective and impartial manner;

(b) Brunei Darussalam shall take in due consideration to the quality of home regulation and supervision over the bank, the degree of protection accorded to depositors in the home country with respect to depositors in Brunei Darussalam, and the amount of assets held in Brunei Darussalam;

(c) prior to the imposition of the requirement, the bank and the Party where the bank originates from shall be notified at least six months in advance of Brunei Darussalam's intention to locally incorporate the bank;

(d) Brunei Darussalam shall consult the Party concerned regarding the requirement and provide considerations to the views expressed by the Party concerned in this regard; and

(e) provide considerable duration for the bank to comply with the requirement.

(1) For example, partnerships and sole proprietorships are generally not acceptable juridical forms for depository financial institutions in Brunei Darussalam. This explanatory note is not in itself intended to affect, or otherwise limit, a choice by a financial institution of the other Party between branches or subsidiaries.

1. Sector: All Sectors

Subsector: -

Obligations Concerned: National Treatment (Trade in Services and Investment).Senior Management and Board of Directors

Description: Trade in Services and Investment

1. Sole Proprietorship and Cooperative Society

A foreign national may not establish a sole proprietorship or cooperative society.

2. Partnership

A foreign national may not establish a partnership, unless with the written approval of the Registry of Companies and Business Names (ROCBN).

3. Company Directorship

A foreign national may not sit on the board of directors of an enterprise established in Brunei Darussalam unless one of the two directors or, where there are more than two directors, at least two of them shall be ordinarily resident in Brunei Darussalam.

4. For the purposes of this entry, a foreign national will forward his or her application to become ordinarily resident in Brunei Darussalam to the Ministry of Finance and Economy.

Source of Measure:

Companies Act (Chapter 39)

Business Names Act (Chapter 92)

Co-operative Societies Act (Chapter 84)

Employment Agencies Order, 2004

Administrative Measures and Guidelines

2. Sector: All Sectors

Subsector: -

Obligations Concerned: National Treatment (Investment)

Description: Investment

1. A business licence may only be granted to a Bruneian national for the operation of commercial properties identified in the listed measures.

2. A business licence is required for the enforcement of health and safety regulations, and do not restrict the participation of a foreign national in any other commercial activity where such a business licence is required otherwise provided for in this List A.

Source of Measure:

Beauty and Health Establishment Order, 2016

Municipal Boards Act (Chapter 57)

Road Traffic Act (Chapter 68)

Public Entertainment Act (Chapter 187)

Administrative Measures and Guidelines

3. Sector: Manufacturing and Services Incidental to Manufacturing

Subsector: -

Obligations Concerned: National Treatment (Investment). Prohibition of Performance Requirements

Description: Investment

1. Local equity shareholding is required for all foreign investment in this sector that utilises sites under the control of relevant government authorities for manufacturing and services incidental to manufacturing activities.

2. A foreign investor may not utilise these sites unless he or she complies with the requirement to purchase, use or accord a preference to goods produced in Brunei Darussalam or to purchase goods from local suppliers.

Source of Measure:

Brunei Darussalam National Development Plan

Administrative Measures and Guidelines

4. Sector: Agriculture and Services Incidental to Agriculture

Subsector: -

Obligations Concerned: National Treatment (Investment). Prohibition of Performance Requirements

Description: Investment

1. Local equity shareholding is required for all foreign investment in this sector that utilises sites under the control of relevant government authorities for agriculture and services incidental to agriculture activities.

2. A foreign investor may not utilise these sites unless he or she complies with these requirements:

(a) to purchase, use, or accord a preference to goods produced in Brunei Darussalam, or to purchase goods from local suppliers; or

(b) to achieve a given level or percentage of domestic content.

Source of Measure:

Brunei Darussalam National Development Plan Halal Meat Act (Chapter 183) Halal Certificate and Halal Label Order, 2005

Administrative Measures and Guidelines

5. Sector: Fisheries and Services Incidental to Fisheries

Subsector: -

Obligations Concerned: National Treatment (Investment). Prohibition of Performance Requirements

Description: Investment

1. Local equity shareholding is required for all foreign investment in this sector that utilises sites under the control of relevant government authorities for fishery and services incidental to fishery activities.

2. A foreign investor may not utilise these sites unless he or she complies with the requirements to purchase, use, or accord a preference to goods produced in Brunei Darussalam, or to purchase goods from local suppliers.

Source of Measure:

Fisheries Order, 2009

Fisheries (Fish Culture Farms) Regulations, 2002

Fisheries (Fish Landing Complexes) Regulations, 2002

Fisheries (Fish Processing Establishments) Regulations, 2002

Brunei Darussalam Fishery Limits Act (Chapter 130)

Administrative Measures and Guidelines

6. Sector: Forestry and Services Incidental to Forestry (Except logging and sawmilling)

Subsector: -

Obligations Concerned: National Treatment (Investment). Prohibition of Performance Requirements

Description: Investment

1. A foreign national or enterprise may not establish an enterprise to undertake activities related to forestry and services incidental to forestry activities:

(a) unless through a joint venture with a Bruneian national or enterprise, in which the foreign national or enterprise does not own more than 70 per cent equity shareholding; and

(b) unless they comply with any performance requirements which may be imposed.

2. For greater certainty, this entry does not apply to logging and sawmilling activities.

Source of Measure:

National Forestry Policy (1989)

Brunei Darussalam National Development Plan

Forest Act (Chapter 46)

Administrative Measures and Guidelines (Strategic Plan 2004-2023)

7. Sector: Construction Services

Subsector: -

Obligations Concerned: Local Presence. National Treatment (Investment). Prohibition of Performance Requirements

Description: Trade in Services and Investment

1. A foreign national or enterprise is not allowed to provide construction services such as general construction work for building services; general construction work for civil engineering and mining; installation and assembly work services; building completion and finishing work services; and mechanical engineering services, unless:

(a) through an enterprise established in Brunei Darussalam registered under the Registry of Companies and Business Names (ROCBN);

(b) they first register for a Lesen Pembina (Builder's License) and, if required, a Sifil Pendaftaran Kontraktor (Contractor Registration Certificate) as a contractor or a Sifif Pendaftaran Pembekal (Supplier's Registration Certificate) as a supplier; and

(c) they comply with any requirement to transfer technology or other proprietary knowledge to persons in Brunei Darussalam as long as such requirement to transfer technology or other proprietary knowledge does not unreasonably prejudice the legitimate interests of the owner of technology or proprietary knowledge and is not for the purposes of commercial exploitation by Brunei Darussalam.

2. In the case of Contractor Registration Certificate and Suppliers Registration Certificate, a foreign national or enterprise may not own full equity shareholding other than what is prescribed in the table below, in any enterprise that applies to be registered as a contractor or supplier:

Table

Class	Project Threshold	Level of Foreign Equity Allowed
I	Up to BND 50 000	None
II	Exceeding BND 50 000 but not more than BND 250 000	None
III	Exceeding BND 250 000 but not more than BND 500 000	20 per cent
IV	Exceeding BND 500 000 but not more than BND 1.5 million	50 per cent
V	Exceeding BND 1.5 million but not more than BND 5 million	70 per cent
VI	Exceeding BND 5 million	90 per cent
Supplier	No threshold	70 per cent

3. For greater certainty, Contractor Registration Certificate refers to certificates which are required for participating in government and private projects, whilst Builder's License refers to certificates which are required for participating in private projects only.

Source of Measure;

Architects, Professional Engineers and Quantity Surveyors Order, 2011

Building Control Order, 2014

Building Control Regulations, 2014 Procedures of Contractors and Suppliers Registration, Ministry of Development (Edition 2012)

Administrative Measures and Guidelines

8. Sector: Environmental Services

Subsector: -

Obligations Concerned: Local Presence. National Treatment (Investment). Prohibition of Performance Requirements

Description: Trade in Services and Investment

1. A foreign national or enterprise is not allowed to provide consultancy services on environmental protection and management; waste management services; landscape design management and maintenance services; and janitorial

services, roadside and cleaning works services, unless:

(a) through an enterprise established in Brunei Darussalam registered under the Registry of Companies and Business Names (ROCBN);

(b) they first register for a Lesen Pembina (Builder's License) and, if required, a Sifil Pendaftaran Kontraktor (Contractor Registration Certificate) as a contractor or a Sifif Pendaftaran Pembekal (Supplier's Registration Certificate) as a supplier; and

(c) they comply with any requirement to transfer technology or other proprietary knowledge to persons in Brunei Darussalam as long as such requirement to transfer technology or other proprietary knowledge does not unreasonably prejudice the legitimate interests of the owner of technology or proprietary knowledge and is not for the purposes of commercial exploitation by Brunei Darussalam.

2. In the case of Contractor Registration Certificate and Suppliers Registration Certificate, a foreign national or enterprise may not own full equity shareholding other than what is prescribed in the table below, in any enterprise that applies to be registered as a contractor or supplier:

Table

Class	Project Threshold	Level of Foreign Equity Allowed
I	Up to BNB 50 000	None
II	Exceeding BND 50 000 but not more than BND 250 000	None
III	Exceeding BND 250 000 but not more than BND 500 000	20 per cent
IV	Exceeding BND 500 000 but not more than BND 1.5 million	50 per cent
V	Exceeding BND 1.5 million but not more than BND 5 million	70 per cent
VI	Exceeding BND 5 million	90 per cent
Supplier	No threshold	70 per cent

3. For greater certainty, Contractor Registration Certificate refers to certificates which are required for participating in government and private projects, whilst Builder's License refers to certificates which are required for participating in private projects only.

Source of Measure:

Pollution Control Guidelines for Industrial Development of Brunei Darussalam (2002)

Planning Guidelines for Earthworks Development (Focus on Environmental Sensitive Area) (2009)

Planning Guidelines and Standards for Industrial Development (2070)

Environmental Protection and Management Order, 2016

Hazardous Waste (Control of Export, import and Transit) Order, 2013

Administrative Measures and Guidelines

9. Sector: Business Services

Subsector: Public Auditing Services

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Senior Management and

Board of Directors

Description: Trade in Services and Investment

1. A foreign national or enterprise may not establish financial auditing enterprises in Brunei Darussalam, unless through a partnership or joint venture with at least one authorised Bruneian auditor.

2. If they are not established in Brunei Darussalam, a foreign national or enterprise may not provide financial auditing services in Brunei Darussalam, unless:

(a) authorised by the Ministry of Finance and Economy; or

(b) through a locally established auditor or enterprise authorised by the Ministry of Finance and Economy.

3. For greater certainty, the term "authorised" refers to a qualified person who has been authorised by the Ministry of Finance and Economy to provide financial auditing services.

Source of Measure:

Companies Act (Chapter 39)

Accountants Order, 2010

Administrative Measures and Guidelines

10. Sector: Business Services

Subsector: Veterinary Services

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Local Presence

Description: Trade in Services and Investment

A foreign national or enterprise may not provide veterinary services in Brunei Darussalam, unless through an enterprise established in Brunei Darussalam that is a partnership or joint venture, where the foreign national or enterprise does not own more than 51 per cent equity shareholding in any such enterprise providing veterinary services.

Source of Measure:

Companies Act (Chapter 39) Veterinary Surgeons Order, 2005

Administrative Measures and Guidelines

11. Sector: Business Services

Subsector: Industrial Design Services

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Local Presence

Description: Trade in Services and Investment

A foreign national or enterprise may not provide industrial design services in Brunei Darussalam, unless through an enterprise established in Brunei Darussalam that is a partnership or joint venture, where the foreign national or enterprise does not own more than 51 per cent equity shareholding in any such enterprise providing industrial design services.

Source of Measure:

Companies Act (Chapter 39) Industrial Design Rules, 2000 Industrial Designs Order, 1999 [E.O.]

Administrative Measures and Guidelines

12. Sector: Business Services

Subsector: Computer and Related Services

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access

Description: Trade in Services and Investment

A foreign national or enterprise may not provide computer and related services through a commercial presence, unless they are ordinarily resident in Brunei Darussalam and through an enterprise established in Brunei Darussalam.

Source of Measure:

Companies Act (Chapter 39)

Authority for Info-Communications Technology Industry of Brunei Darussalam Order, 2001

Administrative Measures and Guidelines

13. Sector: Telecommunication Services

Subsector: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Local Presence. Prohibition of Performance Requirements

Description: Trade in Services and Investment

1. A foreign national or enterprise may not provide telecommunication services for which Brunei Darussalam requires a licence (2) in the territory of Brunei Darussalam, unless:

(a) they maintain a physical business presence in Brunei Darussalam;

(b) they provide such services through a commercial arrangement with a licensed operator in Brunei Darussalam;

(c) through a joint venture with a Bruneian national or enterprise, in which the foreign national or enterprise does not own more than 51 per cent equity shareholding; and

(d) where so required, they locate their transmission equipment used for the provision of public telecommunications networks or supply of public telecommunications services within Brunei Darussalam.

2. A foreign national or enterprise may not undertake activities related to telecommunication services unless they comply with any performance requirements that may be imposed.

Source of Measure:

Telecommunications Order, 2001

AiTi Operational Framework (2006)

(2) Software application-based services provided over the Internet (Over-the-Top services) do not currently require a licence in Brunei Darussalam.

14. Sector: Business Services

Subsector: Architectural Services Engineering Services Integrated Engineering Services Quantity Surveying Services

Related Scientific and Technical Consulting Services

Surveying Services

Urban Planning and Landscape Services

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access Local Presence. Senior Management and Board of Directors

Description: Trade in Services and Investment

1. A foreign national or enterprise may not provide architectural services, engineering services, integrated engineering services and quantity surveying services, unless:

(a) they are resident in Brunei Darussalam for at least 90 days per calendar year and are registered as an "architect, professional engineer or quantity surveyor" in that sector with the Brunei Darussalam Board of Architects, Professional Engineers and Quantity Surveyors;

(b) if they are not resident in Brunei Darussalam, it is through a local enterprise where the services suppliers are registered as an "architect, professional engineer or quantity surveyor and hold a practising certificate" in that sector with the Brunei Darussalam Board of Architects, Professional Engineers and Quantity Surveyors; or

(c) through an enterprise established in Brunei Darussalam that is a partnership or joint venture, where the foreign equity shareholding shall not exceed 51 per cent, with at least one Bruneian national who is registered as an "architect, professional engineer or quantity surveyor" and holds a practising certificate in that sector with Brunei Darussalam Board of Architects, Professional Engineers and Quantity Surveyors.

2. A foreign national or enterprise may not provide urban planning and landscape services, related scientific and technical consulting services and surveying services, unless:

(a) they are resident in Brunei Darussalam for at least 90 days per calendar year and are registered as a "planner or surveyor" in that sector with the Ministry of Development;

(b) if they are not resident in Brunei Darussalam, it is through a local enterprise where the services suppliers are registered as "planner or surveyor" in that sector with the Ministry of Development; or

(c) through an enterprise established in Brunei Darussalam that is a partnership or joint venture, where the foreign equity shareholding shall not exceed 51 per cent, with at least one Bruneian national who is registered as a "planner or surveyor" in that sector with the Ministry of Development.

Source of Measure

Architects, Professional Engineers and Quantity Surveyors Order, 2011

Licensed Land Surveyors Act (Chapter 100) Licensed Land Surveyors Regulations, 1981 Town Planners Registration Order, 2014

Town and Country Planning Order, 2015

Administrative Measures and Guidelines

15. Sector: Private Health and Social Services

Subsector: General Medical practitioners Specialised Medical practitioners

Dental practitioners (Dentist)

Obligations Concerned: National Treatment (Trade in Services). Local Presence

Description: Trade in Services

A foreign national practitioner may not provide a private practice for the provision of general medical, specialised medical or dental services unless the foreign national has fulfilled the requirements for registration with the relevant regulatory authority.

Source of Measure:

Medical Practitioners and Dentists Act (Chapter 112)

Administrative Measures and Guidelines

16. Sector: Social Services

Subsector: Child day-care services including day-care services for the handicapped

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Local Presence

Description: Trade in Services and Investment

A foreign national or enterprise may not establish child day-care services, including day-care services for the handicapped, unless through an enterprise established in Brunei Darussalam that is a partnership or joint venture, where the foreign national or enterprise does not own more than 51 per cent equity shareholding.

Source of Measure:

Administrative Measures and Guidelines

17. Sector: Other Human Health Services

Subsector: Services provided by nurses

Pharmaceutical services

Obligations Concerned: Market Access. National Treatment (Investment)

Description: Trade in Services and Investment

A foreign national practitioner or enterprise may not provide pharmaceutical services or services provided by nurses through a commercial presence, unless through an_ enterprise established in Brunei Darussalam that is a partnership or joint venture, where the foreign national or enterprise does not own more than 49 per cent equity shareholding in any such enterprise providing pharmaceutical services or services provided by nurses.

Source of Measure:

Medical Practitioners and Dentists Act (Chapter 112)

Administrative Measures and Guidelines

18. Sector: Other Health Related and Social Services

Subsector: Ambulance Services

Obligations Concerned: Market Access National Treatment (Investment). Prohibition of Performance Requirements

Description: Trade in Services and Investment

A foreign national practitioner or enterprise may not provide ambulance services through a commercial presence, unless through an enterprise established in Brunei Darussalam that is a partnership or joint venture, where the foreign national or enterprise does not own more than 51 per cent equity shareholding.

Source of Measure:

Administrative Measures and Guidelines

19. Sector: Tourism and Travel Related Services

Subsector: Travel Agents Tour Operator Services Tour Guide Services (for birdwatching only)

Other Tourism and Travel Related Services

Obligations Concerned: Market Access. National Treatment (Trade in Services and Investment)

Description: Trade in Services and Investment

A foreign national or enterprise may not establish a travel agency, tour operator services, birdwatching tour guide services, or other tourism and travel related services through a commercial presence, unless through an_ enterprise established in Brunei Darussalam that is a partnership or joint venture, where the foreign national or enterprise does not own more than 51 per cent equity shareholding in any such enterprise providing such services.

Source of Measure:

Tourism Order, 2016

Administrative Measures and Guidelines

20. Sector: Tourism

Subsector: Hotels, Boarding House or Lodging (excluding Budget Hotels and Resort Hotel/Chalets)

Hotels and Restaurants (including catering)

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access Prohibition of Performance Requirements. Senior Management and Board of Directors

Description:

Trade in Services and Investment

A foreign national or enterprise may not establish hotels, boarding house or lodging (excluding budget hotels and resort hotel/chalets); or hotels and restaurants which include catering services, through a commercial presence unless:

(a) itis through a joint venture with a Bruneian national or enterprise, where the foreign equity shareholding shall not exceed 51 per cent;

(b) where the majority of senior managers are Bruneian nationals; and

(c) where there is a preference to purchase, use, or accord a preference to goods produced in Brunei Darussalam, or to purchase goods from local suppliers.

Source of Measure:

Administrative Measures and Guidelines

21. Sector: Tourism and Travel Related Services

Subsector: Budget Hotels and Resort Hotel/Chalets

Obligations Concerned: Market Access. National Treatment (Trade in Services and Investment). Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

A foreign national or enterprise may not establish budget hotels and resort hotel/chalets through a commercial presence unless:

(a) it is through a joint venture with a Bruneian national or enterprise, where the foreign equity shareholding shall not exceed 70 per cent;

(b) where the majority of senior managers are Bruneian nationals; and

(c) where there is a preference to purchase, use, or accord a preference to goods produced in Brunei Darussalam, or to purchase goods from local suppliers.

Source of Measure:

Administrative Measures and Guidelines

22. Sector: Recreational, Cultural and Sporting Services Subsector News Agency Services Library Services

- Information Technology (i.e. 6D Theatre)

- Consultancy in Library Marketing (including services and premises; Establishment of New Libraries; and Research on User Needs)

- Supplying Library Materials (children's books, e-books or e-journals of local authors etc.)

- Establishment of Private Library

Archive Services Sports Event Promotion Services Sports Event Organisation Services

Sports Facility Operation Services

Computer Reservations System Services

Obligations Concerned: National Treatment (Investment)

Description: Investment

1. A foreign national or enterprise may not provide news agency services; library services (information technology, consultancy in library marketing, supplying library materials, establishment of private library); archive services; and sports event promotion, organisation, or operation services, through a commercial presence unless it is through an enterprise established in Brunei Darussalam that is a joint venture, where the foreign national or enterprise does not own more than

51 per cent equity shareholding.

2. A foreign national or enterprise may not provide computer reservation system services through a commercial presence, unless it is through an enterprise established in Brunei Darussalam that is a joint venture, where the foreign national or enterprise does not own more than 40 per cent equity shareholding.

Source of Measure:

Administrative Measures and Guidelines

23. Sector: Transport Services

Subsector: Rail Transport Services

Obligations Concerned: Market Access National Treatment (Investment). Senior Management and Board of Directors

Description: Trade in Services and Investment

A foreign national or enterprise may not provide tail transport services through a commercial presence, unless:

(a) it is through an enterprise established in Brunei Darussalam that is a joint venture, where the foreign national or enterprise does not own more than 40 per cent equity shareholding in any such enterprise providing rail transport services; and

(b) a majority of the senior managers in any such enterprise established are Bruneian nationals.

Source of Measure:

Administrative Measures and Guidelines

24. Sector: Transport Services

Subsector: Maritime Passenger Transport Services

Maritime Freight Transport Services (except for energy goods)

Obligations Concerned: Market Access National Treatment (Investment). Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

A foreign national or enterprise may not provide services auxiliary to maritime transport services through a commercial presence at Muara Port, unless:

(a) it is through an enterprise established in Brunei Darussalam that is a joint venture, where the foreign national or enterprise does not own more than 40 per cent equity shareholding in any such enterprise providing services auxiliary to maritime transport services; and

(6) a majority of the senior managers in any such enterprise established are Bruneian nationals.

Source of Measure:

Administrative Measures and Guidelines

25. Sector: Transport Services

Subsector: Space Transport

Obligations Concerned: Market Access Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

A foreign national or enterprise may not provide space transport services through a commercial presence, unless:

(a) it is through an enterprise established in Brunei Darussalam that is a joint venture, where the foreign national or enterprise does not own more than 40 per cent equity shareholding in any such enterprise providing space transport services; and

(b) a majority of the senior managers in any such enterprise established are Bruneian nationals.

Source of Measure:

Administrative Measures and Guidelines

26. Sector: Transport Services

Subsector: Rental of Aircraft with Crew

Obligations Concerned: Market Access. Local Presence. National Treatment (Investment) Prohibition of Performance Requirements. Senior Management and Board of Directors

Description:

Trade in Services and Investment

A foreign national or enterprise may not provide rental of aircraft with crew in Brunei Darussalam, unless:

(a) (i) only through a representative office with a permanent address in Brunei Darussalam; or

(ii) only by appointment of a General Sales Agent, that is a Bruneian controlled company;

(b) a majority of the senior managers in any such enterprise established are Bruneian nationals;

(c) the aircraft is certified; and

(d) the services are approved by Brunei Darussalam subject to any infrastructure capacity conditions or limitations.

Source of Measure:

Companies Act (Chapter 39)

Administrative Measures and Guidelines

27. Sector: Business Services

Subsector: Rental or Leasing Services relating to Aircraft without Operator

Obligations Concerned: Market Access, Local Presence. National Treatment (Investment). Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

A foreign national or enterprise may not provide rental or leasing services related to aircraft without operators, in Brunei Darussalam, unless:

(a) (i) only through a representative office with a permanent address in Brunei Darussalam; or

(ii) only by appointment of a General Sales Agent, that is a Bruneian controlled company;

(b) a majority of the senior managers in any such enterprise established are Bruneian nationals;

(c) the aircraft is certified; and

(d) the services are approved by Brunei Darussalam subject to any infrastructure capacity conditions or limitations.

Source of Measure:

Companies Act (Chapter 39)

Administrative Measures and Guidelines

28. Sector: Communication Services

Subsector: Audio-visual Services, including Sound Recording services and Audio-visual post production support services

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Senior Management and Board of Directors

Description: Trade in Services and Investment

A foreign national or enterprise may not provide audio-visual services through a commercial presence, unless through an enterprise established in Brunei Darussalam that is a partnership or joint venture, where the foreign national or enterprise does not own more than 51 per cent equity shareholding in any such enterprise providing audio-visual services.

Source of Measure:

Administrative Measures and Guidelines

29. Sector: Communication Services

Subsector: Courier Services

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Local Presence

Description: Trade in Services and Investment

A foreign national or enterprise may not provide courier services through a commercial presence, unless through an enterprise established in Brunei Darussalam that is a partnership or joint venture, where the foreign national or enterprise does not own more than 49 per cent equity shareholding in any such enterprise providing courier services.

Source of Measure:

Administrative Measures and Guidelines

30. Sector: Education Services

Subsector: Adult Education, for courses with maximum duration of three months (Private Education)

Other Education Services (Foreign Language Training Centre)

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Senior Management and Board of Directors

Description: Trade in Services and Investment

1. A foreign national or enterprise may not provide adult education services through a commercial presence, unless:

(a) it is through an enterprise established in Brunei Darussalam that is a joint venture, where the foreign national or enterprise does not own more than 49 per cent equity shareholding in any such enterprise providing adult education services; and

(b) foreign employees do not exceed 10 per cent of workforce.

2. A foreign national or enterprise may not provide foreign language training centres through a commercial presence, unless:

(a) it is through an enterprise established in Brunei Darussalam that is a joint venture, where the foreign national or enterprise does not own more than 49 per cent equity shareholding in any such enterprise providing foreign language training services; and

(b) a majority of the senior managers in any such enterprise established are Bruneian nationals.

Source of Measure:

Education Act (Chapter 210)

Administrative Measures and Guidelines

31. Sector: Financial Services

Subsector: All Sectors

Obligations Concerned: Market Access

Description: Trade in Services

A foreign national or enterprise is not allowed to conduct any cross-border activities related to the provision and transfer of financial information, financial data processing, and related software unless through entities established and licensed in Brunei Darussalam.

Source of Measure:

Banking Order, 2006

Islamic Banking Order, 2008

Finance Companies Act (Chapter 89) Insurance Order, 2006

Takaful Order, 2008

Securities Markets Order, 2013 Securities Markets Regulations, 2015

Money-Changing and Remittance Business Act (Chapter 174)

Brunei Darussalam Central Bank Order, 2010

Outsourcing Guidelines

32. Sector: Financial Services

Subsector: Finance Companies

Obligations Concerned: Market Access

Description: Trade in Services

A foreign national or enterprise may not carry out financing business or Islamic financing services unless they are incorporated in Brunei Darussalam.

Source of Measure:

Finance Companies Act (Chapter 89)

33. Sector: Financial Services

Subsector: Money-Changing and Remittance Businesses

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access

Description: Trade in Services and Investment

A foreign national or enterprise may not provide services related to money-changing and money remittance businesses. The number of licences awarded for these businesses are limited.

Source of Measure:

Money-Changing and Remittance Businesses Act (Chapter 174)

34. Sector: Financial Services

Subsector: Insurance

Obligations Concerned: Market Access

Description: Trade in Services

A foreign national or enterprise may not provide compulsory insurance of motor third party liability and workmen's compensation unless they are purchased, directly or through an intermediary, from licensed insurance companies or fakaful (Islamic insurance) operators in Brunei Darussalam.

Source of Measure:

Motor Vehicles Insurance (Third Party Risks) Act (Chapter 90)

Workmen's Compensation Act (Chapter 74)

35. Sector: Financial Services

Subsector: Insurance Intermediaries

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access

Description: Trade in Services and Investment

1. Insurance Agents A foreign national is not allowed to be registered as an insurance agent in Brunei Darussalam.

2. Insurance Brokers A foreign national or enterprise is not allowed to provide insurance brokers services unless they are incorporated in Brunei Darussalam.

Source of Measure:

Insurance Order, 2006 Takaful Order, 2008 Companies Act (Chapter 39)

Business Names Act (Chapter 92)

36. Sector: Financial Services

Subsector: Banking

Obligations Concerned: Market Access

Description: Trade in Services

A foreign national or enterprise is not allowed to provide any outsourcing activities unless it is approved by the Brunei Darussalam Central Bank (BDCB) with the following conditions:

(a) the outsourced activities are not related to credit assessment, processing, administration, or any related core banking activities; and

(b) the outsourcing activities will not affect financial institutions' human capital and it does not involve any retrenchment of local employees.

Source of Measure:

Banking Order, 2006 Islamic Banking Order, 2008

Outsourcing Guidelines

37. Sector: Financial Services

Subsector: Life Insurance and Takaful (Islamic Insurance)

Obligations Concerned: Market Access

Description: Trade in Services

A foreign national or enterprise is not allowed to provide all direct life insurance or fakaful products and services including annuity, disability, income, accident and health insurance unless it is through insurance or fakaful companies established and licensed in Brunei Darussalam.

Source of Measure

Insurance Order, 2006 Takaful Order, 2008

Brunei Darussalam Central Bank Order, 2010

38. Sector: Financial Services

Subsector: Non-life Insurance and Takaful (Islamic Insurance)

Obligations Concerned: Market Access

Description: Trade in Services

A foreign national or enterprise is not allowed to provide all direct non-life insurance or fakaful products and services

including annuity, disability income, accident and health insurance and contracts of fidelity bonds, performance body, or similar contracts of guarantee unless it is through insurance or takaful companies established and licensed in Brunei Darussalam.

Source of Measure:

Insurance Order, 2006 Takaful Order, 2008

Brunei Darussalam Central Bank Order, 2010

39. Sector: Financial Services

Subsector: Banking and Other Financial Services

Obligations Concerned: National Treatment (Trade in Services). Market Access

Description: Trade in Services

A foreign national or enterprise is not allowed to provide any activities related to the acceptance of deposits and other repayable funds unless it is through banking, Islamic banking, or Finance Companies established and licensed in Brunei Darussalam.

Source of Measure:

Banking Order, 2006 Islamic Banking Order, 2008

Brunei Darussalam Central Bank Order, 2010

40. Sector: Financial Services

Subsector: Capital Market

Obligations Concerned: Market Access

Description: Trade in Services

A foreign national or enterprise is not allowed to carry out and provide any type of advisory or other auxiliary services, including credit reference and analysis; investment and portfolio research and advice; advice on acquisitions and on corporate restructuring and strategy, unless it is carried out by or through entities with capital market services license or capital market services representative license.

Source of Measure:

Securities Markets Order, 2013

Securities Markets Regulations, 2015

41. Sector: Financial Services

Subsector: Reinsurance and Retrocession (life and non-life)

Obligations Concerned: Market Access

Description: Trade in Services

A foreign national or enterprise is not allowed to conduct any type of reinsurance and retrocession (life and non-life) activities unless it is through reinsurance companies or retakaful operators established and licensed in Brunei Darussalam.

Source of Measure:

Insurance Order, 2006

Takaful Order, 2008

LIST B. EXPLANATORY NOTES

1. This List B sets out, pursuant to Article 12 (Schedules of Non-Conforming Measures) of Chapter 8 (Trade in Services) and Article 13 (Reservations and Non- Conforming Measures) of Chapter 11 (Investment), the specific sectors, subsectors or

activities for which Brunei Darussalam may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

(a) Article 4 (National Treatment) of Chapter 8 (Trade in Services) or Article 3 (National Treatment) of Chapter 11 (Investment);

(b) Article 5 (Market Access) of Chapter 8 (Trade in Services);

(c) Article 9 (Most-Favoured-Nation Treatment) of Chapter 8 (Trade in Services) or Article 4 (Most-Favoured-Nation Treatment) of Chapter 11 (Trade in Services);

(d) Article 10 (Local Presence) of Chapter 8 (Trade in Services);

(e) Article 5 (Senior Management and Board of Directors) of Chapter 11 (Investment); or

(f) Article 6 (Prohibition of Performance Requirements) of Chapter 11 (Investment).

2. Each entry in this List B sets out the following elements:

(a) Sector refers to the sector for which the entry is made;

(b) Subsector, where referenced, refers to the specific subsector for which the entry is made;

(c) Obligations Concerned specifies the obligations referred to in Paragraph 1 that, pursuant to Article 12 (Schedules of Non-Conforming Measures) of Chapter 8 (Trade in Services) and Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), do not apply to the sectors, subsectors or activities listed in the entry;

(d) Description sets out the scope of the sectors, subsectors or activities covered by the entry; and

(e) Existing Measures where specified, identifies, for transparency purposes, a non-exhaustive list of existing measures that apply to the sectors, subsectors or activities covered by the entry.

3. In accordance with Article 12 (Schedules of Non-Conforming Measures) of Chapter 8 (Trade in Services) and Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), the Articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the sectors, subsectors and activities identified in the Description element of that entry.

4. Commitments under Chapter 8 (Trade in Services) with respect to financial services are undertaken subject to the limitations and conditions set forth in these explanatory notes and this List B.

5. For greater certainty, where Brunei Darussalam has more than one entry in this List B that could apply to a measure, each entry is to be read independently, and is without prejudice to the application of any other entry to the measure.

6. The Schedules of other Parties shall not be used to interpret Brunei Darussalam's commitments or obligations under Chapter 8 (Trade in Services) or Chapter 11 (Investment).

7. For greater certainty, Brunei Darussalam's commitment with respect to Article 5 (Market Access) of Chapter 8 (Trade in Services), juridical persons supplying financial services and constituted under the laws, regulations and guidelines of Brunei Darussalam are subject to non-discriminatory limitations on juridical forms. (3)

8. All financial institutions offering Islamic financial products and services shall be subject to the Syariah requirements as determined by the laws of Brunei Darussalam and any supervisory bodies for the control of the administration and business dealings of financial institutions concerning Islamic products and any matters connected thereto.

9. Brunei Darussalam reserves the right to require a foreign bank branch that is systemically important to be a locally incorporated bank in Brunei Darussalam subject to the following prerequisites:

(a) such measure is imposed in a reasonable, objective, and impartial manner;

(b) Brunei Darussalam shall take in due consideration the quality of home regulation and supervision over the bank, degree of protection accorded to depositors in the home country with respect to depositors in Brunei Darussalam, and the amount of assets held in Brunei Darussalam;

(c) prior to the imposition of the requirement, the bank and the Party where the bank originates from shall be notified at least six months in advance of Brunei Darussalam's intention to locally incorporate the bank;

(d) Brunei Darussalam shall engage the Party concerned in consultations regarding the requirement and provide due considerations to the views expressed by the Party concerned in this regard; and

(e) provide considerable duration for the bank to comply with the requirement.

(3) For example, partnerships and sole proprietorships are generally not acceptable juridical forms for depository financial institutions in Brunei Darussalam. This explanatory note is not in itself intended to affect, or otherwise limit, a choice by a financial institution of the other Party between branches or subsidiaries.

1. Sector: All Sectors

Subsector: Obligations Concerned. National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Brunei Darussalam reserves the right to adopt or maintain any measure related to the privatisation, corporatisation, commercialisation or divestment of government assets, entities, or agencies including the following:

(a) limitations on ownership of assets;

(b) transfer or disposal of equity interests or their assets;

(c) the right of foreign investors or their investments to control their assets; and

(d) nationality of the senior management or members of the board of directors.

Existing Measures: -

2. Sector: All Sectors

Subsector: -

Obligations Concerned: National Treatment (Investment). Most-Favoured-Nation Treatment (Investment)

Description:

Investment

1. Brunei Darussalam reserves the right to adopt or maintain any measure related to all land transactions and use, which shall be subject to approval and consent by His Majesty-in-Council, including:

(a) ownership and lease of land; and

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

2. Brunei Darussalam reserves the right to adopt or maintain any measure affecting the subdivision and consolidation of land, land use, land planning, and earthwork and building applications on state and private land.

Existing Measures:

Land Code (Chapter 40)

Land Code (Strata) Act (Chapter 189) Town and Country Planning (Control of Subdivision and Consolidation of Land) Regulations, 1973

Town and Country Planning (Control of Development and Use of Land and Buildings) Regulations, 1974

Town and Country Planning Order, 2015 Building Control Order, 2014

Land Code (Amendment) Order, 2016

Valuers and Estate Agents (Amendment) Order, 2016

Land Acquisition Act (Chapter 41)

3. Sector: All Sectors

Subsector: -

Obligations Concerned : Most-Favoured-Nation Treatment (Trade in Services and Investment)

Description: Trade in Services and Investment

Brunei Darussalam reserves the right to adopt or maintain any measure that accords differential or preferential treatment to:

(a) any countries under any bilateral, regional or multilateral international agreement signed or in force prior to the date of entry into force of this Second Protocol; (4)

(b) any Member State of ASEAN under any agreement or arrangement between or among Member States of ASEAN in force or signed after the date of entry into force of this Second Protocol; and

(c) any countries under any international agreement in force or signed after the date of entry into force of this Second Protocol involving:

(i) air services;

(ii) maritime and port matters; (iii) fisheries;

(iv) e-commerce;

(v) broadcasting; and

(vi) land transport.

Existing Measures: -

(4) For greater certainty, this extends to any preferential treatment accorded pursuant to a subsequent review or amendment of the relevant bilateral, regional or multilateral international agreement.

4. Sector: All Sectors

Subsector: -

Obligations Concerned: Market Access

Description: Trade in Services

Brunei Darussalam reserves the right to adopt or maintain any measure with respect to the supply of a service by the presence of natural persons, including on the total number of foreign natural persons that may be employed in any sector, subject to Chapter 9 (Movement of Natural Persons), and in a manner that is not inconsistent with Brunei Darussalam's obligations under Article XVI of GATS.

Existing Measures: -

5. Sector: All Sectors

Subsector: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Brunei Darussalam reserves the right to adopt or maintain any measure that it considers necessary for the protection of its essential security interests.

Existing Measures: -

6. Sector: All Sectors

Subsector: -

Obligations Concerned: Prohibition of Performance Requirements

Description: Investment

Brunei Darussalam reserves the right to adopt or maintain any measure related to the imposition and enforcement of a requirement, commitment, or undertaking related to the transfer of technology, production process, or other proprietary knowledge to a person in Brunei Darussalam as:

(a) acondition for establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in Brunei Darussalam; or

(b) acondition for receipt or continued receipt of an advantage in connection with the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in Brunei Darussalam.

Existing Measures: -

7. Sector: Fishery and Services Incidental to Fisheries

Subsector: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence. Prohibition of Performance Requirements

Description: Trade in Services and Investment

Brunei Darussalam reserves the right to adopt or maintain any measure related to any fisheries and services incidental to fisheries activity in its territory and its exclusive economic zone.

Existing Measures:

Fisheries Order, 2009

Fisheries (Fish Culture Farms) Regulations, 2002

Fisheries (Fish Landing Complexes) Regulations, 2002

Fisheries (Fish Processing Establishments) Regulations, 2002

Brunei Darussalam Fishery Limits Act (Chapter 130)

Exclusive Economic Zone Proclamation (Sup. HA)

Administrative Measures and Guidelines

8. Sector: Logging and sawmilling

Subsector: -

Obligations Concerned: National Treatment (Investment).

Description: Investment

Brunei Darussalam reserves the right to adopt or maintain any measure related to logging and sawmilling activities.

Existing Measures:

Brunei Darussalam National Development Plan

Brunei Darussalam Long-Term Development Plan

Forest Act (Chapter 46) National Forestry Policy (1989)

Administrative Measures and Guidelines

9. Sector: Mining and Quarrying, and Services Incidental to Mining and Quarrying Subsector Sand and Gravel

Obligations Concerned: National Treatment (Trade in Services and Investment). Most-Favoured-Nation Treatment (Trade in

Services and Investment). Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Brunei Darussalam reserves the right to adopt or maintain any measure related to this subsector. This includes any measure with respect to the commercialisation of activities related to silica sand deposits, including mining, quarrying, manufacture and export of such deposits.

Existing Measures:

Mining Act (Chapter 42)

Administrative Measures and Guidelines

10. Sector: Oil and Gas

Subsector: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Most-Favoured-Nation Treatment (Trade in Services and Investment). Prohibition of Performance Requirements. Senior Management and Board of Directors.

Description: Trade in Services and Investment

Brunei Darussalam reserves the right to adopt or maintain any measure related to the Oil and Gas Industry.

Existing Measures:

Petroleum Mining Act (Chapter 44) (as amended from time to time)

Brunei National Petroleum Company Sendirian Berhad Order, 2002 (as amended from time to time)

Petroleum (Pipe-Lines) Act (Chapter 45) (as amended from time to time)

Administrative Measures and Guidelines

11. Sector: Coal

Subsector: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Brunei Darussalam reserves the right to adopt or maintain any measure related to this sector including the exploration, extraction, and use of coal reserves in Brunei Darussalam.

Existing Measures:

12. Sector: Business Services

Subsector: Services Incidental to Agriculture, Hunting and Forestry

Services Incidental to Mining Services Incidental to Manufacturing

Services Incidental to Energy Distribution

Obligations Concerned: National Treatment (Trade in Services) Market Access. Most-Favoured-Nation Treatment (Trade in Services). Local Presence

Description: Trade in Services

Brunei Darussalam reserves the right to adopt or maintain any measure related to services incidental to the sectors listed above.

Existing Measures: -

13. Sector: Business Services

Subsector: Placement and supply services of personnel Employment Agencies

Investigation and Security, including Unarmed Guard Services

Convention Services

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Brunei Darussalam reserves the right to adopt or maintain any measure related to placement and supply services of personnel; employment agencies; investigation and security, including unarmed guard services; and Convention Services.

Existing Measures:

Employment Agencies Order, 2004

Administrative Measures and Guidelines

14. Sector: Business Services

Subsector: - Research and Development Services

- Research and Development Services on Natural Sciences and Engineering

- Research and Development Services on Social Sciences and Humanities

- Interdisciplinary Research and Development Services

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Senior Management and Board of Directors

Description: Trade in Services and Investment

Brunei Darussalam reserves the right to adopt or maintain any measure related to the supply of research and development services.

Existing Measures: -

15. Sector: Business Services

Subsector: Other Business Services

Sale or leasing services of advertising space or time

Planning, creating, and placement services of advertising

Other advertising services (Advertising consultancy services)

Marketing research and public opinion polling services

Management consulting services

Services related to management consulting (including management services n.e.c.)

Technical testing and analysis services including other technical testing and analysis services

Related scientific and technical consulting services

Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment)

Building-cleaning services

Photographic services

Packaging services

Duplicating services

Translation and interpretation services

Mailing list compilation and mailing services

Specialty design services

Obligations Concerned: National Treatment (Trade in Services). Market Access

Description: Trade in Services

Brunei Darussalam reserves the right to adopt or maintain any measure related to the supply of services in Brunei Darussalam for the sectors listed above.

Existing Measures: -

16. Sector: Business Services

Subsector: - Rental or Leasing Services without Operator

- Relating to Ships

- Relating to Other Transport Equipment

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Brunei Darussalam reserves the right to adopt or maintain any measure related to rental or leasing services without operator for ships or other transport equipment in Brunei Darussalam.

Existing Measures: -

17. Sector: Business Services

Subsector: - Rental or Leasing Services without Operator

- Rental or Leasing Services relating to Other Machinery and Equipment

- Rental or Leasing Services relating to Personal and Household Goods

Obligations Concerned: National Treatment (Trade in Services). Market Access

Description: Trade in Services

Brunei Darussalam reserves the right to adopt or maintain any measure related to rental or leasing services without operators related to other machinery and equipment and _ concerning personal and household goods.

Existing Measures:

Companies Act (Chapter 39)

Administrative Measures and Guidelines

18. Sector: Business Services

Subsector: Professional Services

Legal Services

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Brunei Darussalam reserves the right to adopt or maintain any measure related to the supply of legal services in Brunei Darussalam.

Existing Measures: -

19. Sector: Business Services

Subsector: Valuers (Appraisers) and Estate Agents

Obligations Concerned: National Treatment (Trade in Services and Investment. Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance. Senior Management and Board of Directors

Description: Trade in Services and Investment

Brunei Darussalam reserves the right to adopt or maintain any measure related to the supply of valuers (appraisers) and estate agent services in Brunei Darussalam.

Existing Measures: -

20. Sector: Business Services

Subsector: Taxation Services

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Brunei Darussalam reserves the right to adopt or maintain any measure relating to the representation of taxpayers (either by individuals or enterprises) in their tax matters including preparing and furnishing of income tax returns, filing responses to notices issued by tax authority and filing notices of objections, and handling payment in relation to tax.

Existing Measures: -

21. Sector: Business Services

Subsector: Accounting and Book-Keeping Services Insolvency Services

Corporate Secretarial Services

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Brunei Darussalam reserves the right to adopt or maintain any measure on commercial presence related to the service sectors listed above.

Existing Measures: -

22. Sector: Communication Services

Subsector: Postal Services

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Brunei Darussalam reserves the right to adopt or maintain any measure related to postal services.

Existing Measures: -

23. Sector: Distribution Services

Subsector: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Brunei Darussalam reserves the right to adopt or maintain any measure related to distribution services.

Existing Measures: -

24. Sector: Private Health Services

Subsector: Pharmacists, nurses, midwives and allied health services

Private laboratory services

Private radiology services

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access Local Presence. Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

1. Brunei Darussalam reserves the right to adopt or maintain any measure related to the private practice of pharmacists, nurses, midwives, and allied health services.

2. Brunei Darussalam reserves the right to adopt or maintain any measure related to the establishment of private laboratory services and private radiology services.

Existing Measures: -

25. Sector: Health Related and Social Services

Subsector: Hospital Services, excluding Laboratory Services and X-Ray Services

Obligations Concerned: National Treatment (Trade in Services) Market Access. Local Presence. Prohibition of Performance Requirements. Senior Management and Board of Directors

Description:

Trade in Services and Investment

Brunei Darussalam reserves the right to adopt or maintain any measure related to hospital services, excluding laboratory services and x-ray services.

Existing Measures: -

26. Sector: Health Related and Social Services

Subsector: Hospital Services - Laboratory Services

- X-Ray Services

Obligations Concerned: National Treatment (Trade in Services). Market Access. Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Brunei Darussalam reserves the right to adopt or maintain any measure on commercial presence related to the establishment of private laboratory services and private radiology services.

Existing Measures: -

27. Sector: Private Health Services

Subsector: Private Health Centres or Clinics

Obligations Concerned: Market Access Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Brunei Darussalam reserves the right to adopt or maintain any measure related to the establishment of private health centres or clinics, including:

(a) requiring that such private health centres or clinics be established in the form of a joint venture with a Bruneian national;

(b) limiting the number of private health centres or clinics that can be established in Brunei Darussalam;

(c) requiring such private health centre or clinic to carry out research and development within the territory of Brunei Darussalam, or transfer of technology; or

(d) requiring a majority of the senior managers in the private health centres or clinics to be of Bruneian nationality.

Existing Measures: -

28. Sector: Other Human Health Services

Subsector: Services provided by nurses

Obligations Concerned: National Treatment (Trade in Services and Investment)

Description: Trade in Services and Investment

Brunei Darussalam reserves the right to adopt or maintain any measure on commercial presence related to services provided by nurses, except as stated in List A.

Existing Measures: -

29. Sector: Other Health Related and Social Services

Subsector: Ambulance Services

Obligations Concerned: National Treatment (Trade in Services)

Description: Trade in Services

Brunei Darussalam reserves the right to adopt or maintain any measure on commercial presence related to ambulance services, except as stated in List A.

Existing Measures: -

30. Sector: Recreational, Cultural and Sporting Services

Subsector: News Agency Services Library Services

- Information Technology (i.e. 6D Theatre)

- Consultancy in Library Marketing (including services and premises; Establishment of New Libraries; and Research on User Needs)

- Supplying Library Materials (childrenâs books, e-books or e-journals of local authors etc.)

- Establishment of Private Library

Archive Services Sports Event Promotion Services Sports Event Organisation Services

Sports Facility Operation Services

Computer Reservations System Services

Obligations Concerned: National Treatment (Trade in Services)

Description: Trade in Services

Brunei Darussslam reserves the right to adopt or maintain any measure on commercial presence related to news agency

services; library services (information technology, consultancy in library marketing, supplying library materials, establishment of private library); archive services; and sports event promotion, organisation or operation services, except as stated in List A.

Existing Measures: -

31. Sector: Recreational, Cultural and Sporting Services

Subsector: Theme Parks

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access

Description: Trade in Services and Investment

Brunei Darussalam reserves the right to adopt or maintain any measure on commercial presence related to the supply of services for theme parks in Brunei Darussalam.

Existing Measures: -

32. Sector: Tourism and Travel Related Services

Subsector: Hotels, Boarding House or Lodging

Hotels and Restaurants (including catering) Travel Agents

Tour Operator Services

Tour Guide Services (for birdwatching only)

Other Tourism and Travel Related Services (not classified)

Obligations Concerned: National Treatment (Trade in Services)

Description: Trade in Services

Brunei Darussalam reserves the right to adopt or maintain any measure on commercial presence relating to hotels, boarding house, or lodging; hotels and restaurants including catering; travel agents; tour operator services; tour guide services for birdwatching only; and other tourism and travel related services (not classified), except as stated in List A.

Existing Measures: -

33. Sector: Other Tourism Services

Subsector: Youth Hostel Golf Courses

Marina Facilities

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Brunei Darussalam reserves the right to adopt or maintain any measure on commercial presence related to youth hostels, golf courses and marina facilities.

Existing Measures: -

34. Sector: Broadcasting Services

Subsector: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence. Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Brunei Darussalam reserves the right to adopt or maintain any measure related to broadcasting services.

Existing Measures: -

35. Sector: Printing, Publishing and Reproduction of Newspapers including matters relating to the collection and publication of news and the distribution of newspapers

Subsector: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence. Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Brunei Darussalam reserves the right to adopt or maintain any measure related to the printing, publishing and reproduction of newspapers including matters related to the collection and publication of news and the distribution of newspapers in Brunei Darussalam.

Existing Measures: -

36. Sector: Transport Services

Subsector: Air Transport Services

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Board of Directors.

Description: Trade in Services and Investment

Brunei Darussalam reserves the right to adopt or maintain any measure related to air transport services including:

a) the ownership, operation and management of airports and heliports in Brunei Darussalam;

b) the supply of ground handling operations;

c) specialty air services;

d) passenger transportation;

e) freight transportation;

f) maintenance and repair of aircraft; and

g) supporting services for air transport.

Existing Measures: -

37. Sector: Transport Services

Subsector: Land Transport Services

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Brunei Darussalam reserves the right to adopt or maintain any measure related to the supply of land transport services including:

(a) passenger transportation;

(b) freight transportation;

(c) commercial vehicle with operator;

(d) pushing and towing services;

(e) maintenance and repair of road transport equipment; and

(f) supporting services for toad transport services.

Existing Measures

38. Sector: Transport Services

Subsector: Pipeline Transport

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Brunei Darussalam reserves the right to adopt or maintain any measure related to pipeline transport including the transportation of fuels and other goods.

Existing Measures: -

39. Sector: Transport Services

Subsector: Pushing and Towing Services for Maritime Transport Services

Pushing and Towing Supporting Services for Internal Waterways Transport

Supporting Services for Rail Transport Services

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Brunei Darussalam reserves the right to adopt or maintain any measure related to pushing and towing services for maritime transport services, pushing and towing supporting services for internal waterways, and supporting services for rail transport services.

Existing Measures: -

40. Sector: Maritime Transport Services

Subsector: Rental of vessels with crew Maintenance and repair of vessels Maritime Agency Services

Services auxiliary to Maritime Transport

Supporting services for Maritime Transport

Obligations Concerned: National Treatment (Trade in Services). Market Access

Description: Trade in Services

Brunei Darussalam reserves the right to adopt or maintain any measure on commercial presence related to sectors listed above.

Existing Measures: -

41. Sector: Maritime Transport Services

Subsector: Freight Transport (for energy goods)

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Brunei Darussalam reserves the right to adopt or maintain any measure related to freight transport for energy goods.

Existing Measures: -

42. Sector: Transport Services

Subsector: Internal Waterways - Passenger Transport Services - Freight Transport Services - Rental of vessels with crew - Maintenance and repair of vessels

- Supporting services for Internal Waterways Transport

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access Prohibition of Performance Requirements. Senior Management and Board of Directors

Description

Trade in Services and Investment

Brunei Darussalam reserves the right to adopt or maintain any measure on commercial presence related to internal waterways transport services.

Existing Measures: -

43. Sector: Transport Services

Subsector: Rail Transport Services

Obligations Concerned: National Treatment (Trade in Services and Investment)

Description: Trade in Services and Investment

Brunei Darussalam reserves the right to adopt or maintain any measure on commercial presence related to this sector, except as stated in List A.

Existing Measures: -

44. Sector: Transport Services

Subsector: Space Transport

Obligations Concerned: National Treatment (Trade in Services and Investment)

Description: Trade in Services and Investment

Brunei Darussalam reserves the right to adopt or maintain any measure on commercial presence related to this sector, except as stated in List A.

Existing Measures: -

45. Sector: Other Transport Services

Subsector: Freight transport agency services and other freight transport services (freight consolidation and break-bulk services only)

Obligations Concerned: National Treatment (Trade in Services)

Description: Trade in Services

Brunei Darussalam reserves the right to adopt or maintain any measure on commercial presence related to freight transport agency services and other freight transport services (freight consolidation and break-bulk services only), except as stated in List A.

Existing Measures: -

46. Sector: Other Transport Services

Subsector: Freight transport agency services and other freight transport services (except for freight consolidation and break-bulk services)

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Brunei Darussalam reserves the right to adopt or maintain any measure related to freight transport agency services and other freight transport services, except for freight consolidation and break-bulk services only.

Existing Measures: -

47. Sector: Services Auxiliary to all modes of transport

Subsector: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access Most-Favoured-Nation Treatment Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Brunei Darussalam reserves the right to adopt or maintain any measure on commercial presence related to services auxiliary to all modes of transport.

Existing Measures: -

48. Sector: Business Services

Subsector: Rental or Leasing Services relating to Aircraft without Operator

Obligations Concerned: Market Access. National Treatment (Trade in Services and Investment)

Description: Trade in Services and Investment

Brunei Darussalam reserves the right to adopt or maintain any measure on commercial presence related to the rental or leasing services related to aircraft without operator, except as stated in List A.

Existing Measures:

49. Sector: Private Education Services

Subsector: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access Local Presence. Senior Management and Board of Directors

Description: Trade in Services and Investment

Brunei Darussalam reserves the right to adopt or maintain any measure related to the supply of private education services, including the following:

(a) equity shareholding by foreign nationals or companies in the ownership of schools and higher learning institutions;

(b) the total number of schools and higher learning institutions that may be established in Brunei Darussalam;

(c) the total number of employees, including teachers; or

(d) the nationality of senior management or board of directors.

Existing Measures: -

50. Sector: Education Services

Subsector: Adult Education, for courses with maximum duration of three months (Private Education)

Obligations Concerned: National Treatment (Trade in Services)

Description: Trade in Services

Brunei Darussalam reserves the right to adopt or maintain any measure on commercial presence related to adult education,

for courses with maximum duration of three months for private education, except as stated in List A.

Existing Measures:

Education Act (Chapter 210)

51. Sector: Higher Education Services

Subsector: -

Obligations Concerned: Market Access. Local Presence. National Treatment (Investment) Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Brunei Darussalam reserves the right to adopt or maintain any measure related to the supply of higher education services.

Existing Measures:

Education Act (Chapter 210)

52. Sector: Education Services

Subsector: International Schools, for Primary and Secondary Education Services

Obligations Concerned: National Treatment (Trade in Services). Market Access

Description: Trade in Services

Brunei Darussalam reserves the right to adopt or maintain any measure related to international schools, for primary and secondary education services.

Existing Measures: -

53. Sector: Electricity Services

Subsector: -

Obligations Concerned: Market Access. Prohibition of Performance Requirements

Description: Trade in Services and Investment

Brunei Darussalam reserves the right to adopt or maintain any measure related to the generation, supply, transmission and distribution of electrical energy.

Existing Measures: -

54. Sector: Trade Services

Subsector: Supply of potable water for human consumption

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Prohibition of Performance Requirements

Description: Trade in Services and Investment

Brunei Darussalam reserves the right to adopt or maintain any measure related to the supply of potable water, including:

(a) the supply of water as a public utility;

(b) the extraction of ground water; or

(c) the export of water.

Existing Measures: -

55. Sector: Trade Services

Subsector: Wholesale trade services and retail trade services of tobacco

Obligations Concerned: Market Access

Description: Trade in Services

Brunei Darussalam reserves the right to adopt or maintain any measure related to the supply of wholesale and retail trade services of tobacco products.

Existing Measures: -

56. Sector: Trade Fair and Exhibition Organising Services

Subsector: -

Obligations Concerned: National Treatment (Trade in Services)

Description: Trade in Services

Brunei Darussalam reserves the right to adopt or maintain any measure related to trade fair and exhibition organising services.

Existing Measures: Public Entertainment Act (Chapter 187)

57. Sector: Financial Services

Subsector: All Sectors

Obligations Concerned: Senior Management and Board of Directors

Description: Trade in Services and Investment

Brunei Darussalam reserves the right to adopt or maintain any measure related to the appointment of key responsible persons of the financial institutions including its senior executives, chairman, and the board of directors.

Existing Measures: -

58. Sector: Financial Services

Subsector: All Sectors

Obligations Concerned: National Treatment (Trade in Services and Investment)

Description: Trade in Services and Investment

1. Brunei Darussalam reserves the right to adopt or maintain any measure related to subsidies or grant of advantages including the following:

(a) government-owned or government- controlled entities for legitimate national economic development objectives; and

(b) Islamic financial institutions carrying out Islamic banking, fakaful or retakaful, and Islamic capital markets for the purpose of Islamic finance development.

2. Brunei Darussalam reserves the right to adopt or maintain any measure related to small and medium enterprises financing programme.

Existing Measures: -

59. Sector: Financial Services

Subsector: Capital Market

Clearing and Settlement Services

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services). Senior Management and Board of Directors

Description: Trade in Services and Investment

1. Brunei Darussalam reserves the right to adopt or maintain any measure related to the establishment or operation of the following:

(a) clearing and settlement services;

(b) central securities depository;

(c) trade repository;

(d) trading facilities;

(e) credit rating agencies;

(f) exchanges; or

(g) securities and futures market.

2. For greater certainty, this entry applies to financial institutions participating in, or seeking to participate in, any such exchange or securities market.

Existing Measures:

Brunei Darussalam Central Bank Order, 2010 Securities Markets Order, 2013 Securities Markets Regulations, 2015

Payment and Settlement Systems (Oversight) Order, 2015

60. Sector: Credit Reporting Services

Subsector: -

Obligations Concerned: National Treatment (Trade in Services) Market Access. Most-Favoured-Nation Treatment (Trade in Services). Local Presence

Description: Trade in Services

Brunei Darussalam reserves the right to adopt or maintain any measure related to the establishment and operation of credit reporting services.

Existing Measures:

Brunei Darussalam Central Bank Order, 2010 Banking Order, 2006

Islamic Banking Order, 2008

61. Sector: Financial Services

Subsector: Banking

Obligations Concerned: National Treatment (Trade in Services). Market Access. Most-Favoured-Nation Treatment (Trade in Services).

Description: Trade in Services

Brunei Darussalam reserves the right to adopt or maintain any measure related to the treatment of locally incorporated banks that are not available to licensed foreign banks branches including the following:

(a) number of branch locations; or

(b) types of banking business (5) offered.

Existing Measures :

Brunei Darussalam Central Bank Order, 2010 Banking Order, 2006

Islamic Banking Order, 2008

(5) "Banking Business" is as defined under Section 2 of the Banking Order, 2006 and Section 2 of the islamic Banking Order, 2008.

62. Sector: Financial Services

Subsector: Banking

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access

Description: Trade in Services and Investment

Brunei Darussalam reserves the right to adopt or maintain any measure related to the granting of licences to banks.

Existing Measures:

ANNEX 3 . SCHEDULE OF RESERVATIONS AND NON-CONFORMING MEASURES FOR INVESTMENT AND SERVICES. NEW ZEALAND

LIST A. EXPLANATORY NOTES

1. This List A sets out, pursuant to Article 12 (Non-Conforming Measures) of Chapter 8 (Trade in Services) and Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), New Zealand's existing measures that are not subject to some or all of the obligations imposed by:

(a) Article 4 (National Treatment) of Chapter 8 (Trade in Services) or Article 3 (National Treatment) of Chapter 11 (Investment);

(b) Article 9 (Most-Favoured-Nation Treatment) of Chapter 8 (Trade in Services) or Article 4 (Most-Favoured-Nation Treatment) of Chapter 11 (Investment);

(c) Article 5 (Market Access) of Chapter 8 (Trade in Services); (d) Article 10 (Local Presence) of Chapter 8 (Trade in Services);

(e) Article 5 (Senior Management and Board of Directors) of Chapter 11 (Investment); or

(f) Article 6 (Prohibition of Performance Requirements) of Chapter 11 (Investment).

For greater certainty, Article 5 (Market Access) of Chapter 8 (Trade in Services) refers to non-discriminatory measures.

2. Article 10 (Local Presence) of Chapter 8 (Trade in Services) and Article 4 (National Treatment) of Chapter 8 (Trade in Services) are separate disciplines and a measure that is only inconsistent with Article 10 (Local Presence) of Chapter 8 (Trade in Services) need not be reserved against Article 4 (National Treatment) of Chapter 8 (Trade in Services).

3. Each entry in New Zealand's Schedule sets out the following elements: (a) Sector refers to the sector in which the entry is made; (b) Subsector where referenced, refers to the specific subsector for which the entry is made;

(c) Level of Government indicates the level of government maintaining the listed measures;

(d) Obligations Concerned specifies the obligation(s) referred to in Paragraph 1;

(e) Description sets out the non-conforming measure to which the entry applies;

(f) Source of Measure identifies laws, regulations, procedures, requirements or practices for which the entry is made. A measure cited in the Measures element:

(i) means the measure as amended, continued, or renewed as of the date of entry into force of the Second Protocol;

(ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure

4. In accordance with Articles 12 (Schedules of Non-Conforming Measures) of Chapter 8 (Trade in Services) and Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), the Articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the laws, regulations, procedures, requirements or practices identified in the Description element of that entry.

5. All elements of the entry shall be considered in their totality for the purposes of its interpretation.

6. To clarify New Zealand's commitment with respect to Article 5 (Market Access) of Chapter 8 (Trade in Services), juridical persons supplying financial services and constituted under the laws of New Zealand are subject to non-discriminatory limitations on juridical form. (1)

7. For greater certainty, the measures that New Zealand may take in accordance with Article 3 (Prudential Measures) of Annex 8A (Financial Services), provided they meet the requirements of that Article, include those governing:

(a) licensing, registration or authorisation as a financial institution or cross- border financial service supplier, and

corresponding requirements;

(b) juridical form, including legal incorporation requirements for systemically important financial institutions and limitations on deposit- taking activities of branches of overseas banks, and corresponding requirements;

(c) requirements pertaining to directors and senior management of a financial institution or cross-border financial service supplier;

(d) capital, related party exposures, liquidity, disclosure and other risk management requirements;

(e) payment, clearance and settlement systems (including securities systems);

(f) anti-money laundering and countering financing of terrorism; and

(g) distress or failure of a financial institution or cross-border financial service supplier.

8. For greater certainty, New Zealand reaffirms its right to regulate within its territory to achieve legitimate policy objectives, such as the protection of human, animal or plant life or health, social services, public education, safety, the environment including climate change, public morals, social or consumer protection, animal welfare, privacy and data protection, or the promotion and protection of cultural diversity and the promotion and protection of the rights, interests, duties and responsibilities of Maori related to Te Tiriti o WaitangiAthe Treaty of Waitangi. The interpretation of Te Tiriti o Waitangi/the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it, shall not be subject to the dispute settlement provisions of this Agreement.

(1) For example, partnerships and sole proprictorships are generally not acceptable juridical forms for authorised depository institutions in New Zealand. This headnote is not in itself intended to affect, or otherwise limit, a choice by a financial institution of the other Party between branches or subsidiaries.

1. Sector: All Sectors

Subsector: -

Level of Government: Central

Obligations Concerned : National Treatment (Investment)

Description : Investment

1. Consistent with New Zealand's financial reporting regime established under the Companies Act 1993 and Financial Reporting Act 2013, the following types of entities are required to prepare financial statements that comply with generally accepted accounting practice, and have those statements audited and registered with the Registrar of Companies (unless exceptions to any of those requirements apply):

a) any. body corporate that is incorporated outside New Zealand (an "overseas company") that carries on business in New Zealand within the meaning of the Companies Act 1993 and which is "large" (2);

b) any "large" New Zealand company in which shares that in aggregate carry the right to exercise or control the exercise of 25 per cent or more of the voting power at a meeting of the company are held by: (3)

(i) a subsidiary of a body corporate incorporated outside New Zealand;

(il) a body corporate incorporated outside New Zealand; or

(iii) a person not ordinarily resident in New Zealand; or

c) any "large" company incorporated in New Zealand which is a subsidiary of an overseas company. (4)

2. If a company is required to prepare financial statements and if they have one or more subsidiaries, they must, instead of preparing financial statements in respect of themselves, prepare group financial statements that comply with generally accepted accounting practice in relation to that group. This obligation does not apply if:

a) that company (A) is itself a subsidiary of a body corporate (B), where body corporate (B) is:

(i) incorporated in New Zealand; or

(ii) registered or deemed to be registered under Part 18 of the Companies Act 1993;

b) group financial statements in relation to a group comprising B, A, and all other subsidiaries of B that comply with generally accepted accounting practice are completed; and

c) a copy of the group financial statements referred to in paragraph (b) and a copy of the auditor's report on those statements are delivered for registration under the Companies Act 1993 or for lodgement under another Act.

3. If an overseas company is required to prepare:

a) financial statements under the Companies Act 1993 it must also, if its New Zealand business meets the asset and revenue thresholds that apply in respect of "large" overseas companies, prepare, in addition to the financial statements of the large overseas company itself, financial statements for its New Zealand business prepared as if that business were conducted by a company formed and registered in New Zealand; and

b) group financial statements under the Companies Act 1993, and if the group's New Zealand business meets the asset and revenue thresholds that apply in respect of "large" overseas companies, the group financial statements that are prepared must include, in addition to the financial statements of the group, financial statements for the group's New Zealand business prepared as if the members of the group were companies formed and registered in New Zealand.

Source of Measure

- Companies Act 1993

- Financial Reporting Act 2013

(2) An overseas company or subsidiary of an overseas company is "large" in respect of an accounting period if at least one of the following applies: (i) as at the balance date of each of the two preceding accounting periods, the total assets of the entity and its subsidiaries (if any) exceed NZ$20 million; or (ii) in each of the two preceding accounting periods, the total revenue of the entity and its subsidiaries (if any) exceeds NZ$10 million. An audit report is required unless the New Zealand business of that overseas company is not "large" and the law where the company is incorporated does not require an audit.

(3) A New Zealand company is "large" in respect of an accounting period if at least one of the following applies: (i) as at the balance date of each of the two preceding accounting periods, the total assets of the entity and its subsidiaries (if any) exceed NZ$60 million; or (ii) in each of the two preceding accounting periods, the total revenue of the entity and its subsidiaries (if any) exceeds NZ$30 million.

(4) An overseas company or subsidiary of an overseas company is "large" in respect of an accounting period if at least one of the following applies: (i) as at the balance date of each of the two preceding accounting periods, the total assets of the entity and its subsidiaries (if any) exceed NZ$20 million; or (ii) in each of the two preceding accounting periods, the total revenue of the entity and its subsidiaries (if any) exceeds NZ$10 million. An audit report is required unless the New Zealand business of that overseas company is not "large" and the law where the company is incorporated does not require an audit.

2. Sector: Business Services

Subsector: -

Level of Government: Central

Obligations Concerned: National Treatment (Trade in Services) Most-Favoured-Nation Treatment (Trade in Services)

Description: Trade in Services

Registration of patent attorneys is restricted to those who satisfy the criteria set out under the joint trans-Tasman registration regime.

Source of Measure:

Part 6 of the Patents Act 2013 (New Zealand) Section 198 of the Patents Act 1990 (Australia)

3. Sector: Agriculture, including services incidental to agriculture

Subsector: -

Level of Government: Central

Obligations Concerned: National Treatment (Trade in Services and Investment) Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Investment and Trade in Services

The Dairy Industry Restructuring Act 2007 (DIRA) and Regulations provide for the management of a national database for herd testing data.

The DIRA:

(a) provides for the New Zealand Government to determine arrangements for the database to be managed by another dairy industry entity. In doing so the New Zealand Government may:

(i) take into account the nationality and residency of the entity, persons that own or control the entity, and the senior management and board of directors of the entity; and

(ii) restrict who may hold shares in the entity, including on the basis of nationality;

(b) requires the transfer of data by those engaged in herd testing of dairy cattle to the Livestock Improvement Corporation (LIC) or successor entity; and

(c) establishes rules regarding access to the database and that access may be denied on the basis that the database's intended use could be "harmful to the New Zealand dairy industry", which may take into account the nationality or residency of the person seeking access.

Source of Measure:

Dairy Industry Restructuring Act 2001 and Regulations

4. Sector: Communication services Telecommunications

Subsector: -

Level of Government: Central

Obligations Concerned: National Treatment (Investment) Senior Management and Board of Directors

Description: Investment

The Constitution of Chorus Limited requires New Zealand Government approval for the shareholding of any single overseas entity to exceed 49.9 per cent.

At least half of board directors are required to be New Zealand citizens.

Source of Measure:

Constitution of Chorus Limited

5. Sector: Communication services Audio-visual services

Subsector: -

Level of Government: Central

Obligations Concerned: National Treatment (Trade in Services and Investment). Local Presence. Prohibition of Performance Requirements

Description: Investment and Trade in Services

The acquisition of licences or management rights to use the radio frequency spectrum, or any interest in such licences or management rights, under the Radiocommunications Act 1989 by foreign governments or agents on behalf of foreign governments is subject to the written approval of the Chief Executive of the Ministry of Business, Innovation and Employment.

Source of Measure: Radiocommunications Act 1989

6. Sector: Agriculture, including services incidental to agriculture

Subsector: -

Level of Government: Central

Obligations Concerned: National Treatment (Trade in Services and Investment).Prohibition of Performance Requirements Senior Management and Board of Directors

Description: Investment and Trade in Services

Under the Primary Products Marketing Act 1953, the New Zealand Government may impose regulations to enable the establishment of statutory marketing authorities with monopoly marketing and acquisition powers (or lesser powers) for "primary products", being products derived from beekeeping, fruit growing, hop growing, deer farming or game deer, or goats, being the fur bristles or fibres grown by the goat.

Regulations may be issued under the Primary Products Marketing Act 1953 concerning a broad range of the marketing authority's functions, powers and activities. In particular, regulations may require that board members or personnel be nationals of or resident in New Zealand.

Source of Measure: Primary Products Marketing Act 1953

7. Sector: Air Transportation

Subsector: -

Level of Government: Central

Obligations Concerned: National Treatment (Investment) Senior Management and Board of Directors

Description: Investment

Only a licensed air transport enterprise may provide international scheduled air services as a New Zealand international airline. Only a licensed air transport enterprise may provide international scheduled air services, including cabotage, to/from New Zealand, as a foreign international airline. Either the Minister of Transport or the Secretary for Transport determines the issuance of international air services licences. Non-scheduled air services require either an appropriate licence or the approval of the Secretary for Transport in accordance with guidelines issued by the Minister of Transport. Such determinations shall include consideration of the provisions of New Zealand's bilateral and multilateral air services agreements. Licences may be subject to certain conditions, such as that a New Zealand international airline is substantially owned and effectively controlled by New Zealand nationals, or has its principal place of business in New Zealand.

Source of Measure:

- Civil Aviation Act 1990

- Ministerial Guidelines

8. Sector: Air Transportation

Subsector: -

Level of Government: Central

Obligations Concerned: National Treatment (Investment) Senior Management and Board of Directors

Description: Investment

No one foreign national may hold more than 10 per cent of shares which confer voting rights in Air New Zealand unless they have the permission of the Kiwi Shareholder (New Zealand Government).

In addition:

(a) no person that owns or operates an airline business, nor any other person "associated" with a person who owns or operates an airline business, may hold or have an interest in Air New Zealand unless the prior written consent of the Kiwi Shareholder (New Zealand Government) has been given;

(b) the location of the Head Office of Air New Zealand, and its principal place of business, shall be in New Zealand;

(c) at least three members of the board of directors must be ordinarily resident in New Zealand;

(d) more than half of the board of directors must be New Zealand citizens;

(e) the Chairperson of the board of directors must be a New Zealand citizen; and

(f) Air New Zealand shall continue to be incorporated and registered in New Zealand.

Source of Measure: Constitution of Air New Zealand Limited

9. Sector: All sectors

Subsector: -

Level of Government: -

Obligations Concerned : Prohibition on Performance Requirements

Description : Investment and Trade in Services

Any existing non-conforming taxation measure.

Source of Measure :

- Income Tax Act 2007

- Goods and Services Tax Act 1985

- Estate and Gift Duties Act 1968

- Stamp and Cheque Duties Act 1971

- Gaming Duties Act 1971

- Tax Administration Act 1994

10. Sector: Financial Services

Subsector: Insurance and insurance related services

Level of Government: Central

Obligations Concerned: National Treatment (Trade in Services and Investment) Market Access

Description: Investment and Trade in Services

The provision of crop insurance for wheat can be restricted in accordance with the Commodity Levies Amendment Act 1995 (CLA). Section 4 of the CLA provides for the use of funds derived under a mandatory commodity levy on wheat growers to be used for the purpose of funding a scheme insuring wheat crops against damage or loss.

The provision of insurance intermediation services related to the export of kiwifruit can be restricted in accordance with the Kiwifruit Industry Restructuring Act 1999 and regulations relating to the export marketing of kiwifruit.

Source of Measure

- Commodity Levies Act 1990 - Commodity Levies Amendment Act 1995 - Kiwifruit Industry Restructuring Act 1999 and

- Regulations.

11. Sector: Financial Services

Subsector: Banking and other financial services (excluding insurance)

Level of Government: Central

Obligations Concerned: Senior Management and Boards of Directors

Description: Investment and Trade in Services

The fund manager of a registered Kiwisaver scheme and the corporate trustee of a registered Kiwisaver scheme that is a

restricted scheme must both have at least one director that is a New Zealand resident for tax purposes.

Source of Measure:

- Kiwisaver Act 2006

- Financial Markets Conduct Act 2013

12. Sector: All Sectors

Subsector: -

Level of Government: Central

Obligations Concerned: National Treatment (Investment). Market Access.Prohibition on Performance Requirements. Senior Management and Boards of Directors

Description: Investment

Consistent with New Zealand's overseas investment regime as set out in the relevant provisions of the Overseas Investment Act 2005, the Fisheries Act 1996 and the Overseas Investment Regulations 2005, the following investment activities require prior approval from the New Zealand Government:

(a) acquisition or control by non-government sources of 25 per cent or more of any class of shares (5) or voting power (6) in a New Zealand entity where either the consideration for the transfer or the value of the assets exceeds NZ$10 million;

(b) commencement of business operations or acquisition of an existing business by non-government sources, including business assets, in New Zealand, where the total expenditures to be incurred in setting up or acquiring that business or those assets exceed NZ$10 million;

(c) acquisition or control by government sources of 25 per cent or more of any class of shares (7) or voting power (8) in a New Zealand entity where either the consideration for the transfer or the value of the assets exceeds NZ$10 million;

(d) commencement of business operations or acquisition of an existing business by government sources, including business assets, in New Zealand, where the total expenditures to be incurred in setting up or acquiring that business or those assets exceed NZ$10 million;

(e) acquisition or control, regardless of dollar value, of certain categories of land that are regarded as sensitive or require specific approval according to New Zealand's overseas investment legislation; and

(f) any transaction, regardless of dollar value, that would result in an overseas investment in fishing quota.

Overseas investors must comply with the criteria set out in the overseas investment regime and any conditions specified by the regulator and the relevant Minister or Ministers.

This entry should be read in conjunction with New Zealand's List B (5).

Source of Measure

- Overseas Invesiment Act 2005 - Fisheries Act 1996

- Overseas Investment Regulations 2005

(5) For greater certainty, the term "shares" includes shares and other types of securities.

(6) For greater certainty, "voting power" includes the power to control the composition of 25 percent or more of the governing body of the New Zealand entity.

(7) For greater certainty, the term "shares" includes shares and other types of securities.

(8) For greater certainty, "voting power" includes the power to control the composition of 25 percent or more of the governing body of the New Zealand entity.

LIST B. EXPLANATORY NOTES

1. This List B sets out, pursuant to Article 12 (Non-Conforming Measures) of Chapter 8 (Trade in Services) and Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), the specific sectors, subsectors, or activities for which New Zealand may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

(a) Article 4 (National Treatment) of Chapter 8 (Trade in Services) or Article 3 (National Treatment) of Chapter 11 (Investment);

(b) Article 9 (Most-Favoured-Nation Treatment) of Chapter 8 (Trade in Services) or Article 4 (Most-Favoured-Nation Treatment) of Chapter 11 (Investment);

(c) Article 5 (Market Access) of Chapter 8 (Trade in Services);

(d) Article 10 (Local Presence) of Chapter 8 (Trade in Services);

(e) Article 5 (Senior Management and Board of Directors) of Chapter 11 (Investment); or

(f) Article 6 (Prohibition of Performance Requirement) of Chapter 11 (Investment).

For greater certainty, Article 5 (Market Access) of Chapter 8 (Trade in Services) refers to non-discriminatory measures.

2. Article 10 (Local Presence) of Chapter 8 (Trade in Services) and Article 4 (National Treatment) of Chapter 8 (Trade in Services) are separate disciplines and a measure that is only inconsistent with Article 10 (Local Presence) of Chapter 8 (Trade in Services) need not be reserved against Article 4 (National Treatment) of Chapter 8 (Trade in Services).

3. Each entry in New Zealand's Schedule sets out the following elements:

(a) Sector refers to the sector in which the entry is made;

(b) Subsector where referenced, refers to the specific subsector for which the entry is made;

(c) Level of Government indicates the level of government maintaining the listed measures;

(d) Obligations Concerned specifies the obligation(s) referred to in Paragraph 1;

(e) Description sets out the nature or scope of the non-conforming measures in the sectors, sub-sectors or activities covered by the entry; and

(f) Existing measures are included for transparency purposes. The measures stipulated therein are not exhaustive.

4. In accordance with Articles 12 (Schedules of Non-Conforming Measures) of Chapter 8 (Trade in Services) and Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), the Articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the sectors, subsectors, and activities identified in the Description element of that entry.

5. Where an inconsistency arises in relation to the interpretation of an entry, the Description element of the entry shall prevail to the extent of the inconsistency.

6. To clarify New Zealand's commitment with respect to Article 5 (Market Access) of Chapter 8 (Trade in Services), juridical persons supplying financial services and constituted under the laws of New Zealand are subject to non-discriminatory limitations on juridical form. (9)

7. For greater certainty, the measures that New Zealand may take in accordance with Article 3 (Prudential Measures) of Annex 8A (Financial Services), provided they meet the requirements of that Article, include those governing:

(a) licensing, registration or authorisation as a financial institution or cross- border financial service supplier, and corresponding requirements;

(b) juridical form, including legal incorporation requirements for systemically important financial institutions and limitations on deposit-taking activities of branches of overseas banks, and corresponding requirements;

(c) requirements pertaining to directors and senior management of a financial institution or cross-border financial service supplier;

(d) capital, related party exposures, liquidity, disclosure and other risk management requirements;

(e) payment, clearance and settlement systems (including securities systems);

(f) anti-money laundering and countering financing of terrorism; and

(g) distress or failure of a financial institution or cross-border financial service supplier.

8. For greater certainty, New Zealand reaffirms its right to regulate within its territory to achieve legitimate policy objectives, such as the protection of human, animal or plant life or health, social services, public education, safety, the environment including climate change, public morals, social or consumer protection, animal welfare, privacy and data protection, or the promotion and protection of cultural diversity and the promotion and protection of the rights, interests, duties and responsibilities of Maori related to Te Tiriti o Waitangi/the Treaty of Waitangi. The interpretation of Te Tiriti o Waitangi/the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it, shall not be subject to the dispute settlement provisions of this Agreement.

(9) For example, partnerships and sole proprietorships are generally not acceptable juridical forms for authorised depository institutions in New Zealand. This headnote is not in itself intended to affect, or otherwise limit, a choice by a financial institution of the other Party between branches or subsidiaries.

1. Sector: All sectors

Subsector: -

Level of Government: -

Obligations Concerned: National Treatment (Trade in Services and Investment).Most-Favoured-Nation Treatment (Trade in Services and Investment). Prohibition of Performance Requirements. Senior Management and Board of Directors Local Presence

Description: Investment and Trade in Services

New Zealand reserves the right to adopt or maintain any measure with respect to:

(a) the provision of public law enforcement and correctional services; and

(b) the following, to the extent that they are social services established for a public purpose:

- child care;

- health;

- income security and insurance; public education;

- public housing;

- public training;

- public transport;

- public utilities;

- social security and insurance; and social welfare.

Existing Measures: -

2. Sector: All sectors

Subsector: -

Level of Government: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Prohibition of Performance Requirements. Senior Management and Board of Directors Local Presence

Description: Investment and Trade in Services

New Zealand reserves the right to adopt or maintain any measure with respect to water, including the allocation, collection, treatment, and distribution of drinking water.

This entry does not apply to the wholesale trade and retail of bottled mineral, aerated, and natural water.

Existing Measures: -

3. Sector: All sectors

Subsector: -

Level of Government: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Most-Favoured-Nation Treatment (Trade in Services and Investment). Prohibition of Performance Requirements. Senior Management and Board of Directors Local Presence

Description: Investment and Trade in Services

New Zealand reserves the right to adopt or maintain any measure solely as part of the act of devolving a service that is provided in the exercise of governmental authority at the date of entry into force of the Second Protocol. Such measures may include:

(a) restricting the number of service suppliers;

(b) allowing an enterprise, wholly or majority owned by the New Zealand Government, to be the sole service supplier or one amongst a limited number of service suppliers;

(c) imposing restrictions on the composition of senior management and board of directors;

(d) requiring local presence; and

(e) specifying the juridical form of the service supplier.

Existing Measures: -

4. Sector: All sectors

Subsector: -

Level of Government: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Most-Favoured-Nation Treatment (Trade in Services and Investment). Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Investment and Trade in Services

Where the New Zealand Government wholly owns or has effective control over an enterprise then New Zealand reserves the right to adopt or maintain any measures regarding the sale of any shares in that enterprise or any assets of that enterprise to any person, including according more favourable treatment to New Zealand nationals.

Existing Measures: -

5. Sector: All sectors

Subsector: -

Level of Government: -

Obligations Concerned: National Treatment (Investment). Most-Favoured-Nation Treatment (Investment). Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Investment

New Zealand reserves the right to adopt or maintain any measure that requires the following investment activities to receive prior approval by the New Zealand Government under its overseas investment regime:

For transparency purposes those categories, as set out in List A (12) are:

(a) acquisition or control by non-government sources of 25 per cent or more of any class of shares (10) or voting power (11) in a New Zealand entity where either the consideration for the transfer or the value of the assets exceeds NZ$10 million;

(6) commencement of business operations or acquisition of an existing business by Nongovernment sources, including business assets, in New Zealand, where the total expenditures to be incurred in setting up or acquiring that business or those assets exceed NZ$10 million;

(c) acquisition or control by government sources of 25 per cent or more of any class of shares (12) or voting power (13) in a New Zealand entity where either the consideration for the transfer or the value of the assets exceeds NZ$10 million;

(d) commencement of business operations or acquisition of an existing business by government sources, including business assets, in New Zealand, where the total expenditures to be incurred in setting up or acquiring that business or those assets exceed NZ$10 million;

(e) acquisition or control, regardless of dollar value, of certain categories of land that are regarded as sensitive or require specific approval according to New Zealand's overseas investment legislation; and

(f) any transaction, regardless of dollar value, that would result in an overseas investment in fishing quota.

New Zealand reserves the right to adopt or maintain any measure that sets out the approval criteria to be applied to the categories of transactions that require approval under New Zealand's overseas investment regime.

Existing Measures

- Overseas Investment Act 2005 - Fisheries Act 1996

- Overseas Investment Regulations 2005

(10) For greater certainty, the term "shares" includes shares and other types of securities.

(11) For greater certainty, "voting power" includes the power to control the composition of 25 per cent or more of the governing body of the New Zealand entity.

(12) For greater certainty, the term "shares" includes shares and other types of securities.

(13) For greater certainty, "voting power" includes the power to control the composition of 25 per cent or more of the governing body of the New Zealand entity.

6. Sector: All sectors

Subsector: -

Level of Government: -

Obligations Concerned: Most-Favoured-Nation Treatment (Trade in Services and Investment)

Description: Investment and Trade in Services

New Zealand reserves the right to adopt or maintain any measure that accords differential treatment to a Party or non-party under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of the Second Protocol.

For greater certainty, this includes, in respect of agreements on the liberalisation of trade in goods or services or investment, any measures taken as part of a wider process of economic integration or trade liberalisation between the parties to such agreements.

New Zealand reserves the right to adopt or maintain any measure that accords differential treatment to a Party or non-party under any international agreement in force or signed after the date of entry into force of this Agreement involving:

(a) aviation;

(b) fisheries; and

(c) maritime matters.

Existing Measures: -

7. Sector: All sectors

Subsector: -

Level of Government: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Local Presence

Description: Investment and Trade in Services

New Zealand reserves the right to adopt or maintain any measure regarding the control, management, or use of:

(a) protected areas, being areas established under and subject to the control of legislation, including resources on land, interests in land or water, that are set up for heritage management purposes (both historic and natural heritage), public recreation, and scenery preservation; or

(b) species owned under enactments by the Crown or that are protected by or under an enactment.

Existing Measures: Conservation Act 1987 and the enactments listed in:

- Schedule 1 of the Conservation Act 1987; - Resource Management Act 1991; and

- Local Government Act 1974.

8. Sector: All sectors

Subsector: -

Level of Government: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Senior Management and Board of Directors

Description: Investment and Trade in Services

New Zealand reserves the right to adopt or maintain any measure including nationality or residency measures in relation to:

(a) animal welfare; and

(b) the preservation of plant, animal and human life and health; including in particular:

- food safety of domestic and exported foods;

- animal feeds;

- food standards;

- biosecurity;

- biodiversity; or

- certification of the plant or animal health status of goods.

Nothing in this entry shall be construed to derogate from the obligations of Chapter 5 (Sanitary and Phytosanitary Measures), or the obligations of the SPS Agreement.

Nothing in this entry shall be construed to derogate from the obligations of Chapter 6 (Standards, Technical Regulations, and Conformity Assessment Procedures), or the obligations of the TBT Agreement.

Existing Measures: -

9. Sector: All sectors

Subsector: -

Level of Government: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Investment and Trade in Services

New Zealand reserves the right to adopt or maintain any measure made by or under an enactment in respect of the foreshore and seabed, internal waters as defined in international law (including the beds, subsoil and margins of such internal waters), territorial sea, the Exclusive Economic Zone, and the continental shelf, including for the issuance of maritime concessions in the continental shelf.

Existing Measures:

- Resource Management Act 1997

- Marine and Coastal Area (Takutai Moana) Act 2011

- Continental Shelf Act 1964 - Crown Minerals Act 1991

- Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012

10. Sector: All Sectors

Subsector: -

Level of Government: Central

Obligations Concerned: Market Access

Description: Trade in Services

New Zealand reserves the right to adopt or maintain any measure that is not inconsistent with New Zealand's obligations under Article XVI of GATS as set out in New Zealand's Schedule of Specific Commitments under GATS (GATS/SC/62, GATS/SC/62 Suppl.1, GATS/SC/62/Suppl.2).

For the purposes of this entry only, New Zealand's Schedule of Specific Commitments is modified as set out in Appendix A.

Existing Measures: -

11. Sector: Business Services Legal Services

Subsector: -

Level of Government: -

Obligations Concerned: Senior Management and Board of Directors. Market Access. National Treatment (Trade in Services and Investment)

Description: Investment and Trade in Services

New Zealand reserves the right to adopt or maintain any measure with respect to the provision of publicly funded legal services.

Existing Measures: -

12. Sector: Business Services Fire Services

Subsector: -

Level of Government: -

Obligations Concerned: National Treatment (Trade in Services and Investment)

Description: Investment and Trade in Services

New Zealand reserves the right to adopt or maintain any measure with respect to the provision of fire prevention and firefighting services, excluding aerial firefighting services.

Existing Measures: Fire and Emergency New Zealand Act 2017

13. Sector: Business Services Research and Development

Subsector: -

Level of Government: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Most-Favoured-Nation Treatment (Trade in Services and Investment). Prohibition of Performance Requirements

Description: Investment and Trade in Services

New Zealand reserves the right to adopt or maintain any measure with respect to:

(a) Research and development services carried out by State funded tertiary institutions or by Crown Research Institutes when such research is conducted for a public purpose; and

(b) Research and experimental development services on physical sciences, chemistry, biology, engineering, and technology, agricultural sciences, medical, pharmaceutical, and other natural sciences.

Existing Measures: -

14. Sector: Business Services Technical Testing and Analysis Services

Subsector: -

Level of Government: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Prohibition of Performance Requirements

Description: Investment and Trade in Services

New Zealand reserves the right to adopt or maintain any measures in respect of:

(a) composition and purity testing and analysis services;

(b) technical inspection services;

(c) other technical testing and analysis services;

(d) geological, geophysical, and other scientific prospecting services; and

(e) drug testing services.

Existing Measures: -

15. Sector: Business Services Fisheries and aquaculture Services related to fisheries and aquaculture

Subsector: -

Level of Government: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Most-Favoured-Nation Treatment (Trade in Services and Investment). Prohibition of Performance Requirements. Senior Management and Board of Directors. Local Presence

Description: Investment and Trade in Services

New Zealand reserves the right to control the activities of foreign fishing, including fishing landing, first landing of fish processed at sea, and access to New Zealand ports (port privileges), consistent with the provisions of the United Nations Convention on the Law of the Sea 1982.

Existing Measures:

- Fisheries Act 1996

- Aquaculture Reform Act 2004

16. Sector: Business Services Energy Manufacturing Wholesale trade Retail

Subsector: -

Level of Government: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Most-Favoured-Nation Treatment (Trade in Services and Investment). Prohibition of Performance Requirements. Senior Management and Board of Directors Local Presence

Description: Investment and Trade in Services

New Zealand reserves the right to adopt any measure in order to prohibit, regulate, manage or control the production, use, distribution, or retail of nuclear energy, including setting conditions for natural persons or juridical persons to do so.

Existing Measures: -

17. Sector: Business Services Services incidental to mining

Subsector: -

Level of Government:-

Obligations Concerned: Prohibition of Performance Requirements. Senior Management and Board of Directors National Treatment (Trade in Services and Investment). Market Access. Local Presence

Description: Investment and Trade in Services

New Zealand reserves the right to adopt or maintain any measure with respect to services incidental to mining.

Existing Measures: -

18. Sector: Communication Services Postal

Subsector: -

Level of Government: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Most-Favoured Nation Treatment (Trade in Services and Investment). Market Access. Senior Management and Board of Directors

Description: Investment and Trade in Services

New Zealand reserves the right to adopt or maintain any measure with respect to the supply of postal services.

Existing Measures: -

19. Sector: Communication Services Audio-visual and other Services

Subsector: -

Level of Government: -

Obligations Concerned: Prohibition of Performance Requirements. Most-Favoured-Nation Treatment (Trade in Services and Investment)

Description: Investment and Trade in Services

New Zealand reserves the right to adopt or maintain preferential co-production arrangements for film and television productions. Official co-production status, which may be granted to a co-production produced under these co-production instruments, confers national treatment on works covered by these instruments.

Existing Measures: -

For greater transparency, Section 18 of the New Zealand Film Commission Act 1978 limits Commission funding to films with a "significant New Zealand content". This criterion is deemed to be satisfied if made pursuant to a co- production agreement or arrangement with the partner country in question.

20. Sector: Communication Services Audio-visual and other Services

Subsector: -

Level of Government: -

Obligations Concerned: Prohibition of Performance Requirements. Senior Management and Board of Directors National Treatment (Trade in Services and Investment). Market Access

Description: Investment and Trade in Services

New Zealand reserves the right to adopt or maintain any measure with respect to the promotion of film and television production in New Zealand and the promotion of local content on public radio and television, and in films.

Existing Measures: -

21. Sector: Agriculture, including services incidental to agriculture

Subsector: -

Level of Government: -

Obligations Concerned: National Treatment (Investment). Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Investment

New Zealand reserves the right to adopt or maintain any measure with respect to:

(a) the holding of shares in the cooperative dairy company arising from the amalgamation authorised under the Dairy Industry Restructuring Act 2007 or any successor body; and

(b) the disposition of assets of that company or its successor bodies.

Existing Measures: Dairy Industry Restructuring Act 2007

22. Sector: Agriculture, including services incidental to agriculture

Subsector: -

Level of Government: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Investment and Trade in Services

New Zealand reserves the right to adopt or maintain any measure with respect to the export marketing of fresh kiwifruit to all markets other than Australia.

Existing Measures: Kiwifruit Industry Restructuring Act 1999 and Regulations

23. Sector: Agriculture, including services incidental to agriculture

Subsector: -

Level of Government: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Investment and Cross-Border Trade in Services

New Zealand reserves the right to adopt or maintain any measure with respect to:

(a) specifying the terms and conditions for the establishment and operation of any government-endorsed allocation scheme for the rights to the distribution of export products falling within the HS Code categories covered by the Agreement on Agriculture to markets where tariff quotas, country-specific preferences, or other measures of similar effect are in force; and

(b) the allocation of distribution rights to wholesale trade service suppliers pursuant to the establishment or operation of such an allocation scheme.

This entry is not intended to have the effect of prohibiting all investment in the provision of wholesale trade and distribution services relating to goods in the HS Code covered by the Agreement on Agriculture. The entry applies in respect of investment to the extent that the services sectors specified in this entry are a subset of agricultural products subject to tariff quotas, country-specific preferences, or other measures of similar effect.

Existing Measures: -

24. Sector: Agriculture, including services incidental to agriculture

Subsector: -

Level of Government: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Senior Management and Board of Directors

Description: Investment and Trade in Services

New Zealand reserves the right to maintain or adopt any measures necessary to give effect to the establishment or the implementation of mandatory marketing plans (also referred to as "export marketing strategies") for the export marketing of products derived from:

(a) agriculture;

(b) beekeeping;

(c) horticulture;

(d) arboriculture;

(e) arable farming; and

(f) the farming of animals,

where there is support within the relevant industry that a mandatory collective marketing plan should be adopted or activated.

For the avoidance of doubt, mandatory marketing plans, in the context of this entry, exclude measures limiting the number of market participants or limiting the volume of exports.

Existing Measures: New Zealand Horticulture Export Authority Act 1987

25. Sector: Health and Social Services

Subsector: -

Level of Government: -

Obligations Concerned: Most-Favoured-Nation Treatment (Trade in Services and Investment). Market Access

Description: Investment and Trade in Services

New Zealand reserves the right to adopt or maintain any measure with respect to all services suppliers and investors for the supply of adoption services.

Existing Measures:

- Adoption Act 1955

- Adoption (inter-country) Act 1997

26. Sector: Recreation, cultural, and sporting

Subsector: -

Level of Government: -

Obligations Concerned: Prohibition of Performance Requirements. Senior Management and Board of Directors. National Treatment (Trade in Services and Investment)

Description: Investment and Trade in Services

New Zealand reserves the right to adopt or maintain any measure with respect to gambling, betting, and prostitution services.

Existing Measures: -

27. Sector: Recreation, cultural, and sporting Library, archive, museum, and other cultural services

Subsector: -

Level of Government: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Most-Favoured-Nation Treatment (Trade in Services and Investment). Prohibition of Performance Requirements Local Presence

Description: Investment and Trade in Services

New Zealand reserves the right to adopt or maintain any measure in respect of:

(a) cultural heritage of national value; including ethnological, archaeological, historical, literary, artistic, scientific or technological heritage, as well collections that are documented, preserved and exhibited by museums, galleries, libraries, archives and other heritage collecting institutions;

(b) public archives;

(c) library and museum services; and

(d) services for the preservation of historical or sacred sites or historical buildings.

Existing Measures: -

28. Sector: Transport Maritime Services

Subsector: -

Level of Government: -

Obligations Concerned: National Treatment (Trade in Services and Investment. Most-Favoured-Nation Treatment (Trade in Services and Investment). Market Access. Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Investment and Trade in Services

New Zealand reserves the right to adopt or maintain any measure with respect to:

(a) provision of certain Port Services (pilotage, towing and tug assistance provisioning, fuelling and watering, garbage collecting and ballast waste disposal, port captains' services, navigation aids, emergency repair facilities, anchorage, other shore-based operational services essential to ship operations, including communications, water and electrical supplies). However, no measures shall be applied which deny international maritime transport suppliers reasonable and non-discriminatory access to the above port services;

(b) the establishment of registered companies for the purpose of operating a fleet under the New Zealand flag;

(c) the registration of vessels in New Zealand; and

(d) the regulation and entry of ships crews to New Zealand through the presence of natural person mode of supply.

Existing Measures: -

29. Sector: Financial services

Subsector: -

Level of Government: -

Obligations Concerned: Local Presence. Prohibition of Performance Requirements. Senior Management and Board of Directors National Treatment (Trade in Services and Investment)

Description: Investment and Trade in Services

New Zealand reserves the right to adopt or maintain any measure with respect to financial services as defined in GATS Annex on Financial Services that is not inconsistent with New Zealand's obligations under Articles XVI, XVII, and XVIII of GATS.

Existing Measures: -

30. Sector: All sectors

Subsector: -

Level of Government: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Investment and Trade in Services

New Zealand reserves the right to adopt or maintain any measure necessary to protect national treasures or specific sites of historical or archaeological value, or measures necessary to support creative arts of national value. (14)

Existing Measures

(14) "Creative arts" include ng toi Maori (Maori arts), the performing arts - including theatre, dance, and music, haka (traditional Maori pasture dance), waiata (song or chant) - visual arts and craft - such as painting, sculpture, whakairo (carving), raranga (weaving), and ta moko (traditional Maori tattoo) - literature, film and video, language arts, creative online content, indigenous traditional practice and contemporary cultural expression, and digital interactive media and hybrid art work, including those that use new technologies to transcend discrete art form divisions. The term encompasses those activities involved in the presentation, execution, and interpretation of the arts; and the study and technical development of these art forms and activities.

31. Sector: Distribution Services

Subsector: -

Level of Government: -

Obligations Concerned: Market Access

Description: Trade in Services

New Zealand reserves the right to adopt or maintain any measure for public health or social policy purposes with respect to wholesale and retail trade services of tobacco products and alcoholic beverages.

Existing Measures: -

32. Sector: All sectors

Subsector: -

Level of Government: -

Obligations Concerned: National Treatment (Investment). Prohibition on Performance Requirements

Description: Investment

New Zealand reserves the right to adopt or maintain any taxation measure with respect to the sale, purchase or transfer of residential property (including interests that arise via leases, financing and profit sharing arrangements, and acquisition of interests in enterprises that own residential property).

For greater certainty, residential property does not include non-residential commercial real estate.

Existing Measures: -

33. Sector: Financial Services

Subsector: -

Level of Government: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Most-Favoured-Nation Treatment (Trade in Services and Investment). Senior Management and Boards of Directors Prohibition on Performance Requirements. Local Presence

Description: Investment and Trade In Services

New Zealand reserves the right to adopt or maintain any measure with respect to the supply of:

(a) compulsory social insurance for personal injury caused by accident, work related gradual process disease and infection, and treatment injury; and

(b) disaster insurance for residential property for replacement cover up to a defined statutory maximum.

Existing Measures

- Accident Compensation Act 2001

- Earthquake Commission Act 1993

34. Sector: Financial Services

Subsector: Banking and other financial services (excluding insurance)

Level of Government: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Senior Management and Board of Directors

Description: Trade In Services

New Zealand reserves the right to adopt or maintain any measures with respect to the establishment or operation of any unit trust, market or other facility established for the trade in, or allotment or management of, securities in the co-operative dairy company arising from the amalgamation authorised under the Dairy Industry Restructuring Act 2001 (or any successor body).

Existing Measures: -

35. Sector: Financial Services

Subsector: Insurance and Insurance related services

Level of Government: -

Obligations Concerned: National Treatment (Trade in Services). Market Access

Description: Trade In Services

New Zealand reserves the right to adopt or maintain any measure with respect to insurance and insurance-related services for industry marketing boards established for products under the following CPC codes:

(a) 01, except 01110 and 01340 (products of agriculture, horticulture and market gardening, except wheat and kiwifruit);

(b) 02 (live animals and animal products);

(c) 211, except 21111, 21112, 21115, 21116 and 21119 (meat and meat products, except beef, sheep meat, poultry and offal);

(d) 213-216 (prepared and _ preserved vegetables, fruit juices and vegetable juices, prepared and preserved fruit and nuts, animal and vegetable oils and fats);

(e) 22 (dairy);

(f) 2399 (other food products); and

(g) 261, except for 2613, 2614, 2615, 02961, 02962 and 02963 (natural textile fibres prepared for spinning, excluding wool).

Existing Measures: Commodity Levies Act 1990

36. Sector: Financial Services

Subsector: -

Level of Government: -

Obligations Concerned : Senior Management and Board of Directors

Description : Investment and Trade In Services

New Zealand reserves the right to adopt or maintain any measure that requires all companies to have one or more directors, of whom at least one must:

(a) live in New Zealand; or

(b) live in an "enforcement country" (15) and be a director of a company that is registered (except as the equivalent of an overseas company) in that enforcement country.

Existing Measures: -

(15) "Enforcement country" means a country that has an agreement with New Zealand that allows for the recognition and enforcement in that country of New Zealand judgements imposing regulatory regime criminal fines.

37. Sector: Financial Services

Subsector: -

Level of Government: -

Obligations Concerned: National Treatment (Trade in Services and Investment)

Description: Investment and Trade In Services

New Zealand reserves the right to adopt or maintain any measure that provides a subsidy or grant to any entities that are controlled, or wholly or partially owned, by the government that may conduct financial operations, including measures taken in relation to the privatisation of such entities.

Existing Measures: -

38. Sector: Financial Services

Subsector: -

Level of Government: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Most-Favoured-Nation Treatment (Trade in Services and Investment)

Description: Investment and Trade In Services

New Zealand reserves the right to adopt or maintain any measure that provides a subsidy or grant to an entity that is systemically important to the infrastructure of the financial market, including:

(a) exchanges;

(b) clearing and settlement facilities; and

(c) market operators.

Existing Measures: -

39. Sector: Financial Services

Subsector: -

Level of Government: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access

Description: Investment and Trade In Services

New Zealand reserves the right to adopt or maintain any measure with respect to the establishment or operation of exchanges, securities markets or futures markets.

For greater certainty, this reservation does not apply to financial institutions participating in, or seeking to participate in, any such exchange, securities market, or futures market.

Existing Measures: -

40. Sector: All sectors

Subsector: -

Level of Government: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Local Presence. Performance Requirements. Senior Management and Boards of Directors Market Access

Description: Trade in Services and Investment

New Zealand reserves the right to adopt or maintain measures it deems necessary to protect or promote Maori rights, interests, duties and responsibilities in respect of trade enabled by electronic means, including in fulfilment of its obligations under Te Tiriti o Waitangi/The Treaty of Waitangi, provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Party or as a disguised restriction on trade in services and investment.

The Parties agree that the interpretation of Te Tiriti o Waitangi/the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it, shall not be subject to the dispute settlement provisions of this Agreement.

APPENDIX A.

For the purposes of New Zealand's entry List B (10), New Zealand's obligations under Article XVI of GATS as set out in New Zealand's Schedule of Specific Commitments under GATS (GATS/SC/62, GATS/SC/62 Suppl. 1, GATS/SC/62/Suppl. 2) are improved in the following:

Sector/subsector	**Market Access Improvement**
BUSINESS SERVICES	
Professional Services	
Legal Services in Respect of the following areas of law (CPC 861) - Practice of foreign law - Integrated engineering services (CPC 8673) - Consultancy related to Urban Planning and Landscape Architecture (CPC 8674**)	Insert new commitments with no limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section."

Computer And Related Services	
Maintenance and repair of office machinery and equipment including computers (CPC 845) Other computer services (CPC 849)	Insert new commitments with no limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section."
Other Business Services	
Management consulting services (CPC 865) Services related to management consulting (CPC 866) Placement and supply services of personnel (CPC 872) Photographic services (CPC 875) Convention services (CPC 87909**) Credit reporting services (CPC 87901) Collection agency services (CPC 87902) Interior design services (CPC 87907**) Telephone answering services (CPC 87903) Duplicating services (CPC 87904) Mailing list compilation and mailing services (CPC 87906) Services generally provided to business, not elsewhere classified in the CPC and not including convention services. These include: business brokerage services, appraisal services (other than for real estate), secretarial services, demonstration and exhibition services, etc. (CPC 87909)	Insert new commitments with no limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section."
COMMUNICATION SERVICES	
Telecommunication Services	
Voice telephone services (CPC 7521) Packet-switched data transmission services (CPC 7523**) Circuit-switched data transmission services (CPC 7523**) Telex services (CPC 7523**) Telegraph services (CPC 7522) Facsimile services (CPC 7521**, CPC 7529**) Private leased circuit services (CPC 7522**, CPC 7523**) Other: - Paging services (CPC 75291) - Teleconferencing services (CPC 75292) - Personal Communications Services (CPC 75213*) - Cellular services (CPC 75213*) - Trunked radio system services (CPC 7523**, CPC 75213*) - Mobile data services (CPC 7523*)	Insert new commitments with no limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section."
CONSTRUCTION AND RELATED ENGINEERING SERVICES	
Other: Renting Services related to Equipment for Construction or Demolition of Buildings or Civil Engineering, with Operator (CPC 518)	Insert new commitments with no limitations for consultancy services under mode 1, no limitations for modes 2-3 and mode 4

	"Unbound, except as indicated in the horizontal section."
EDUCATION SERVICES	
Other education in respect of the following services only: - language training provided in private specialist language institutions - tuition in subjects taught at the primary and secondary levels, provided by private specialist institutions operating outside the New Zealand compulsory school system	Insert new commitments with no limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section."
ENVIRONMENTAL SERVICES (16)	
Waste water management: - consultancy relating to waste water management - for all other aspects of this service: those contracted by private industry only (CPC 9401**) Waste management - Refuse disposal services: - consultancy relating to refuse disposal - for all other aspects of this service: those contracted by private industry only (CPC 9402**) Sanitation and similar services: - consultancy relating to sanitation and similar services. D. Other - Protection of ambient air and climate: consultancy only (CPC 9404**) - Remediation and clean-up of soil and water: consultancy only (CPC 9406**) - Noise and vibration abatement: consultancy only (CPC 9405**) - Noise and vibration abatement: consultancy only (CPC 9405**) - Other environmental and ancillary services: consultancy only (CPC 9409**)	Insert new commitments with no limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section."

(16) New Zealand's commitments on environmental services exclude the collection, purification and distribution

FINANCIAL SERVICES

1. New Zealand undertakes specific commitments on Financial Services in accordance with the GATS Understanding on Financial Services ("the Understanding" in this Schedule).

2. Market Access commitments in modes 1 and 2 are bound to the extent of the obligations in paragraphs B.3 and B.4 of the Understanding.

3. The admission to the market of new financial services or products may be subject to the existence of, and consistency with, a regulatory framework aimed at achieving the objectives indicated in Article 3 (Prudential Measures) of Annex 8A (Financial Services).

Sector/subsector	**Market Access Improvement**
All insurance and insurance-related services	
	Insert new commitments

Life insurance services (CPC 8121) Insurance intermediation, such as brokerage and agency services (CPC 8140**) Services auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services (CPC8140**)	with no limitations for modes 3 and mode 4 "Unbound, except as indicated in the horizontal section."
TRANSPORT SERVICES	
Air Transport Services	
Aircraft repair and maintenance services	Insert new commitments with mode 1 = "unbound", no limitations for modes 2-3 and mode 4 "Unbound, except as indicated in the horizontal section."
Airport operation services (CPC 74610**, excluding navigation aids) For the purposes of this entry, "Airport operation services" means air terminal, airfield and other airport infrastructure operation services excluding airport security services and services covered in ground handling services. Other supporting services for air transport (CPC 74690** excluding firefighting and fire-prevention services) Specialty air services. For the purposes of this entry "specialty air services" means any non-transportation air services, such as aerial fire-fighting, flight training, sightseeing, spraying, surveying, mapping, photography, parachute jumping, glider towing, and helicopter-lift for logging and construction, and other airborne agricultural, industrial and inspection services.	Insert new commitments with no limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section."
Cargo and baggage handling services (CPC 741**) Ramp handling services (CPC 741**) Airfreight storage and warehousing services (CPC 742**) Airport management services	Insert new commitments with mode 1 = "unbound", no limitations for modes 2-3 and mode 4 "Unbound, except as indicated in the horizontal section."
	Insert new commitments with no limitations for modes 1-3

Airport management services	and mode 4 "Unbound, except as indicated in the horizontal section."
Road Transport Services	
Commercial road transport services (passenger, goods, rental and vehicle recovery) (CPC 712 except 71235)	Insert new commitments with no limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section."
OTHER SERVICES NOT INCLUDED	
Washing, cleaning and dyeing services	Insert new commitments with no limitations for modes 1-3 and mode 4 "Unbound, except as indicated in the horizontal section."

ANNEX 3. SCHEDULE OF RESERVATIONS AND NON-CONFORMING MEASURES FOR INVESTMENT AND SERVICES. SINGAPORE

LIST A. EXPLANATORY NOTES

1. This List A of the Schedule of Singapore in this Annex sets out, pursuant to Article 12 (Schedules of Non-Conforming Measures) of Chapter 8 (Trade in Services) and Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), the reservations taken by Singapore with respect to measures that do not conform with obligations imposed by:

(a) Article 4 (National Treatment) of Chapter 8 (Trade in Services) or Article 3 (National Treatment) of Chapter 11 (Investment);

(b) Article 5 (Market Access) of Chapter 8 (Trade in Services);

(c) Article 9 (Most-Favoured-Nation Treatment) of Chapter 8 (Trade in Services) or Article 4 (Most-Favoured-Nation Treatment) of Chapter 11 (Investment);

(d) Article 10 (Local Presence) of Chapter 8 (Trade in Services);

(e) Article 5 (Senior Management and Board of Directors) of Chapter 11 (Investment); or

(f) Article 6 (Prohibition of Performance Requirements) of Chapter 11 (Investment).

2. In the interpretation of a reservation, all elements of the reservation shall be considered in their totality.

3. With respect to trade in services, Local Presence and National Treatment are separate disciplines and a measure that is only inconsistent with Local Presence need not be reserved against National Treatment.

4. The reservations and commitments relating to trade in services shall be read together with the relevant guidelines stated in Scheduling of Initial Commitments in Trade in Services: Explanatory Note dated 3 September 1993 (MTN.GNS/W/164) and Scheduling of Initial Commitments in Trade in Services: Explanatory Note: Addendum dated 30 November 1993 (MTN.GNS/W/164/Add.1).

5. Each entry in this List A sets out the following elements:

(a) Sector refers to the general sector for which the entry is made;

(b) Subsector, where referenced, refers to the specific subsector for which the entry is made;

(c) Industry Classification, where referenced, refers to the activity covered by the non-conforming measure, according to the provisional CPC codes as used in the Provisional Central Product Classification (Statistical Papers Series M No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991);

(d) Obligations Concemed specifies the obligations (National Treatment, Market Access, Most-Favoured-Nation Treatment, Local Presence, Prohibition of Performance Requirements, and Senior Management and Board of Directors) against which a reservation is taken;

(e) Description sets out the non-conforming measures to which the reservation applies; and

(f) Source of Measure identifies, for transparency purposes, the laws, regulations, or other measures to which the entry applies. The measures stipulated therein are not exhaustive.

6. Whenever, in this List A, the supply of services is conditioned upon obtaining licensing or authorisation from relevant regulatory authorities, it shall be understood that the licensing or authorisation process is non-automatic, requiring a case-by-case evaluation, and the regulatory authorities may exercise discretion over their decisions.

7. References in this List A to any enterprise or entity apply as well to any successor enterprise or entity, which shall be entitled to benefit from any listing of a non-conforming measure with respect to that enterprise or entity.

8. The Schedules of other Parties shall not be used to interpret Singapore's commitments or obligations under Chapter 8 (Trade in Services) or Chapter 11 (Investment).

1. Sector: All

Subsector: -

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access

Description: Trade in Services and Investment

A non-resident financial institution may in certain circumstances be unable to borrow in Singapore dollars (S$) more than S$5 million from a resident financial institution owing to the following restrictions placed on financial institutions lending of the Singapore dollar to non-resident financial institutions.

A financial institution shall not extend to any non- resident financial institution S$ credit facilities exceeding S$5 million per non-resident financial institution:

(a) where the S$ proceeds are to be used outside of Singapore, unless:

(i) such proceeds are swapped or converted into foreign currency upon draw-down or before remittance abroad; or

(ii) such proceeds are for the purpose of preventing settlement failures where the financial institution extends a temporary S$ overdraft to any vostro account of any non-resident financial institution, and the financial institution takes reasonable efforts to ensure that the overdraft is covered within two business days; and

(b) where there is reason to believe that the S$ proceeds may be used for S$ currency speculation, regardless of whether the S$ proceeds are to be used in Singapore or outside of Singapore.

A financial institution shall not arrange S$ equity or bond issues for any non-resident financial institution where the S$

proceeds are to be used outside Singapore, unless the proceeds are swapped or converted into foreign currency upon draw-down or before remittance abroad.

"Non-residents financial institution" means any financial institution which is not a resident as defined in the relevant notice.

Source of Measure:

Insurance Act 1996, MAS Notice 109 Banking Act 1970, MAS Notice 757 Finance Companies Act 1967, MAS Notice 816

Monetary Authority of Singapore Act 1970, MAS Notice 1105

Securities and Futures Act 2001, MAS Notice SFA 04-No4

2. Sector: All

Subsector: -

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access

Description: Trade in Services and Investment:

The aggregate of foreign shareholdings in PSA Corporation or its successor body is subject to a 49 per cent limit.

The "aggregate of foreign shareholdings" is defined as the total number of shares owned by:

(a) any individual who is not a Singapore citizen;

(b) any corporation which is not more than 50 per cent owned by Singapore citizens or by the Singapore Government; or

(c) any other enterprise which is not owned or controlled by the Singapore Government.

Source of Measure:

This is an administrative policy of the Singapore Government and is inscribed in the Memorandum and Articles of Association of PSA Corporation.

3. Sector: All

Subsector: -

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access

Description: Trade in Services and Investment:

All individual investors, apart from the Singapore Government, will be subject to the following equity ownership limits in the enterprises, or its successor bodies, as listed below:

(a) Singapore Technologies Engineering - 15 per cent;

(6) PSA Corporation - 5 per cent;

(c) Singapore Airlines - 5 per cent; and

(d) PowerGas, SP PowerGrid, SP PowerAssets, Singapore LNG Corporation - 10 per cent.

For the purposes of this reservation, ownership of equity by an investor in these enterprises or its successor bodies includes both direct and indirect ownership of equity.

Source of Measure:

This is an administrative policy of the Singapore Government and is inscribed in the Memorandum and Articles of Association of the relevant enterprises.

Gas Act 2001, 2020 Revised Edition, Section 63B

Electricity Act 2001, 2020 Revised Edition, Section 30B

4. Sector: All

Subsector: -

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence. Senior Management and Board of Directors

Description: Trade in Services and Investment

Where a person required to be registered under the Business Names Registration Act 2014, or, in the case of any corporation, the directors, or secretaries of the corporation, do not reside in Singapore, an authorised representative who must be ordinarily resident* in Singapore must be appointed.

*Persons who qualify to be appointed in such a capacity are primarily Singapore citizens, Singapore permanent residents and EntrePass holders (all with local address).

Source of Measure:

Business Names Registration Act 2014, 2020 Revised Edition

Business Names Registration Regulations 2015

5. Sector: Business Services

Subsector: Architectural Services. Architectural services includes preparing and selling or supplying for gain or reward any architectural plan, drawing, tracing, design, specification, or the like for use in the construction, enlargement, or alteration of any building or part thereof. It includes the certification and inspection of buildings for compliance with a building authority or public authority.

Industry Classification:

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Local Presence

Description: Trade in Services and Investment

Only persons who are registered with the Board of Architects (BOA) or its successor body and resident in Singapore are allowed to provide architectural services.

All corporations, limited liability partnerships and partnerships (including those which are providing architectural services as part of a multi- disciplinary corporation or practice) providing architectural services shall obtain a licence from the BOA or its successor body. To qualify for the licence, the corporation or partnership shall:

(a) be under the control and management of a director or partner who is a Singapore- registered architect; where a multi-disciplinary corporation or partnership is concerned, the business of the corporation or partnership relating to architectural services shall be under the control and management of a director or partner who is a Singapore- registered architect; and

(b) where limited corporations are concerned, the majority of the directors of a corporation shall be Singapore- registered architects or allied professionals; where unlimited corporations are concerned, the majority of directors shall be registered professional architects or allied professionals who have in force practicing certificates; where partnerships are concerned, the beneficial interest in the capital assets and profits of the partnership shall be held by Singapore-registered architects or allied professionals who have in force practicing certificates.

"Allied professionals" are Singapore-registered land surveyors and engineers.

Source of Measure:

Architects Act 1991, 2020 Revised Edition

6. Sector: Business Services

Subsector: Public Accountancy Services (including statutory audit)

Industry Classification: CPC 86211 Financial auditing services ; CPC 86309 Other Tax-related services

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Local Presence. Senior Management and Board of Directors

Description: Trade in Services and Investment

Only public accountants, accounting firms, accounting corporations or accounting limited liability partnerships (LLPs) may provide public accountancy services. Public accountants must be registered with the Accounting and Corporate Regulatory Authority (ACRA) and fulfil the registration requirements under the Accountants Act 2004, including requirements pertaining to qualifications, experience as well as membership with the Institute of Singapore Chartered Accountants (ISCA).

Accounting firms, accounting corporations and accounting LLPs must be approved by the Public Accountants Oversight Committee, which is a Board Committee of ACRA under the Accountants Act 2004. The business of an accounting firm, accounting corporation or an accounting LLP, so far as it relates to the provision or supply of public accountancy services in Singapore, shall be under the control and management of one or more directors (in the case of accounting corporation) ora partner (in the case of accounting firm) who is a public accountant ordinarily resident in Singapore. (1)

Source of Measure:

Accountants Act 2004, 2020 Revised Edition, Sections 2, 10(1), 17(3)(d), 18(3)(c), and 18A(3)(e)

Accountants (Public Accountants) Rules, Second Schedule, Paragraph 7

Companies Act 1967, 2020 Revised Edition, Section 10

(1) Reference: See Sections 17, 18, and 18A of the Accountants Act 2004.

7. Sector: Business Services - Professional Services

Subsector: Land Surveying Services

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Local Presence. Senior Management and Board of Directors

Description: Trade in Services and Investment

All persons seeking to provide land surveying services in Singapore are required to register with the Land Surveyors Board (LSB) or its successor body, and be physically present in Singapore for the duration of the land surveying project which requires his supervision or certification.

All corporations, limited liability partnerships and partnerships (including those which are providing land surveying services as part of a multi- disciplinary corporation or practice) seeking to provide land surveying services must obtain a licence from the LSB. To qualify for the licence, the corporation or partnership must:

(a) be under the control and management of a director or partner who is a Singapore- registered surveyor; where a_ multi-disciplinary corporation or partnership is concerned, the business of the corporation or partnership relating to land surveying services must be under the control and management of a director or partner who is a Singapore-registered surveyor; and

(b) where limited corporations are concerned, a simple majority of its directors must be Singapore-registered surveyors or allied professionals; where unlimited corporations are concerned, the directors or members shall be Singapore-registered surveyors or allied professionals; where partnerships are concerned, only Singapore-registered surveyors and allied professionals can have a beneficial interest in the capital assets and profits of the partnership.

"Allied professionals" are Singapore-registered engineers and architects.

Source of Measure :

Land Surveyors Act 1997, 2020 Revised Edition, Sections 12 to 23

Land Surveyors Rules, Rules 2 to 20

8. Sector: Business Services

Subsector: Patent Agent Services

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Local Presence. Senior Management and Board of Directors

Description: Trade in Services and Investment

Only service suppliers registered with the Intellectual Property Office of Singapore (IPOS) or its successor body and resident in Singapore shall be allowed to carry on a business, practise or act as a patent agent in Singapore.

Only service suppliers which have at least one Singapore-registered patent agent resident in Singapore either as a director or partner, shall be allowed to carry on a business, practise or act as a patent agent in Singapore.

Source of Measure:

Patents Act 1994, 2020 Revised Edition

9. Sector : Business Services

Subsector : Placement and supply services of personnel

Industry Classification: -

Obligations Concerned : Local Presence

Description : Trade in Services:

Only service suppliers with local presence shall be allowed to set up employment agencies and place foreign workers in Singapore.

Source of Measure : Employment Agencies Act 1958, 2020 Revised Edition

10. Sector Business Services

Subsector: Professional Engineering Services. Professional engineering services includes any professional service, consultation, investigation, evaluation, planning, design or responsible supervision of construction or operation in connection with any public or privately owned public utilities, buildings, machines, equipment, processes, works or projects wherein the public interest and welfare, or the safeguarding of life, public health or property is concerned or involved, and that requires the application of engineering principles and data.

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Local Presence

Description: Trade in Services and Investment

Only persons who are registered with or firms which are licensed by the Professional Engineers Board (PEB) are allowed to provide professional engineering services in Singapore in prescribed branches of engineering, namely: civil, electrical and mechanical engineering.

The implementation in Singapore of professional engineering works which require approval by the authorities shall be carried out by a professional engineer physically present in Singapore for the duration when the project is being implemented.

All corporations, multi-discipline partnerships and limited liability partnerships providing professional engineering services shall obtain a licence from the PEB or its successor body. To qualify for the licence, the corporation, multi-disciplinary partnership or limited liability partnership shall meet the following requirements:

(a) the business of the corporation, multi- disciplinary partnership or limited liability partnership relating to professional engineering services shall be under the control and management of a director or a partner who is a Singapore-registered professional engineer and who has a valid practising certificate and who, in the case of corporations or limited liability partnerships, is authorised under a resolution of the board of directors of the corporation or partners of the limited liability partnership to make all final engineering decisions on behalf of the corporation or limited liability partnership; and

(b) where limited or unlimited corporations are concerned, not less than 51 per cent of the directors shall be Singapore-

registered professional engineers or allied professionals; where multi-disciplinary partnerships are concerned, the beneficial interest in the capital assets and profits of the partnerships shall be held by Singapore-registered professional engineers or allied professionals; where limited liability partnerships are concerned, partners shall be Singapore-registered professional engineers or allied professionals, licensed corporations or licensed limited liability partnerships.

"Allied professionals" are Singapore-registered land surveyors and architects.

Source of Measure:

Professional Engineers Act 1997, 2020 Revised Edition, Sections 10, 11, and 20 to 26

11. Sector: Business Services

Subsector: Real Estate Services

Industry Classification: CPC 82202 Non-residential property management services on a fee or contract basis

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access

Description: Trade in Services and Investment

Only the Sentosa Development Corporation or its successor body shall be allowed to develop and manage the resort island of Sentosa and its waterways.

Only the Singapore Land Authority, the National Parks Board, or their successor bodies shall be allowed to develop and manage the Southern Islands of Singapore.

For the purpose of this reservation, the "Southern Islands of Singapore" are St. John's Island, Lazarus Island, Kusu Island, Pulau Renggit, Sister's Island, Pulau Hantu, Pulau Biola, Pulau Jong and Pulau Tekukor.

Source of Measure:

Sentosa Development Corporation Act 1972, 2020 Revised Edition, Section 9

Singapore Land Authority Act 2001, 2020 Revised Edition, Section 6(1)(e) (ii)

12. Sector: Business Services

Subsector: Private Investigation Services. Unarmed Guard Services

Industry Classification: CPC 87301 Investigation Services CPC 87302 Security Consultation Services CPC 87305 Guard Services (only applies to unarmed security guard services)

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence. Senior Management and Board of Directors

Description: Trade in Services and Investment

Singapore reserves the right to adopt or maintain any measure affecting the supply of Unarmed Guard Services, Private Investigation Services, and Security Services, which are regulated under the Private Security Industry Act 2007 for the protection of vital security interests.

Source of Measure:

Private Security Industry Act 2007, 2020 Revised Edition

13. Sector: Education Services

Subsector: Higher Education Services in relation to the training of doctors

Industry Classification: CPC 92390 Other Higher Education Services (Only applies to Higher Education Services in relation to the training of doctors)

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access.

Description Trade in Services and Investment:

Only local tertiary institutions which are established pursuant to an Act of Parliament, or as designated by the Ministry of

Education shall be allowed to operate undergraduate or graduate programmes for the training of doctors in Singapore.

Currently, only the National University of Singapore and the Nanyang Technological University are allowed to operate undergraduate or graduate programmes for the training of doctors in Singapore.

Source of Measure:

Medical Registration Act 1997, 2020 Revised Edition, Sections 2, 3, 34 and 35

Private Education Act 2009, 2020 Revised Edition

14. Sector: Health and Social Services

Subsector: Medical Services. Pharmacy Services. Deliveries and related services, nursing services, para-medical services and allied health services (2). Optometrists and Opticians

Industry Classification: -

Obligations Concerned: Local Presence

Description: Trade in Services

Only persons who are resident in Singapore are allowed to provide the following services: medical services, pharmacy services, deliveries and related services, nursing services, para-medical services and allied health services and optometry and opticianry services.

Source of Measure

Medical Registration Act 1997, 2020 Revised Edition

Pharmacists Registration Act 2007, 2020 Revised Edition

Medicines Act 1975, 2020 Revised Edition

Health Products (Licensing of Retail Pharmacies) Regulations 2016

Nurses and Midwives Act 1999, 2020 Revised Edition

Allied Health Professions Act 2011, 2020 Revised Edition

Optometrists and Opticians Act 2007, 2020 Revised Edition

(2) Includes physiotherapy services.

15. Sector: Import, export and trading services

Subsector: -

Industry Classification: -

Obligations Concerned: Market Access. Local Presence

Description: Trade in Services

Only services suppliers with local presence shall be allowed to apply for import or export permits, certificates of origin or other trade documents from the relevant authorities.

Source of Measure:

Regulation of Imports and Exports Act 1995, 2020 Revised Edition

Regulation of Imports and Exports Regulations

16. Sector: Telecommunication Services

Subsector: Telecommunication Services

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Local Presence

Description: Trade in Services and Investment

Facilities-based operators and service-based operators must be locally incorporated under the Companies Act, 1967, 2020 Revised Edition.

"Facilities-based operators" are operators who deploy any form of telecommunication networks, systems and facilities, outside of their own property boundaries, to offer telecommunication services to third parties, which may include other licensed telecommunication operators, business customers, or the general public.

"Service-based operators" are operators who lease telecommunication network elements (such as transmission capacity and switching services) from any Facilities-Based Operator (FBO) licensed by Infocomm Media Development Authority of Singapore (IMDA) so as to provide their own telecommunication services, or to resell the telecommunication services of FBOs to third parties.

The number of licences granted will be limited only by resource constraints, such as the availability of radio frequency spectrum. In view of spectrum constraints, parties interested in deploying networks based on wireless technology may be licensed to use radio frequency spectrum via a tender or auction process.

Source of Measure:

Info-communications Media Development Authority Act 2016, 2020 Revised Edition

Telecommunications Act 1999, 2020 Revised Edition

17. Sector: Power Supply

Subsector: -

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access

Description: Trade in Services and Investment

Power producers shall not be allowed to sell power directly to consumers and shall only sell power through the Singapore electricity wholesale market operators licensed by the Energy Market Authority.

The amount of power supplied cumulatively by power producers located outside of Singapore to Singapore's wholesale power market shall not exceed 600 megawatt.

Singapore reserves the right and flexibility to revise or reduce the power supply threshold of 600 megawatt.

Source of Measure: Electricity Act 2001, 2020 Revised Edition, Sections 6(1) and 9(1)

18. Sector: Power Supply

Subsector: -

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Local Presence

Description: Trade in Services and Investment

Only a Market Support Service Licensee shall be allowed to supply electricity to:

(a) all household consumers of electricity; and

(b) non-household consumers of electricity whose Average monthly consumption is below 2,000 kilowatt-hour.

Only retail electricity licensees with local presence may supply electricity in Singapore.*

* With the full liberalisation of Singapore's retail electricity market (i.e. Open Electricity Market Initiative), the retailing of electricity to all consumers shall be subject to competition as consumers could buy electricity from retail electricity licensees as well.

Source of Measure: Electricity Act 2001, 2020 Revised Edition, Sections 6(1) and 9(1)

19. Sector: Power Transmission and Distribution

Subsector: -

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access

Description Trade in Services and Investment:

Only a Transmission Licensee shall be the owner and operator of the electricity transmission and distribution network in Singapore.

Source of Measure: Electricity Act 2001, 2020 Revised Edition, Sections 6(1) and 9(1)

20. Sector: Tourism and Travel Related Services

Subsector: Beverage serving services for consumption on the premises.

Meal serving services in eating facilities run by the Singapore Government.

Retail sales of food

Industry Classification: CPC 643 Beverage serving services for consumption on the premises CPC 642 Food serving services CPC 6310 Retail sales of food

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Local Presence

Description: Trade in Services and Investment

Only a Singapore citizen or permanent resident can apply for a licence to operate a stall in government- run markets or hawker centres in his or her personal capacity.

To provide food or beverage catering services in Singapore, a foreign service supplier must incorporate as a limited company in Singapore, and apply for the food establishment licence in the name of the limited company to operate a food or beverage establishment in non-government run eating facilities.

Only Singapore citizens or permanent residents can apply to run stalls at hawker centres managed by the National Environment Agency or the National Environment Agency's appointed managing agents.

Source of Measure: Environmental Public Health Act 1987, 2020 Revised Edition

21. Sector: Refuse Disposal, Sanitation and other Environmental Protection Services

Subsector: Waste Management, including collection, disposal, and treatment of hazardous waste

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Local Presence

Description: Trade in Services and Investment

Foreign service suppliers must be locally incorporated in Singapore.

The public waste collectors (PWCs) rendering services to domestic and trade premises are appointed by public competitive tender. The number of PWCs is limited by the number of geographical sectors in Singapore. For industrial and commercial waste, the market is opened to any licensed general waste collectors (GWCs).

Source of Measure: Environmental Public Health Act 1987, 2020 Revised Edition

22. Sector: Trade Services

Subsector: Distribution and Sale of Hazardous Substances

Industry Classification: -

Obligations Concerned : National Treatment (Trade in Services and Investment). Market Access. Local Presence

Description: Trade in Services and Investment

Only companies with local presence and a valid hazardous substances licence shall be allowed to distribute and sell hazardous substances as defined in the Environmental Protection and Management Act 1999 and the Environmental Protection and Management (Hazardous Substances) Regulations.

Singapore reserves the right and flexibility to modify or increase the list of hazardous substances as defined or listed in the Environmental Protection and Management Act 1999 and the Environmental Protection and Management (Hazardous Substances) Regulations.

Source of Measure:

Environmental Protection and Management Act 1999, 2020 Revised Edition

Environmental Protection and Management (Hazardous Substances) Regulations

23. Sector: Manufacturing and Services Incidental to Manufacturing

Subsector: -

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Prohibition of Performance Requirements

Description: Trade in Services and Investment

Singapore reserves the right to adopt or maintain any measures affecting the imposition of duty, restrictions on the manufacture of goods, or penalties for offences under the Control! of Manufacture Act 1959.

Singapore reserves the right and flexibility to modify or increase the list of goods as scheduled in the Control of Manufacture Act 1959. The current list of scheduled goods is:

(a) beer and stout;

(b) cigars;

(c) drawn steel products;

(d) chewing gum, bubble gum, dental chewing gum or any like substance, not being a health product categorised as an oral dental gum or a therapeutic product in the First Schedule to the Health Products Act 2007, 2020 Revised Edition;

(e) cigarettes; and

(f) matches.

Source of Measure: Control of Manufacture Act 1959, 2020 Revised Edition

24. Sector: Trade Services

Subsector: Distribution Services Retailing Services

Wholesale Trade Services

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Local Presence

Description: Trade in Services and Investment

Only service suppliers with local presence shall be allowed to supply wholesale, retail and distribution services for medical and health-related products and materials as defined under the Medicines Act 1975 and Health Products Act 2007.

Singapore reserves the right and flexibility to modify or increase the list of medical and health- related products and materials as defined or listed in the Medicines Act 1975 and Health Products Act 2007.

Source of Measure:

Medicines Act 1975, 2020 Revised Edition

Health Products Act 2007, 2020 Revised Edition

25. Sector: Transportation and Distribution of Manufactured Gas and Natural Gas

Subsector: -

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access

Description: Trade in Services and Investment

Only the holder of a gas transporter licence shall be allowed to transport and distribute manufactured and natural gas.

Only one gas transporter licence has been issued given the size of the Singapore market.

Source of Measure: Gas Act 2001, 2020 Revised Edition

26. Sector: Business Services

Subsector: Leasing or rental services concerning private cars, goods transport vehicles and other land transport equipment without operator

Industry Classification: CPC 83101, 83102, 83105 Leasing or rental services concerning private cars, goods transport vehicles and other land transport equipment without operator

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access

Description: Trade in Services and Investment

The cross-border rental of private cars, goods transport vehicles and other land transport equipment without operator by Singapore residents with the intent to use the vehicles in Singapore is prohibited.

Source of Measure: Road Traffic Act 1967, 2020 Revised Edition

27. Sector: Transport Services

Subsector: Maritime Transport Services. Cargo Handling Services. Pilotage Services. Supply of Desalinated Water to Ships berthed at Singapore ports or in Singapore territorial waters

Industry Classification: CPC 741 Cargo Handling Services CPC 74520 Pilotage and Berthing Services (only applies to Pilotage Services) CPC 74590 Other Supporting Services for Water Transport

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment)

Description: Trade in Services and Investment

Only PSA Corporation Ltd and Jurong Port Pte Ltd or their respective successor bodies are allowed to provide cargo handling services.

Only PSA Marine (Pte) Lid or its successor bodies are allowed to provide pilotage services and supply desalinated water to ships berthed at Singapore ports or in Singapore territorial waters.

Source of Measure: Maritime and Port Authority of Singapore Act 1996, 2020 Revised Edition

28. Sector: Transport Services

Subsector: Maritime Transport Services

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Local Presence

Description: Trade in Services and Investment

Only local service suppliers shall be allowed to operate and manage cruise and ferry terminals.

Local service suppliers are either Singapore citizens or juridical persons which are more than 50 per cent owned by Singapore citizens.

Source of Measure: Maritime and Port Authority of Singapore Act 1996, 2020 Revised Edition

29. Sector: Transport Services

Subsector: Maritime Transport Services - Registration of ships under Singapore flag

Industry Classification: CPC 74590 Other Supporting Services for Water Transport

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Local Presence

Description: Trade in Services and Investment

Only a Singapore citizen, permanent resident or Singapore legal person may register a ship under the Singapore flag.

All Singapore legal persons seeking to register ships under the Singapore flag shall appoint a ship manager who is resident in Singapore.

Vessels or ships owned by Singapore legal persons that are not majority owned by Singapore citizens or Singapore permanent residents shall be of at least 1,600 Gross Tonnage and be self- propelled before they can be registered under the Singapore flag.

For the purposes of this reservation, a "Singapore legal person" is a locally incorporated company.

Source of Measure:

Merchant Shipping Act 1995, 2020 Revised Edition

Merchant Shipping (Registration of Ships) Regulations

30. Sector: Transport Services

Subsector: Maritime Transport Services - Seaman Services

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access

Description: Trade in Services and Investment

Only Singapore citizens and permanent residents can register as Singapore seamen as defined in the Maritime and Port Authority of Singapore Act 1996.

Source of Measure:

Maritime and Port Authority of Singapore Act 1996, 2020 Revised Edition

Maritime and Port Authority of Singapore (Registration and Employment of Seamen) Regulations

31. Sector: Telecommunications Services

Subsector: Telecommunications services

Domain name allocation policies in Internet country code top level domains (ccTLDs) corresponding to Singapore territories (.sg)

Industry Classification: -

Obligations Concerned: Market Access. Local Presence

Description: Trade in Services

A registrar must be a company incorporated or a foreign company registered under the Companies Act 1967, 2020 Revised Edition.

Source of Measure:

Info-communications Media Development Authority Act 2016, 2020 Revised Edition

Telecommunications Act 1999, 2020 Revised Edition

The Internet Corporation for Assigned Names and Numbers (ICANN), which recognises the ultimate authority of sovereign Governments over ccTLDs corresponding to their territories.

32. Sector: Nature Reserve Services (includes national parks, nature reserves and parklands)

Subsector: -

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Senior Management and Board of Directors

Description: Trade in Services and Investment

National Parks Board or its successor body is the only agency authorised to control, administer and manage national parks, nature reserves and parklands as defined under the National Parks Board Act 1996.

Source of Measure:

National Parks Board Act 1996, 2020 Revised Edition

Parks and Trees Act 2005, 2020 Revised Edition

LIST B. EXPLANATORY NOTES

1. This List B of the Schedule of Singapore in this Annex sets out, pursuant to Article 12 (Schedules of Non-Conforming Measures) of Chapter 8 (Trade in Services) and Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment), the reservations taken by Singapore for sectors, subsectors or activities for which it may maintain existing or adopt new or more restrictive measures that do not conform with obligations imposed by:

(a) Article 4 (National Treatment) of Chapter 8 (Trade in Services) or Article 3 (National Treatment) of Chapter 11 (Investment);

(b) Article 5 (Market Access) of Chapter 8 (Trade in Services);

(c) Article 9 (Most-Favoured-Nation Treatment) of Chapter 8 (Trade in Services) or Article 4 (Most-Favoured-Nation Treatment) of Chapter 11 (Investment);

(d) Article 10 (Local Presence) of Chapter 8 (Trade in Services);

(e) Article 5 (Senior Management and Board of Directors) of Chapter 11 (Investment); or

(f) Article 6 (Prohibition of Performance Requirements) of Chapter 11 (Investment).

2. In the interpretation of a reservation, all elements of the reservation shall be considered in their totality.

3. With respect to trade in services, Local Presence and National Treatment are separate disciplines and a measure that is only inconsistent with Local Presence need not be reserved against National Treatment.

4. The reservations and commitments relating to trade in services shall be read together with the relevant guidelines, stated in Scheduling of Initial Commitments in Trade in Services: Explanatory Note dated 3 September 1993 (MTN.GNS/W/164) and Scheduling of Initial Commitments in Trade in Services: Explanatory Note: Addendum dated 30 November 1993 (MTN.GNS/W/164/Add.1).

5. Each entry in this List B sets out the following elements:

(a) Sector refers to the general sector for which the entry is made;

(b) Subsector, where referenced, refers to the specific subsector for which the entry is made;

(c) Industry Classification, where referenced, refers to the activity covered by the non-conforming measure, according to the provisional CPC codes as used in the Provisional Central Product Classification (Statistical Papers Series M No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991);

(d) Obligations Concemed specifies the obligations (National Treatment, Market Access, Most-Favoured-Nation Treatment, Local Presence, Prohibition of Performance Requirements, and Senior Management and Board of Directors) against which a reservation is taken;

(e) Description sets out the non-conforming measures to which the reservation applies; and

(f) Existing Measures identifies, for transparency purposes, existing measures that apply to the sector, subsector, or activities covered by the entry. The measures stipulated therein are not exhaustive.

6. Whenever, in this List B, the supply of services is conditioned upon obtaining licensing or authorisation from relevant regulatory authorities, it shall be understood that the licensing or authorisation process is non-automatic, requiring a case-by-case evaluation, and the regulatory authorities may exercise discretion over their decisions.

7. References in this List B to any enterprise or entity apply as well to any successor enterprise or entity, which shall be entitled to benefit from any listing of a non-conforming measure with respect to that enterprise or entity.

8. The Schedules of other Parties shall not be used to interpret Singapore's commitments or obligations under Chapter 8 (Trade in Services) or Chapter 11 (Investment).

1. Sector: All

Subsector: -

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services) Market Access. Most-Favoured-Nation Treatment (Trade in Services). Local Presence

Description: Trade in Services

Singapore reserves the right to adopt or maintain any measure with respect to the supply of a service by the presence of natural persons, or other movement of natural persons, including immigration, entry or temporary stay subject to Chapter 9 (Movement of Natural Persons).

Existing Measure: -

2. Sector: All

Subsector: -

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence

Description: Trade in Services and Investment

Singapore reserves the right to adopt or maintain any measure in relation to the development or usage of land or the type of activities which may be conducted on land in accordance with its land zoning, land use, urban planning policies, development control, conservation and preservation policies as well as policies relating to environmental protection, nature reserves and national parks.

Existing Measure: Planning Act 1998, 2020 Revised Edition

3. Sector: All

Subsector: -

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment).Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Singapore reserves the right to adopt or maintain any measure affecting the supply of health services by government-

owned or controlled healthcare institutions, such as hospitals and polyclinics, including investments in these institutions, hospitals and polyclinics.

Existing Measure: -

4. Sector: All

Subsector: -

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Board of Directors

Description:

Trade in Services and Investment:

Singapore reserves the right to adopt or maintain any measure affecting the supply of social services, social security, public training, public law enforcement, ambulance services, correctional services and fire- fighting services.

Existing Measure: -

5. Sector: All

Subsector: -

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Singapore reserves the right to adopt or maintain any measure affecting, including the alienation and divestment of, real estate owned by the State.

Existing Measure: State Lands Act 1920, 2020 Revised Edition

6. Sector: All

Subsector: -

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment:

Singapore reserves the right to adopt or maintain any measure affecting:

(a) the full or partial devolvement to the private sector of services provided in the exercise of governmental authority;

(b) the divestment of its equity interests in, or the assets of, an enterprise that is wholly owned by the Singapore Government; and

(c) the divestment of its equity interests in, or the assets of, an enterprise that is partially owned by the Singapore Government.

Existing Measure: -

7. Sector: All

Subsector: -

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Singapore reserves the right to adopt or maintain any measure affecting real estate. This includes measures affecting the ownership, sale, purchase, development and management of real estate.

This reservation does not apply to real estate consultancy services, real estate agency services, real estate auction services, real estate valuation services, and renting or leasing services involving owned or leased non-residential property.

Existing Measure:

Residential Property Act 1976, 2020 Revised Edition

State Lands Act 1920, 2020 Revised Edition

Sentosa Development Corporation Act 1972, 2020 Revised Edition

Housing and Development Act 1959, 2020 Revised Edition

Housing Developers (Control and Licensing) Act 1965, 2020 Revised Edition

Jurong Town Corporation Act 1968, 2020 Revised Edition

Executive Condominium Housing Scheme Act 1996, 2020 Revised Edition

Planning Act 1998, 2020 Revised Edition

Sale of Commercial Properties Act 1979, 2020 Revised Edition

8. Sector: Administration and Operation of National Electronic Systems

Subsector: -

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Singapore reserves the right to adopt or maintain any measure relating to or affecting the collection and administration of proprietary information by national electronic systems.

Existing Measure: -

9. Sector: Arms and Explosives

Subsector: -

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Singapore reserves the right to adopt or maintain any measure affecting the arms and explosives sector.

Existing Measure: Arms and Explosives Act 1937, 2020 Revised Edition

10. Sector: Broadcasting Services

Broadcasting is defined as the transmission of signs or signals via any technology for the reception or display of aural or visual programme signals by all or part of the public.

Subsector: -

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Singapore reserves the right to adopt or maintain any measure affecting broadcasting services receivable by Singapore's domestic audience or originating from Singapore and to the allocation of spectrum in relation to broadcasting services.

This entry does not apply to the sole activity of transmitting licensed broadcasting services to a final consumer.

Commitments in the production, distribution and public display of motion pictures, video recordings and sound recordings shall not include all the broadcasting and audio-visual services and materials that are broadcasting-related. Examples of services that are reserved include: free-to-air broadcasting, cable and pay television, direct broadcasting by satellite and teletext.

Existing Measure: -

11. Sector: Entertainment and Cultural Services

Subsector: -

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Board of Directors)

Description: Trade in Services and Investment:

Singapore reserves the right to adopt or maintain any measure relating to the creative arts, cultural heritage and other cultural industries, including entertainment services and other cultural services.

"Creative arts" includes: the performing arts - including theatre, dance and music - visual arts and craft, literature, film, television, video, radio, creative online, indigenous traditional practice and contemporary cultural expression, and digital interactive media and hybrid arts work which uses new technologies to transcend discrete artform divisions.

"Cultural heritage" includes: ethnological, archaeological, historical, literary, artistic, scientific or technological moveable or built heritage, including the collections which are documented, preserved and exhibited by museums, galleries, libraries, archives and other heritage collecting institutions, as well as intangible cultural heritage.

Existing Measure: -

12. Sector: Business Services

Subsector: Patent Agent Services

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Local Presence

Description: Trade in Services and Investment

Singapore reserves the right to adopt or maintain any measure affecting the recognition of educational and professional qualifications for purposes such as admission, registration and qualification for patent agents.

Existing Measure: Patents Act 1994, 2020 Revised Edition

13. Sector: Business Services

Subsector: Armed Escort Services and Armoured Car Services

Armed Guard Services

Industry Classification: CPC 87305 Guard Services

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Singapore reserves the right to adopt or maintain any measure affecting the provision of armed escort, armoured car and armed guard services.

Existing Measure: Police Force Act 2004, 2020 Revised Edition, Part 9

14. Sector: Business Services

Subsector: Betting and Gambling Services

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Singapore reserves the right to adopt or maintain any measure affecting the supply of betting and gambling services.

Existing Measure:

Gambling Control Act 2022 (No. 15 of 2022)

Gambling Regulatory Authority of Singapore Act 2022 (No. 14 of 2022)

Casino Control Act 2006, 2020 Revised Edition

15. Sector: Business Services - Professional Services (Legal Services)

Subsector: -

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence. Senior Management and Board of Directors

Description: Trade in Services and Investment

Singapore reserves the right to adopt or maintain any measure affecting the supply of legal services in Singapore.

Existing Measure: -

16. Sector: Community, Personal and Social Services

Subsector: Services furnished by co-operative societies

Services furnished by trade unions

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence. Senior Management and Board of Directors

Description: Trade in Services and Investment

Singapore reserves the right to adopt or maintain any measure affecting services provided by co-operative societies and trade unions.

Existing Measure:

Co-operative Societies Act 1979, 2020 Revised Edition

Trade Unions Act 1940, 2020 Revised Edition

17. Sector: All

Subsector: -

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Senior Management and Board of Directors

Description: Trade in Services and Investment

Singapore reserves the right to adopt or maintain any measure in relation to the retention of a controlling interest by the Singapore Government in Singapore Technologies Engineering (the Company) or its successor body, including controls over the appointment and _ termination of members of the Board of Directors, divestment of equity and dissolution of the Company for the purpose of safeguarding the security interest of Singapore.

Existing Measure: -

18. Sector: Distribution, Publishing and Printing of Newspapers

Subsector: -

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Singapore reserves the right to adopt and maintain any measure affecting the publishing and printing of newspapers, including shareholding limits and management control.

The distribution of any newspaper, whether published outside of Singapore or in Singapore, shall be subject to the laws of Singapore.

"Newspapers" means any publication containing news, intelligence, reports of occurrences, or any remarks, observations or comments, in relation to such news, intelligence, reports of occurrences, or to any matter of public interest, printed in any language and published for sale or free distribution at regular intervals or otherwise, but does not include any publication published by or for the Singapore Government.

Existing Measure: Newspaper and Printing Presses Act 1974, 2020 Revised Edition

19. Sector: Trade Services

Subsector: Distribution Services Commission Agents - Services Wholesale Trade Services Retailing Services. Franchising

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Local Presence

Description: Trade in Services and Investment

Singapore reserves the right to adopt or maintain any measure affecting the supply of any products subject to import prohibition or non-automatic import licensing.

Singapore reserves the right to modify or increase the list of products stipulated in the laws, regulations and other measures governing Singaporeâs import prohibition or non-automatic import licensing regime.

Existing Measure: -

20. Sector: Educational Services

Subsector: Primary Education Services

Secondary Education Services

Industry Classification: CPC 921 Primary Education Services

CPC 92210 General Secondary Education Services

CPC 92220 Higher Secondary Education Services (only applies to junior colleges and pre-university centres under the Singapore educational system)

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence. Senior Management and Board of Directors

Description: Trade in Services and Investment

Singapore reserves the right to adopt or maintain any measure affecting the supply of primary, general secondary and_ higher secondary (only applies to junior colleges and pre-university centres under the Singapore educational system) education services for Singapore citizens, including Sports Education Services.

Existing Measure:

Education Act 1957, 2020 Revised Edition Administrative Guidelines

Private Education Act 2009, 2020 Revised Edition

21. Sector: Health and Social Services

Subsector: Medical Services

Pharmacy Services

Deliveries and related services, nursing services, para-medical services and allied health services?

Optometrists and Opticians

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access

Description: Trade in Services and Investment:

Singapore reserves the right to adopt or maintain any limit on the number of service suppliers providing, including the following services: medical services, pharmacy services, deliveries and related services, nursing services, para-medical services and allied health services and optometry and opticianry services.

Singapore reserves the right to adopt or maintain any measure with respect to the regulation of service suppliers providing, including the following services: medical services, pharmacy services, deliveries and related services, nursing services, para-medical services and allied health services and optometry and opticianry services.

Existing Measure:

Allied Health Professions Act 2011, 2020 Revised Edition

Medical Registration Act 1997, 2020 Revised Edition

Pharmacists Registration Act 2007, 2020 Revised Edition

Medicines Act 1975, 2020 Revised Edition 3 Includes physiotherapy services.

Health Products (Licensing of Retail Pharmacies) Regulations 2016

Nurses and Midwives Act 1999, 2020 Revised Edition

Optometrists and Opticians Act 2007, 2020 Revised Edition

22. Sector Recreational, Cultural and Sporting Services

Subsector: Archive services for government records

Industry Classification: CPC 96312 Archive services

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence

Description: Trade in Services and Investment:

Singapore reserves the right to adopt or maintain any measure affecting the supply of archive services for government records specified under the National Heritage Board or its successor body.

Existing Measure: -

23. Sector: Recreational, Cultural and Sporting Services

Subsector: Museum services. Preservation of historical sites, monuments and buildings

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence

Description: Trade in Services and Investment

Singapore reserves the right to adopt or maintain any measure affecting the supply of museum services and the preservation services of historical sites, monuments and buildings.

Existing Measure: -

24. Sector: Foreign Employee Dormitory Services

Subsector: -

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment:

Singapore reserves the right to adopt or maintain any measure affecting the supply of dormitory services for foreign employees.

Existing Measure: -

25. Sector: Sewage Services

Subsector: Waste Water Management, including collection, disposal and treatment of solid waste and waste water.

Industry Classification: CPC 9401 Sewage Services

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Singapore reserves the right to adopt or maintain any measure affecting waste water management, including the collection, treatment and disposal of waste water.

Existing Measure:

Code of Practice on Sewerage and Sanitary Works

Sewerage and Drainage Act 1999, 2020 Revised Edition

26. Sector: Sewage and Refuse Disposal, Sanitation and other Environmental Protection Services

Subsector: Other Environmental Protection Services

Industry Classification: CPC 9409 - Other environmental protection services not elsewhere classified

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Singapore reserves the right to adopt or maintain any measure affecting the supply of any other environmental protection services not elsewhere classified.

Existing Measure: -

27. Sector: Postal Services

Subsector: -

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Singapore reserves the right to adopt or maintain any measure affecting the supply of postal services.

Existing Measure: -

28. Sector: Telecommunications Services (4)

Subsector: Telecommunications Services

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Singapore reserves the right to adopt or maintain any measure affecting the supply of Telecommunications Services, except for the following sectors and subsectors which are subject to the limitations, conditions and qualifications listed herein:

(a) Basic Telecommunication Services, (5) including resale (facilities-based and services-based):

(i) Public Switched Services (6) (local and international);

(ii) Leased Circuit Services (local and international);

(b) Mobile Services (7) including resale (facilities-based and services-based):

(i) Public Mobile Data Service (PMDS);

(ii) Public Trunked Radio Service (PTRS);

(iii) Public Radio Paging Service (PRPS);

(iv) Public Cellular Mobile Telephone Service (PCMTS); and

(c) The following value-added Network (VAN) services:

(i) electronic-mail; voice-mail;

(ii) on-line information and data- base retrieval;

(iii) electronic data interchange; and

(iv) on-line information and/or data processing.

Existing Measure: -

(4) Telecommunication services exclude broadcasting services, which is defined as the transmission of signs or signals via any technology for the reception or display of aural or visual programme signals by all or part of the public. For supply of service from the territory of another Party into the territory of Singapore, market access is subject to commercial arrangements with licensed operators.

(5) Basic Telecommunication Services may be provided using satellite technology.

(6) This includes voice, data and facsimile services.

(7) Mobile Services may be provided using satellite technology. For supply of service from the territory of another Party into the territory of Singapore, market access is subject to commercial arrangements with licensed operators.

29. Sector: Trade Services

Subsector: Supply of potable water for human consumption

Industry Classification: CPC 18000 Natural Water

The sectors listed above apply only insofar as they relate to the supply of potable water.

Obligations Concerned: National Treatment (Trade in Services and Investment).Market Access.Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Singapore reserves the right to adopt or maintain any measure affecting the supply of potable water.

For greater certainty, this reservation does not affect the supply of bottled water.

Existing Measure: Public Utilities Act 2001, 2020 Revised Edition

30. Sector: Transport Services

Subsector: Transportation services via pipeline

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Local Presence

Description: Trade in Services and Investment

Only service suppliers with local presence shall be allowed to provide transportation services via pipeline of goods such as chemical and petroleum products and petroleum, and other related products.

Singapore reserves the right and flexibility to modify or increase the list of the chemical and petroleum products, and other related products that are subject to this reservation.

Existing Measure: -

31. Sector: Transport Services

Subsector: Air transport services

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence. Senior Management and Board of Directors

Description: Trade in Services and Investment

Singapore reserves the right to adopt or maintain any measure affecting cross-border supply of:

(a) aircraft repair and maintenance services;

(b) the selling and marketing of air transport services;

(c) computer reservation system services;

(d) specialty air services;

(e) ground handling services; and

(f) airport operation services. Singapore reserves the right to adopt or maintain any measure affecting investments in air transport and air transport-related services

Existing Measure: Civil Aviation Authority of Singapore Act 2009, 2020 Revised Edition

32. Sector: Transport Services

Subsector: Air transport services

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Singapore reserves the right to adopt or maintain any measure affecting the supply of the following:

(a) surveying;

(b) mapping; and

(c) photography.

Existing Measure: -

33. Sector: Transport Services

Subsector: Air Transport Services - Passengers Transportation by Air

Freight Transportation by Air

Industry Classification: CPC 731 Passenger Transportation by Air

CPC 732 Freight Transportation by Air

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Singapore reserves the right to adopt or maintain any measure relating to requirements of Singapore's bilateral and multilateral air services agreements.

Service suppliers providing air transport services (for both passenger and freight) as a Singapore designated airline may have to be effectively controlled or substantially owned by the Singapore Government or citizens of Singapore or both.

Existing Measure: Air Navigation (Licensing of Air Services) Regulations, Cap. 6, RG 2

34. Sector: All

Subsector: -

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Singapore reserves the right to adopt or maintain any measure in relation to the divestment of the administrator and operator of airports.

Existing Measure: -

35. Sector: Transport Services

Subsector: Land Transport Services - Public transport services, including passenger transportation services by railway, urban and suburban regular transportation services, taxi services, bus and rail station services and ticketing services related to public transport services.

Public transport services are services which are used by and accessible to members of the public for the purposes of transporting themselves within Singapore.

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Singapore reserves the right to adopt or maintain any measure affecting the supply of public transport services.

Public transport services are services which are used by and accessible to members of the public for the purposes of transporting themselves within Singapore.

Existing Measure:

Rapid Transit Systems Act 1995, 2020 Revised Edition

Land Transport Authority of Singapore Act 1995, 2020 Revised Edition

Public Transport Council Act 1987, 2020 Revised Edition

Road Traffic Act 1961, 2020 Revised Edition

Point-to-Point Passenger Transport Industry Act 2019, 2020 Revised Edition

36. Sector: Transport Services

Subsector: Land Transport Services - Rail and road freight transportation. Supporting services for rail and road transport services.

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Singapore reserves the right to adopt or maintain any measure affecting the supply of land transport services as set out above.

Existing Measure: -

37. Sector: Transport Services

Subsector: Services Auxiliary to All Modes of Transport

Industry Classification: CPC 742 Storage and warehousing services

CPC 742** Container station and depot services

CPC 748 Freight transport agency services

CPC 7123** Inland trucking services

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Singapore reserves the right to adopt or maintain any measure that accords equivalent treatment to storage and warehousing, freight forwarding, inland trucking, container station and depot services of another Party.

Existing Measure: -

38. Sector: Transport Services

Subsector: Maritime Transport Services - Towing and tug assistance; provisioning, fuelling and watering; garbage collection and ballast waste disposal; port captain's services; navigation aids; emergency repair facilities; anchorage; and other shore-based operational services essential to ship operations, including communications, water and electrical supplies.

Industry Classification: CPC 74510 Port and Waterway Operation Services

CPC 74520 Pilotage and Berthing Services CPC 74530 Navigation Aid Services

CPC 74590 Other Supporting Services for Water Transport

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Singapore reserves the right to adopt or maintain any measure affecting the supply of towing and tug assistance; provisioning, fuelling and watering; garbage collection and ballast waste disposal; port captain's services; navigation aids; emergency repair facilities; anchorage; and other shore-based operational services essential to ship operations, including communications, water and electrical supplies.

For greater certainty, no measures shall be applied which deny international maritime transport operators reasonable and non-discriminatory access to the above port services.

Existing Measure : Maritime and Port Authority of Singapore Act 1996, 2020 Revised Edition

39. Sector: Transport Services

Subsector: Internal Waterways Transport Services

Industry Classification: CPC 722 Transport Services by Non- seagoing Vessels

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence. Senior Management and Board of Directors

Description: Trade in Services and Investment

Singapore reserves the right to adopt or maintain any measure affecting the supply of internal waterways transportation services.

Existing Measure: -

40. Sector: Trade Services

Subsector: Wholesale trade services and retail trade services of alcoholic beverages and tobacco

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Singapore reserves the right to adopt or maintain any measure affecting the supply of wholesale and retail trade services of tobacco products and alcoholic beverages.

Existing Measure: -

41. Sector: Energy

Subsector: -

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Local Presence Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment:

Singapore reserves the right to adopt or maintain any measure affecting or relating to nuclear energy, including energy products (e.g. electricity, heat and steam) produced by nuclear energy.

Existing Measure: -

42. Sector: All

Subsector: -

Industry Classification: -

Obligations Concerned: Most-Favoured-Nation Treatment (Trade in Services and Investment).

Description: Trade in Services and Investment

Singapore reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of the Second Protocol.*

Singapore reserves the right to adopt or maintain any measure that accords differential treatment to Member States of ASEAN under any international agreement in force or signed after the date of entry into force of the Second Protocol.

Singapore reserves the right to adopt or maintain any measure that accords differential treatment to countries under any international agreement in force or signed after the date of entry into force of the Second Protocol involving:

(a) aviation matters, including air services;

(b) maritime and services auxiliary to maritime matters; and port matters;

(c) land transport matters; (d) postal and courier services matters;

(e) telecommunications and information technology matters;

(f) electronic commerce matters; and

(g) environmental matters.

* For greater certainty, the wording in this paragraph extends to any differential treatment accorded to a country pursuant to a subsequent review or amendment of the relevant bilateral or multilateral agreement mentioned in this paragraph.

Existing Measure: -

43. Sector: Financial Services

Subsector: -

Industry Classification: -

Obligations Concerned: National Treatment (Trade in Services and Investment). Market Access. Most-Favoured-Nation Treatment (Trade in Services and Investment). Prohibition of Performance Requirements. Senior Management and Board of Directors

Description: Trade in Services and Investment

Singapore reserves the right to adopt or maintain any measure affecting the supply of financial services with respect to Most- Favoured-Nation Treatment, Prohibition of Performance Requirements, and Senior Management and Board of Directors.

Singapore reserves the right to adopt or maintain any measure with respect to National Treatment and Market Access, except as specified in the Appendix to this List (Commitments for Financial Services - Singapore) and subject to the limitations, conditions and qualifications specified therein.

Existing Measure: -

44. Sector: All

Subsector: -

Industry Classification: -

Obligations Concerned: Market Access. Local Presence

Description: Trade in Services

Singapore reserves the right to adopt or maintain any limit on the number of suppliers of credit bureau services where information provided by the supplier of credit bureau services is obtained from _ financial institutions in Singapore. The supplier must be established in Singapore.

Existing Measure: Monetary Authority of Singapore Act 1970, 2020 Revised Edition

APPENDIX TO LIST B. COMMITMENTS FOR FINANCIAL SERVICES SINGAPORE

EXPLANATORY NOTES

This Appendix shall be read together with entry 43 in List B of the Schedule of Singapore in Annex 3 (Schedules of Reservations and Non-Conforming Measures for Investment and Services). This Appendix does not include Singapore's commitments on the supply of a service by the presence of natural persons, or other movement of natural persons, including immigration, entry or temporary stay.

Modes of Supply:

1) Cross-border Supply

2) Consumption abroad

3) Commercial presence

FINANCIAL SERVICES

All the commitments in this Appendix are also subject to entry requirements, domestic laws, guidelines, rules and regulations, terms, and conditions of the Monetary Authority of Singapore (MAS) or any other relevant authority or body in Singapore, as the case may be, which are consistent with Article VI of GATS and paragraph 2 of the Annex on Financial Services of GATS.

Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
A. Insurance and			

Insurance-related Services			
a) Life insurance services including annuity, disability income, accident and health insurance services	(1) Unbound (2) None (3) These measures are also limitations on national treatment. None except foreign persons can only acquire equity stakes of up to 49 per cent in aggregate in locally-owned insurance companies provided the acquisition does not result in any foreign person being the largest shareholder; insurance companies must establish as branches or subsidiaries; and for activities relating to the use, including via investment, of monies from any social security, public retirement or statutory savings scheme.	(1) Unbound (2) None (3) None	
b) Non-life insurance services including disability income, accident and health insurance and contracts of fidelity bonds, performance bonds or similar contracts of guarantee	(1) Unbound (2) None except that compulsory insurance of Motor Third Party Liability and Workmen's Compensation may only be purchased from licensed insurance companies in Singapore. (3) Foreign persons can only acquire equity stakes of up to 49 per cent in aggregate in locally owned insurance companies provided the acquisition does not result in any foreign person being the largest shareholder. Unbound for licensing of new insurance companies and establishment of new representative offices.	(1) Unbound (2) None (3) None	
c) Reinsurance and retrocession	(1) None (2) None (3) None except that reinsurance companies must be established as branches or subsidiaries.	(1) None (2) None (3) None	
d) Insurance intermediation comprising broking and agency services	(1) Unbound (2) These measures are also limitations on national treatment. Agents are not allowed to act for unlicensed insurers. The placement of domestic tisks outside Singapore by brokers is subject to the approval of MAS, with the exception of reinsurance risks and insurance risks relating to maritime liabilities of shipowners insured by protection and indemnity clubs. (3) These measures are also limitations on national treatment. Unbound except for admission of direct insurance brokers (8) and reinsurance brokers as locally incorporated subsidiaries.	(1) Unbound (2) None (3) Unbound	
e) Services auxiliary to insurance comprising actuarial, loss adjustors, average adjustors and consultancy services	(1) None (2) None (3) None	(1) None (2) None (3) None	

(8) Direct insurance broker means an insurance broker which is licensed under the Insurance Act 1996 in respect of insurance policies relating

to general insurance and long term accident and health policies, other than insurance policies relating to reinsurance business.

B. Banking and Other Financial Services			
a) Acceptance of deposits, and other repayable funds from the public	(1) Unbound (2) None (3) These measures are also limitations on national treatment. Only institutions licensed or approved as banks, merchant banks and finance companies can accept deposits. Where a foreign financial institution is subject to legislation in its home country which requires that institution to confer lower priority to depositors of its foreign offices vis-a-vis the home country depositors in receivership or winding-up proceedings, the MAS may exercise appropriate differentiated measures against that foreign financial institution in Singapore to safeguard the interest of the Singapore office's depositors. MAS may require foreign banks to incorporate under Singapore law. Establishment and operation of foreign banks, merchant banks and finance companies are also subject to the limitations listed under activities B.a) through B.I) and the following limitations: Commercial banks: No new full and wholesale banks. New foreign banks may only establish as offshore bank branches or representative offices. Representative offices cannot conduct business or act as agents. Banks, with MAS' approval, can operate foreign currency savings accounts only for nonresidents. A single or related group of foreign shareholders can only hold up to 5 per cent of a local bank's shares. Merchant banks: Foreign banks and merchant banks may establish as merchant bank subsidiaries or merchant bank branches. Finance companies No new finance companies. No foreign person shall acting alone or in concert with other persons, assume control of any finance company. A foreign person is a person that is: (a) in the case of a natural person, not a citizen of Singapore; and (b) in the case of a corporation, not controlled by citizens of Singapore. Approval from the MAS is required before a person (together with associated persons) is allowed to acquire shareholdings or voting control in a finance company of or exceeding 5%, 12% and 20%, and before he obtains effective control of the finance company. In approving applications to exceed the threshold limits, MAS may impose conditions it considers necessary to prevent undue control, protect public interests, and ensure the integrity of the financial system. All finance companies, local and foreign-	(1) Unbound (2) None (3) Commercial banks: Foreign banks can operate from only one office (excluding back- office operations). They cannot establish off-premise Automated Teller Machines (ATM) and ATM networking and new sub-branches. Unbound for provision of all electronic banking services. Location of banks and relocation of banks and sub-branches require prior approval from MAS. Wholesale banks can only accept foreign currency fixed deposits from and operate current accounts for residents and non-residents. For Singapore dollar deposits, they can only accept fixed deposits of $$250,000 or more per deposit. Offshore banks can accept foreign currency fixed deposits from residents and non-residents. For Singapore dollar deposits, they can only accept fixed deposits of $$250,000 or more per deposit from non-residents. A majority of the directors of a bank incorporated in Singapore must be either Singapore citizens or Singapore permanent residents. (9) Merchant banks: Merchant banks can operate from only one office (excluding backoffice operations). Location and relocation of merchant banks require MAS' prior approval. Merchant banks can, with MAS' authorisation, raise foreign currency funds from residents and non-residents, operate foreign currency savings accounts for nonresidents and raise Singapore dollar funds from their shareholders and companies controlled by their shareholders, banks, other merchant banks and finance companies. Finance	

	owned, can only conduct Singapore dollar business. With MAS' prior approval, eligible finance companies can also deal in foreign currencies, gold or other precious metals, and acquire foreign currency stocks, shares, or debt or convertible securities.	companies: Location of finance companies and relocation of sub-branches require MAS' prior approval. Foreign-owned finance companies cannot establish off-premise ATMs, ATM networking and new sub-branches.	

(9) MAS may permit a bank incorporated in Singapore which is a wholly owned subsidiary of a bank of another Party incorporated outside Singapore, to have less than a majority of directors who are either Singapore citizens or Singapore permanent residents.

b) Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions	(1) Unbound (2) None (3) These measures are also limitations on national treatment. (i) Other than in-house credit cards, credit and charge cards may be issued by card issuers approved by MAS subject to MAS' guidelines. (ii) Financial institutions extending Singapore dollar (S$) credit _ facilities exceeding S$5 million per entity to non-resident financial entities or arranging S$ 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. Financial entities shall not extend S$ credit facilities to non-resident financial entities if there is reason to believe that the S$ proceeds may be used for S$ currency speculation. (iii) Establishment of credit companies which do not conduct activities requiring MAS' approval is allowed.	(1) None (2) None (3) Each offshore bank's lending in Singapore dollars to residents shall not exceed S$500 million in aggregate. Offshore banks should not use their related merchant banks to circumvent the $$500_ million lending limit. Unbound for establishment of off-premise cash dispensing machines for credit and charge cards issuers.	
c) Financial leasing	(1) None (2) None (3) None except as indicated for activity B.b) above	(1) None (2) None (3) None except as indicated for activity B.b) above	
d) Payment and money transmission services, including credit, charge and debit cards,	(1) Unbound (2) None (3) These measures are also limitations on national treatment. Remittance shops, except where the remittance business is conducted by banks and merchant banks, are required to be majority owned by Singapore citizens. Bankers' drafts can only be issued by banks. Multi-	(1) Unbound (2) None (3) None	

travellers cheques and bankers' drafts	purpose stored value cards can only be issued by a bank in Singapore licensed by MAS. The limitations indicated in B.b) (3) above also apply to the activities listed in B.d).		
e) Guarantees and commitments	(1) None except for the limitations as indicated in activity A.b) for insurance companies providing contracts of fidelity bonds, performance bonds or similar contracts of guarantee. (2) None (3) None except for the limitations indicated in activity Ab) for insurance companies providing contracts of fidelity bonds, performance bonds or similar contracts of guarantee, and B.b) (3)(ii) above.	(1) None (2) None (3) None	
f) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following: - money market instruments (including cheques, bills, certificates of deposit) - foreign exchange - derivative products, including financial futures and options - exchange rate and interest rate instruments, including swaps and forward rate agreements - transferable securities - other negotiable instruments and financial assets, including bullion	(1) Unbound except for trading in products listed in B.f) for own account. Trading in money market instruments, foreign exchange, as well as exchange rate and interest rate instruments can be conducted with financial institutions only. Measures taken are also limitations on national treatment. (2) None (3) These measures are also limitations on national treatment. Banks and merchant banks are required to set up separate subsidiaries to trade financial futures for customers. Financial futures brokers can establish as branches or subsidiaries. The offer of derivative products by both local and foreign-owned financial institutions is allowed provided: - the product has been offered by the financial institution in other internationally-reputable financial centres and the supervisory authorities of those centres agree to the offer of such products in their markets; - the financial institution's parent supervisor and its head office must be aware and have no objection to the offer of such products in the Singapore branch or subsidiary; and - MAS is satisfied that the financial institution has and continues to have the financial strength and adequate internal controls and risk management systems to trade in these products. The offer of derivative products involving the Singapore dollar is subject to the requirement indicated in B.b)(3)(ii). Moneychangers, except where the money changing business is conducted by banks and merchant banks, are required to be majority owned by Singapore citizens.	(1) None (2) None (3) None except as indicated for activity B.b) above.	
g) Participation in issues of all kinds of securities, including underwriting and placement as	(1) Unbound except for participation in issues of securities for own account, and underwriting and placement of securities through stockbroking companies, banks or merchant banks in Singapore. Measures taken are also limitations on national treatment. (2) None (3) Measures taken are also limitations on national treatment. Singapore Exchange Securities Trading Ltd (SGX-ST) will admit new trading members. New members will be able to trade directly in Singapore dollar (S$) denominated securities of Singapore incorporated companies with resident investors for a	(1) None (2) None (3) None except as indicated	

agent and provision of service related to such issues	minimum value of $$200,000. Representative offices cannot conduct business or act as agents. Unbound for foreign acquisition of new and existing equity interests in SGX-ST member companies. Banks' and merchant banks' membership on SGX-ST and Singapore Exchange Derivatives Trading Ltd (SGX- DT) must be held through subsidiaries. Unbound for new Primary and Registered dealers of Singapore Government Securities.	for activity B.b) above	
h) Money broking	(1) Unbound (2) None (3) Unbound for new money brokers. Measures taken are also limitations on national treatment.	(1) Unbound (2) None (3) None	
i) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services	(1) Unbound (2) None (3) These measures are also limitations on national treatment. None, except asset management companies, custodial depositories, and trust services companies can establish as branches, subsidiaries or joint ventures; only the Central Depositary Pte Ltd is authorised to provide securities custodial depository services under the scripless trading system. Unbound for activities relating to the use, including via investment, of monies from any social security, public retirement, or statutory saving scheme.	(1) Unbound (2) None (3) None	
j) Settlement and clearing services for financial assets, including securities, derivative products and other negotiable instruments	(1) Unbound, except for the provision of settlement and clearing services for financial assets which are listed on overseas exchanges only. (2) None (3) These measures are also limitations on national treatment. Settlement and clearing services for exchange traded securities and financial futures can only be provided by Central Depository (Pte) Limited and SGX-DT respectively. Only one clearing house established under the Banking Act may provide clearing services for Singapore dollar cheques and interbank fund transfer.	(1) Unbound (2) None (3) Unbound	
k) Advisory and other auxiliary financial services, including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy	(1) Commercial presence is required for provision of investment and portfolio research and advice to the public. (2) None (3) Financial advisers can establish as branches, subsidiaries or representative offices. Representative offices cannot conduct business or act as agents.	(1) None (2) None (3) None	
	(1) Unbound except for the provision of financial information by providers such as Reuters and Bloomberg. Measures taken are also limitations on national treatment. The Singapore branches of foreign banks can transmit data to		

(l) Provision and transfer of financial information, and financial data processing and related software by providers of other financial services	their head offices and sister branches for processing provided proper controls exist, the integrity and confidentiality of the data and information are safeguarded, and MAS is allowed on-site access to the data and information at the place where the data and information is processed. (2) Only the provision of financial information by providers such as Reuters and Bloomberg is allowed. Measures taken are also limitations on national treatment. (3) The provision of financial information by providers, such as Reuters and Bloomberg, is allowed. The provision of financial data processing services to banks and merchant banks is subject to domestic laws on protection of confidentiality of information of customers of banks and merchant banks.	(1) None for the provision of financial information by providers such as Reuters and Bloomberg. (2) None (3) None	

ANNEX 3. SCHEDULE OF RESERVATIONS AND NON-CONFORMING MEASURES FOR SERVICES. INDONESIA

LIST A. EXPLANATORY NOTES

1. This List A sets out, pursuant to Article 12 (Schedules of Non-Conforming Measures) of Chapter 8 (Trade in Services), Indonesia's existing measures that are not subject to some or all of the obligations imposed by:

(a) Article 4 (National Treatment) of Chapter 8 (Trade in Services);

(b) Article 5 (Market Access) of Chapter 8 (Trade in Services);

(c) Article 9 (Most-Favoured-Nation Treatment) of Chapter 8 (Trade in Services); or

(d) Article 10 (Local Presence) of Chapter 8 (Trade in Services);

2. Each entry in this List A sets out the following elements:

(a) Sector refers to the sector for which the entry is made;

(b) Subsector, refers to the specific subsector for which the entry is made;

(c) Industry Classification, where referenced in sector or subsector row, refers to the activity covered by the non-conforming measure, according to:

(i) the provisional CPC codes as used in the Provisional Central Product Classification (Statistical Papers Series M No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991); or

(ii) Indonesian Standard of Industrial Classification (Kiasifikasi Baku Lapangan Usaha Indonesia/KBLI) 2015.

(d) Level of Government indicates the level of government maintaining the listed measures;

(e) Obligations Concerned specifies the obligations referred to in Paragraph 1 that, pursuant to Article 12 (Schedules of Non-Conforming Measures) of Chapter 8 (Trade in Services), do not apply to the listed measures;

(f) Description sets out the non-conforming measure for which the entry is made;

(g) Source of Measure identifies the laws, regulations or other measures for which the entry is made. A measure cited in the "Source of Measure" element:

(i) means the measure as amended, continued or renewed as of the date of entry into force of the Second Protocol; and

(ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure.

3. An entry that reserves against Article 10 (Local Presence) of Chapter 8 (Trade in Services) need not be reserved against Article 4 (National Treatment) of Chapter 8 (Trade in Services), however it shall also be considered as a reservation against Article 4 (National Treatment) of Chapter 8 (Trade in Services).

4. In accordance with Article 12 (Schedules of Non-Conforming Measures) of Chapter 8 (Trade in Services), the Articles of this

Agreement specified in the Obligations Concerned element of an entry do not apply to the non-conforming measures identified in the Description element of that entry.

5. Entries that apply to all Sectors specified in entries four through nine of List B apply to supply of services on subsectors specified in this list, unless otherwise provided.

6. The Schedules of other Parties shall not be used to interpret Indonesia's obligations under Chapter 8 (Trade in Services).

7. This note shall form part of Indonesia's reservations.

1. Sector: Professional Services

Subsector: Legal Services (CPC 861):

(a) Only for advisory services on foreign and international law

(b) For greater certainty, advisory service shall not include:

(i) legal representation in Indonesian court of justice or undertake legal proceedings under any circumstances

(ii) notarial activities

Level of Government: Central

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Commercial presences of foreign law firm services supplier are prohibited.

Source of Measure: Law No. 18 of 2003 concerning Advocate

2. Sector: Communication Services

Subsector:

(a) Postal Services (CPC 75111 and CPC 75112) (Indonesia Standard Industrial Classification 2015, Code 53102- Commercial Postal) excluding Intercity Delivery and Universal Post Services

(b) Courier Services (CPC 75121) (Indonesia Standard Industrial Classification 2015, Code 53102-Commercial Postal) excluding Intercity Delivery and Universal Post Services

Level of Government: Central

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Foreign service suppliers are not permitted to establish a commercial presence in Indonesia to supply postal or courier services, except through a joint venture with only one Indonesian postal service supplier with foreign equity participation not exceeding 49 per cent. The Indonesian joint venture partner must be wholly owned by Indonesian nationals.

The joint venture may only operate within a provincial capital that has an international airport or seaport and is prohibited from providing postal and courier services between cities in Indonesia.

Source of Measure: Law No. 38 of 2009 concerning Postal

3. Sector : Maritime Transport Services

Subsector :

(a) International Passenger Transport (CPC 7211)

(b) International Freight Transport (CPC 7212)

Level of Government : Central

Obligations Concerned : National Treatment. Market Access

Description : Trade in Services

Foreign service suppliers are not permitted to establish a commercial presence in Indonesia for international passenger or freight maritime transport, except through a joint venture with foreign equity participation not exceeding 49 per cent.

The joint venture must operate at least one Indonesian-flagged vessel with a minimum 5,000 gross tonnage and crewed by Indonesian nationals.

Foreign shipping enterprises can only provide international passenger transportation services to and from seaports and special ports that are open for foreign trade (1) and are required to appoint an Indonesian shipping enterprise or shipping agent enterprise as its General Agent.

Source of Measure :

- Law No. 17 of 2008 concerning Maritime Law

- Government Regulation No. 20 of 2010 concerning Sea Transport as amended by Government Regulation No. 220f 2011

- Presidential Regulation No. 49 of 2021 concerning the Amendment to Presidential Regulation No. 10 of 2027 concerning Business Fields in the Field of Capital Investment

- Minister of Trade Regulation No. 82 of 2017 concerning Provisions for The Use of Sea Transportation and National Insurance for The Export and Import of Certain Goods as amended by Minister of Trade Regulation No. 80 of 2018 concerning the Second Amendment Minister of Trade Regulation No. 82 of 2017

(1) Seaports and special ports that are open to international trade subject to prevailing laws and regulations at the time of supplying services.

4. Sector : Construction Services

Subsector :

(a) Construction Work for Buildings (CPC 512) excluding one- and two-dwelling buildings (CPC 51210)

(b) Construction Work for Civil Engineering (CPC 513)

(c) Assembly and Erection of Prefabricated Constructions (CPC 514)

(d) Installation Work (CPC 516)

(e) Building Completion and Finishing Work (CPC 517)

(f) Pre-Erection Work at Construction Site (CPC 511) excluding Site Investigation Work (CPC 51110) and Site Formation and Clearance Work (CPC 51113)

(g) Special Trade Construction (CPC 515)

(h) Renting Services Related Equipment for Construction or Demolition of Building or Civil Engineering Works with Operator (CPC 518)

Level of Government : Central

Obligations Concerned : National Treatment

Description : Trade in Services

All existing non-conforming measures at the central level of government.

Source of Measure : All existing non-conforming measures at the central level of government.

LIST B. EXPLANATORY NOTES

1. This List B sets out, pursuant to Article 12 (Schedules of Non-Conforming Measures) of Chapter 8 (Trade in Services), the specific sectors, subsectors or activities for which that Indonesia may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

(a) Article 4 (National Treatment) of Chapter 8 (Trade in Services);

(b) Article 5 (Market Access) of Chapter 8 (Trade in Services);

(c) Article 9 (Most-Favoured-Nation Treatment) of Chapter 8 (Trade in Services); or

(d) Article 10 (Local Presence) of Chapter 8 (Trade in Services).

2. Each entry in this List B sets out the following elements:

a) Sector refers to the sector for which the entry is made;

b) Subsector, refers to the specific subsector for which the entry is made;

c) Industry Classification, where referenced in sector or subsector row, refers to the activity covered by the non-conforming measure, according to:

(i) the provisional CPC codes as used in the Provisional Central Product Classification (Statistical Papers Series M No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991). The appearance of ** against individual CPC listings indicates that the service specified constitutes only a part of the total range of activities covered by the CPC concordance;

(ii) Indonesian Standard of Industrial Classification (Kiasifikasi Baku Lapangan Usaha Indonesia/KBLI) 2015; or

(iii) W120 refers to Services Sectoral Classification List (MTN.GNS/W/120 of 10 July 1991);

(d) Obligations Concerned specifies the obligations referred to in Paragraph 1 that, pursuant to Article 12 (Schedules of Non-Conforming Measures), do not apply to the listed measures; and

(e) Description sets out the non-conforming measure for which the entry is made;

3. An entry that reserves against Article 10 (Local Presence) of Chapter 8 (Trade in Services) need not be reserved against Article 4 (National Treatment) of Chapter 8 (Trade in Services), however it shall also be considered as a reservation against Article 4 (National Treatment) of Chapter 8 (Trade in Services).

4. In accordance with Article 12 (Schedules of Non-Conforming Measures) of Chapter 8 (Trade in Services), the Articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the non- conforming measures identified in the Description element of that entry.

5. In the interpretation of an entry, all elements of the entry shall be considered in their totality. The Description element shall prevail over all other elements.

6. For greater certainty, in the case an entry prescribed for all sectors, and that "All sectors" is used in that entry, such entry applies to all sectors including those scheduled in List A and the Appendices to this List (Specific Commitments for Financial Services and Specific Commitments for The Presence of Natural Persons).

7. Commitments with respect to or relating to trade in financial services are undertaken in accordance with Chapter 8 (Trade in Services), Annex 8A (Financial Services) and subject to the limitations, conditions and qualification set out in the Appendix A to this List B (Specific Commitments for Financial Services).

8. For greater certainty, cabotage in maritime transport services shall not be subject to commitments made in this Schedule.

9. The Schedules of other Parties shall not be used to interpret Indonesia's obligations under Chapter 8 (Trade in Services).

10. This note shall form part of Indonesia's reservations.

1. Sector: All sectors

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measures that does not conform with the obligations imposed by Article 4 (National Treatment) and Article 5 (Market Access) of Chapter 8 (Trade in Services), except commitments with respect to:

(a) sectors and subsectors specified in List A;

(b) subsectors specified in entry 10 through entry 96 of this List B;

(c) subsectors specified in the Appendices to this List B (Specific Commitments for

Financial Services and Specific Commitments for The Presence of Natural Persons);

(d) the supply of services through consumption abroad as defined in Article 1 (t)(ii) (Definitions) of Chapter 8 (Trade in Services) on sectors and subsectors specified in List A of this Schedule, entry 10 through entry 96 of this List B, and the Appendix A to this List B (Specific Commitments for Financial Services) unless otherwise indicated as "unbound" in the Appendix A to this List B (Specific Commitments for Financial Services); and

(e) the supply of services through presence of natural persons of a Party in the territory of Indonesia as defined in Article 1(t)(iv) (Definitions) of Chapter 8 (Trade in Services) on sectors and subsectors specified in the Appendix B to this List B (Sector Specific Commitments for The Presence of Natural Persons) subject to the terms, limitations, conditions, and qualifications set out therein.

2. Sector : All sectors

Obligations Concerned : Most-Favoured-Nation Treatment

Description : Trade in Services

Indonesia reserves the right to adopt or maintain any measure that accords more favourable treatment to any service supplier under any international agreement in force or signed prior to the date of entry into force of the Second Protocol.

Indonesia reserves the right to adopt or maintain any measure that accords more favourable treatment to any services or service suppliers under any bilateral or multilateral international agreement signed after the date of entry into force of the Second Protocol, except with respect to the subsectors listed in List A of this Schedule (2) subject to other relevant entry on Article 9 (Most-Favoured-Nation Treatment) of Chapter 8 (Trade in Services) in this List B.

For subsectors not listed in List A, if, after the entry into force of the Second Protocol, Indonesia enters into any agreement that gives more preferential treatment, with other country, other than those among Member States of ASEAN, Indonesia will give consideration, upon request from another Party, to negotiate for the incorporation herein of treatment no less favourable than that provided under the aforesaid agreement.

Notwithstanding the above, Indonesia reserves the right to adopt or maintain any measure that accords differential treatment:

(a) to Member States of ASEAN under any ASEAN agreement open to participation by any Member State of ASEAN, in force or signed after the date of entry into force of this Agreement;

(b) with respect of advantages accorded to adjacent countries to the extent covered by paragraph 3 of Article II of GATS; and

(c) to any service supplier under any bilateral or multilateral international agreement in force or signed after the date of entry into force of this Agreement involving:

(i) aviation;

(ii) fisheries; or

(iii) maritime matters, including salvage.

(2) For greater certainty, Article 9 (Most-Favoured-Nation Treatment) of Chapter 8 (Trade in Services) does not apply to measures reserved in this List with respect to sectors listed in List A.

3. Sector : All sectors, excluding financial services (3)

Obligations Concerned : Local Presence

Description : Trade in Services

Indonesia reserves the right to adopt or maintain any existing measure that requires a service supplier of another Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service (4).

Any non-conforming measure adopted after the entry into force of this Agreement that would be a breach of Article 10 (Local Presence) of Chapter 8 (Trade in Services) with respect to sectors or subsectors in this Schedule shall be deemed to be

an existing non-conforming measure and subject to Article 12 (Schedules of Non- Conforming Measures) of Chapter 8 (Trade in Services).

Notwithstanding the above paragraph, Indonesia reserves the right to adopt or maintain any measure that requires a supplier of telecommunication services of another Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service.

(3) For greater certainty, consistent with Article 1 (Scope) in Annex 8A (Financial Services), this entry does not apply to financial services.

(4) For greater certainty, cross-border supply of a service means the supply of a services, except where it is by a service supplierof a Party through commercial presence in the territory of the other Party.

4. Sector: All sectors

Obligations Concerned: Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain anymeasure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that require:

(a) commercial presence of the foreign services supplier to be in the form of joint venture or representative office, unless mentionedotherwise in List A and this List B; and joint venture to be in the form of Limited Liability Enterprise (Perseroan Terbatas); and

(b) not more than 49 per cent of the equity participation of the Limited Liability Enterprise (Perseroan Terbafas) may be owned by foreign partners.

5. Sector: All sectors

Obligations Concerned: National Treatment

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that require:

(a) Non-resident taxpayers to be subject to withholding tax of 20 per cent if they derive the following income from an Indonesian source, inter alia:

(i) Interest;

(ii) Royalties;

(iii) Dividend; or

(iv) Fee from service performed in Indonesia.

(b) Relating to Land Acquisition that no foreign persons are allowed to own land. However, a joint venture enterprise could hold the right for land use (Hak Guna Usaha), and building rights (Hak Guna Bangunan), and they may rent or lease land and property.

6. Sector: All sectors

Obligations Concerned: National Treatment

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1 (t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires a joint venture supplying services through commercial presence in Indonesia to have a total investment value of more than IDR 10 billion (5) (excluding land and buildings), except in sectors and subsectors where Indonesia has made commitments under GATS.

(5) This inscription of the said value shall be without prejudice to the time value of money.

7. Sector: All sectors

Obligations Concerned: National Treatment

Description: Trade in Services

Article 4 (National Treatment) of Chapter 8 (Trade in Services) may not apply to measures relating to the procedural aspect of investment implementation permits (6) at the provincial level (7).

(6) For illustrative purposes, this may include a location permit or a building permit.

(7) For the purposes of this entry, “provincial level” means the regional level of government

8. Sector: All sectors

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure:

(a) for the protection of Indonesian essential security interests; and

(b) governing permanent residents to the extent consistent with Indonesia's commitments under GATS.

9. Sector : All sectors

Obligations Concerned: National Treatment. Market Access

Description : Trade in Services

Indonesia reserves the right to adopt or maintain any measures that require to manage, use, or locate computing facilities in its territory as a condition for the conduct of business in Indonesia, and to require certain information to be stored and processed in Indonesia, when such business is performed for and on behalf of government authorities within the context of public electronic system operators.

Indonesia reserves the right to adopt or maintain any measures that require private electronic system operators to provide access to electronic system and data for the purpose of law enforcement to ensure compliance with domestic laws and regulations, where that measure is in accordance with due process of law.*

Indonesia reserves the right to adopt or maintain any measures that requires retaining and providing access to copies of Strategic Electronic Data (8) in the territory of Indonesia.

*Notwithstanding Article 3 (Scope) of Chapter 10 (Electronic Commerce), this paragraph above does not have the effect of exempting Indonesia from its obligations under Article 17 (Location of Computing Facilities) of Chapter 10 (Electronic Commerce) and Article 18 (Cross-border Transfer of Information by Electronic Means) of Chapter 10 (Electronic Commerce).

(8) For the purposes of this entry, "Strategic Electronic Data" is as provided in the Government Regulation No.71 of 2019 concerning Electronic System and Transaction Operation.

10. Sector: Part of Community, Social and Personal Services

Subsector:

(a) Technical and Vocational Secondary Education Services (electronic, automotive) (CPC 92230);

(b) Language Course and Training (CPC 924); (c) Football and Chess only (CPC 92900); (d) Tourism Consultancy Services (CPC 91136).

Obligations Concerned: National Treatment

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) relating to the supply of services of the above subsectors.

11. Sector: Professional Services

Subsector:

(a) Architectural Services (CPC 8671)

(b) Engineering Services (CPC 8672 - except CPC86721, 86725, 86726)

(c) Integrated Engineering Services (CPC 8673)

(d) Urban Planning Services (CPC 86741)

(e) Landscape Architectural Services (CPC 86742)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that require:

(a) joint operation by establishing a representative office in Indonesia. License for representative office shall be valid for 3 years and can be extended.

(b) joint venture company established in accordance with applicable laws and regulations concerning foreign commercial presence.

(c) no more than 51 per cent of the equity participation in a joint venture shall be owned by foreigners;

(d) permit requirements for foreign service suppliers may vary from that applicable to Indonesian service suppliers; and

(e) foreign service suppliers shall only provide services in relation to projects that use advanced technology or are high risk or high capital. The qualifier of advance technology, high risk, and high cost will be in accordance with prevailing laws and regulations at the time of supplying the services.

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(i) and (ii) (Definitions) of Chapter 8 (Trade in Services) of Landscape Architectural Services (CPC 86742).

12. Sector: Professional Services

Subsector: Advisory and Consultative (CPC 86721)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that require commercial presence in the form of joint operation through a representative office in Indonesia, provided that the Indonesian participant must be member of Indonesian consultant association.

13. Sector: Professional Services

Subsector: Engineering Design Services for Industrial Processes and Production (CPC 86725**) only for steel mill, oil & gas, gas turbine industries

(a) Mould and dies (die-casting, forging, stamping, etc.)

(b) Powder metallurgy

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that require the supply through commercial presence in the form of joint venture subject to a condition that the domestic partner in the joint venture is a member of an Indonesian consultant association.

14. Sector: Professional Services

Subsector: Engineering Design Services for Industrial Processes and Production (CPC 86725**) only for materials flows, equipment layout, material handling systems, processes and process control (which may integrate computer technology) for manufacturing plants

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that require the supply through commercial presence in the form of joint venture subject to a condition that the domestic partner in the joint venture is a member of an Indonesian consultant association.

15. Sector: Professional Services

Subsector:

(a) Clinic of Specialised Medical Services for registered health institution, Â© which established and integrated in Class A and B hospital (CPC 93122)

(b) Clinic of Specialised Dental Services for registered health institution, Â© which established and integrated in Class A and B hospital (CPC 93123)

Obligations Concerned: National Treatment Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(i) (Definitions) of Chapter 8 (Trade in Services).

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that require supply through commercial presence to be in the form of joint venture subject to following conditions:

(a) no more than 51 per cent of the equity participation in a joint venture shall be owned by foreigners;

(b) foreigners may only employ foreign health professionals subject to availability of Indonesian health professionals;

(c) must be established in a class A or B hospital-owned premise, for specialistic Medical Services or class B hospital-owned premise for subspecialist Medical Services; and

(d) the management shall be integrated with the hospital.

16. Sector: Professional Services

Subsector: Specialist Nursing Services for registered institutions, which established and integrated in Class A and B hospital (CPC 93191)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(i) (Definitions) of Chapter 8 (Trade in Services).

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that require supply through commercial presence to be in the form of joint venture subject to following conditions:

(a) no more than 51 per cent of the equity participation in a joint venture shall be owned by foreigners;

(b) the health professionals shall be Indonesian nationals; and

(c) establishment limited to the capital of provinces in eastern Indonesia region except Manado and Makassar.

17. Sector: Computer and Related Services

Subsector: Consultancy Services Related to the Installation ofcomputer hardware (CPC 841)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) thatrequire supply through commercial presence to be inthe form of joint operation requirement through arepresentative office in Indonesia and the Indonesianparticipant must be member of Indonesian consultant association.

18. Sector: Computer and Related Services

Subsector: Software Implementation Services (CPC 842) only for CPC 84210

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be subject to following conditions:

(a) only through a locally incorporated joint venture corporation in the form of Limited Liability Enterprise (Perseroan Terbatas) with Indonesian individuals or Indonesian-controlled corporations or both;

(b) shall apply to foreign services supplier with capital value above IDR 100 billion, and investment value above IDR 15 billion; and

(c) the domestic partner must be member of Indonesian consultant association.

19. Sector: Computer and Related Services

Subsector: Database Services (CPC 844) only for advance database services

Obligations Concerned: National Treatment Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(i) (Definitions) of Chapter 8 (Trade in Services).

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be subject to following conditions:

(a) only through a locally incorporated joint venture corporation in the form of Limited Liability Enterprise (Perseroan Terbatas) with Indonesian individuals or Indonesian- controlled corporations or both and joint venture with domestic ownership of the data;

(b) shall apply to foreign services supplier with capital value above IDR 100 billion, and investment value above IDR 15 billion; and

(c) the domestic partner must be member of Indonesian consultant association.

20. Sector: Computer and Related Services

Subsector: Maintenance and Repair Services of Office Machinery and Equipment Including Computers (CPC 845)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(i) and (iii) (Definitions) of Chapter 8 (Trade in Services).

Any non-conforming measure adopted or maintained after the entry into force of this Agreement in relation to the paragraph above shall be deemed to be an existing non-conforming measure and subject to Article 12 (Schedules of Non-Conforming Measures) of Chapter 8 (Trade in Services).

21. Sector: Research and Development Services

Subsector: Interdisciplinary R&D (CPC 853, limited to industrialactivities)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of joint venture subject to following conditions:

(a) the domestic partner in joint venture must be member of Indonesian consultant association;

(b) permit requirement for foreign service suppliers may vary from that applicable to Indonesian service suppliers;

(c) the Indonesia counterpart must have the involvement of researchers from Indonesian research institutions (higher education, government, business, private-non-profit) in Indonesia; and

(d) granting permit for foreign services suppliers will be subject to assessment on the object, area and period of research pursuant to applicable laws and regulations at the time of application.

22. Sector: Research and Development Services

Subsector: Research and Experimental Development Services on Linguistic and Languages (CPC 85204) only for foreign language

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(i) (Definitions) of Chapter 8 (Trade in Services).

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of joint operation requirement through a representative office in Indonesia subject to following conditions:

(a) permit requirements for foreign service suppliers may vary from that applicable to Indonesian service suppliers;

(b) required to establish partnership with higher education services suppliers in Indonesia particularly PTN-BH (Perguruan Tinggi Negeri Berbadan Hukum); and

(c) granting permit for foreign services suppliers will be subject to assessment on the object, area and period of research pursuant to applicable laws and regulations at the time of application.

23. Sector: Rental or Leasing Services without Operator

Subsector: Rental of Vessel Without Crew (CPC 83103)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of joint venture with no more than 60 per cent of the equity participation in a joint venture owned by foreigners.

24. Sector: Rental or Leasing Services without Operator (Business Services)

Subsector: Rental Services Concerning Video Tapes (CPC 83202)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(i) (Definitions) of Chapter 8 (Trade in Services).

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services), that requires the supply through commercial presence to be in the form of joint venture with no more than 51 per cent of the equity participation in a joint venture to be owned by foreigners and permit requirements for foreign service suppliers may vary from that applicable to Indonesian service suppliers.

25. Sector: Management Consulting Services

Subsector:

(a) General Management Consulting Services (CPC 86501)

(b) Marketing Management Consulting Services (CPC 86503)

(c) Human Resources Management Consulting Services (CPC 86504)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of joint venture with no more than 51 per cent of the equity participation in a joint venture shall be owned by foreigners.

26. Sector: Management Consulting Services

Subsector: Project Management Services other than Construction (CPC 86601)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(i) (Definitions) of Chapter 8 (Trade in Services).

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of joint venture with no more than 51 per cent of the equity participation in a joint venture to be owned by foreigners and the domestic partner must be a member of an Indonesian consultant association.

27. Sector: Other Business Services

Subsector: Technical Testing and Analysis Services (CPC 8676)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of joint operation and the domestic partner must be a member of an Indonesian consultant association.

28. Sector: Other Business Services

Subsector: Convention Services CPC 87909 only for Meetings, Incentives, Conventions and Exhibitions (MICE)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of joint venture.

29. Sector: Other Business Services

Subsector: Investigation and Security Services (CPC 873) only for shoplifting investigation services (CPC 87301)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(i) (Definitions) of Chapter 8 (Trade in Services).

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of joint venture subject to following conditions:

(a) no more than 51 per cent of the equity participation in a joint venture shall be owned by foreigners; and

(b) permit requirement for foreign service suppliers may vary from that applicable to Indonesian service suppliers.

30. Sector: Other Business Services

Subsector: Photographic Services (CPC 875) only for Restoration, Copying and Retouching Services of Photography (CPC 87507)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of joint venture (only in Papua and Moluccas).

31. Sector: Other Business Services

Subsector: Services Incidental of Manufacturing (CPC 884 excluding CPC 88411, 88412, 88421, 88422, 88423, 88430, 88442, 88460, 88491, 88492)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of joint venture subject to following conditions:

(a) no more than 33 per cent of the equity participation in a joint venture shall be owned by foreigners; and

(b) the domestic partner must be a member of an Indonesian consultant association.

32. Sector: Other Business Services

Subsector: Services Incidental to Manufacture of Metal Products, machinery, and equipment (CPC 885)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of joint operation through a representative office in Indonesia subject to following conditions:

(a) shall only apply to foreign services suppliers with capital in value above IDR 10 billion; and

(b) the domestic partner must be a member of an Indonesian consultation association

33. Sector: Other Business Services

Subsector: Services Incidental to Energy Distribution (CPC 887) exclusively covers only consultancy services related to operation of power plant and network

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(i) (Definitions) of Chapter 8 (Trade in Services).

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of joint venture with no more than 51 per cent of the equity participation to be owned by foreigners.

34. Sector: Other Business Services

Subsector: Geological and Geophysical Services, only for Seismic Data Acquisition

(a) According to Indonesia Proposal of Energy Services Classification is under: Seismic Data Acquisition (1A.1.4.1.1.); and

(b) According to W 120 Seismic Data Acquisition is under Business Services on Subsurface Surveying Services (CPC 86752)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of joint operation through a representative office in Indonesia.

35. Sector: Other Business Services

Subsector: Maintenance and Repair of Equipment (excluding Maritime Vessels, Aircraft or other Transport Equipment) (CPC 8861+8866)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of joint venture subject to following conditions:

(a) no more than 33 per cent of the equity participation in a joint venture shall be owned by foreigners; and

(b) the domestic partner must be a member of an Indonesian consultant association.

36. Sector: Other Business Services

Subsector: Packaging Services (CPC 876)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(i) (Definitions) of Chapter 8 (Trade in Services).

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of joint venture subject to following conditions:

(a) no more than 70 per cent of the equity participation in a joint venture shall be owned by foreigners; and

(b) limited to eastern part of Indonesia.

37. Sector: Other Business Services

Subsector: Telephone Answering Services (CPC 87903)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services).

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of joint venture subject to following conditions:

(a) no more than 51 per cent of the equity participation in a joint venture shall be owned by foreigners; and

(b) permit requirement for foreign service suppliers may vary from that applicable to Indonesian service suppliers.

38. Sector: Other Business Services

Subsector: Market Research Services (CPC 86401)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of joint operation requirement through a representative office in Indonesia, and the domestic partner must be a member of an Indonesian consultant association.

39. Sector: Other Business Services

Subsector: Repair services of personal and household goods (CPC 633)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain anymeasure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) thatrequire supply through commercial presence to be inthe form of joint operation requirement through arepresentative office in Indonesia and the Indonesianparticipant must be member of Indonesian Consultant Association.

40. Sector : Telecommunication Services (9)

Subsector :

(a) Public Switched Telephone Service (CPC 7521)

(b) Teleconferencing Services (CPC 75292)

(c) Mobile Cellular Telephone Services (CPC 75213)

(d) Internet Access Services Regional and National Paging Services (CPC 75291)

(e) Public Payphone Services Voice Mail Service (CPC 7523)

(f) Electronic Mail Services (CPC 75232)

Obligations Concerned: National Treatment. Market Access

Description : Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of joint venture with no more than 35 per cent of the equity participation in a joint venture to be owned by foreigners.

(9) For greater certainty, the coverage of this sector does not include telecommunications tower construction services.

41. Sector : Telecommunication Services (10)

Subsector :

(a) Videotext Services (CPC 75229)

(b) File Transfer Services, Home Telemeter Alarm, Entertainment Services, Management Information Services (CPC 75299)

(c) Computer Time Sharing Services (CPC84330)

Obligations Concerned : National Treatment. Market Access

Description : Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that require supply through commercial presence to be in the form of joint venture subject to the following conditions:

(a) no more than 35 per cent of the equity participation in a joint venture shall be owned by foreigners;

(b) supply of services in certain provinces or areas are subject to an economic needs test;

(c) services shall be provided only for closed user group; and

(d) the network service supplier is prohibited to connect to other networks for greater certainty, cross-border supply of service is permitted.

(10) For greater certainty, the coverage of this sector does not include telecommunications tower construction services.

42. Sector : Telecommunication Services (11)

Subsector : Electronic Data Interchange (EDI) (CPC 7523**)

Obligations Concerned: National Treatment. Market Access

Description : Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of joint venture subject to aggregate foreign equity participation requirement permitted up to 70 per cent provided that: up to 49 per cent through foreign direct investment and the remaining percentage through other mechanisms.

(11) For greater certainty, the coverage of this sector does not include telecommunications tower construction services

43. Sector : Telecommunication Services (12)

Subsector :

(a) Circuit Switched Public Data Network Services (CPC 7523**)

(b) Packet-Switched Public Data Network services (CPC 7523**)

(c) Private Leased Circuit Services (CPC 7522**+7523**)

(d) Telex Services (CPC 7523**)

(e) Telegraph Services (CPC 7522)

(f) Facsimile (CPC 7521** + 7529**)

(g) Mobile Cellular Telephone Services (CPC 75213)

(h) Dedicated Network Services (CPC 75222)

(i) Enhance or Value-Added Facsimile Services, Including Store and Forward, Store and Retrieve (CPC 7523**)

(j) On-line Information and Database Retrieval (CPC 7523**)

(k) Internet Access Services Regional and National Paging Services (CPC 75291)

(l) Public Payphone Services Voice Mail Service (CPC 7523)

(m) Electronic Mail Services and Electronic Mail Box (CPC 75232)

(n) Video Text Services (CPC 75229)

(o) File Transfer Services, Home Telemeter Alarm, Entertainment Services, Management Information Services (CPC 75299)

(p) On-line Information and or Data Processing (including transaction processing) (CPC 843**)

Obligations Concerned: National Treatment. Market Access

Description : Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of joint venture with no more than 51 per cent of the equity participation in a joint venture to be owned by foreigners.

(12) For greater certainty, the coverage of this sector does not include telecommunications tower construction services

44. Sector: Communication Services

Subsector:

(a) Motion Picture and Video Tape production (CPC 9611)

(b) Motion Picture and Video Tape Distribution Services (CPC 9611)

(c) Motion Picture Projection Services (CPC 9612)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of joint venture subject to following conditions:

(a) no more than 51 per cent of the equity participation in a joint venture shall be owned by foreigners;

(b) permit requirements for foreign service suppliers may vary from that applicable to Indonesian service suppliers; and

(c) the distribution of the motion pictures should be aimed to the regions outside of Java Island.

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(i) (Definitions) of Chapter 8 (Trade in Services) of services of Motion Picture Projection Services (CPC 9612).

45. Sector: Audio-visual Services

Subsector: Sound Recording Services (KBLI 592)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of joint venture subject to following conditions:

(a) no more than 51 per cent of the equity participation in a joint venture shall be owned by foreigners; and

(b) permit requirement for foreign service suppliers may vary from that applicable to Indonesian service suppliers.

46. Sector: Construction and Related Engineering Services

Subsector:

(a) Construction Work for Buildings (CPC 512)

(b) Construction Work for Civil Engineering (CPC513)

(c) Assembly and Erection of Prefabricated Constructions (CPC 514)

(d) Installation Work (CPC516)

(e) Building Completion and Finishing Work CPC517)

(f) Pre-erection Work at Construction Site (CPC 511) excluding Site Investigation Work (CPC 51110) and Site Formation and Clearance Work (CPC 51113)

(g) Special Trade Construction (CPC 515)

(h) Renting Services Related Equipment for Construction or Demolition of Building or CivilEngineering Works with Operator (CPC 518)

Obligations Concerned: Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain anymeasure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) thatrequires supply through commercial presence to be subject to following conditions:

(a) commercial presence only in the form of:

(i) joint operation by establishing a representative office in Indonesia. Permit for representative office shall be valid for three years and can be extended; or

(ii) joint venture company established in accordance with applicable laws and regulations concerning foreign commercialpresence; and

(b) no more than 55 per cent of the equity participation in a joint venture of the commercial presence shall be owned by foreigners.

47. Sector: Distribution Services

Subsector:

(a) Wholesale Trade Services of Food, Beverages and Tobacco (CPC 6222)

(b) Wholesale Trade Services of Textile, Clothing and Footwear (CPC 6223)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(i) (Definitions) of Chapter 8 (Trade in Services).

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of joint venture subject to following conditions:

(a) no more than 51 per cent of equity participation in a joint venture shall be owned by foreigners;

(b) have the obligation to cooperate with at least 100 Indonesian Small and Medium Enterprises yearly as a supplier and retailer, along with training and development with due regard to the principle of mutual need, mutually reinforcing and

mutually beneficial;

(c) permit requirement for foreign service suppliers may vary from that applicable to Indonesian service suppliers;

(d) foreign service suppliers are only permitted to supply the services with minimum of business space above 5,000 square metres;

(e) foreign service suppliers are only permitted to operate in the suburbs of the Provincial Capitals in the Island of Kalimantan, Sulawesi, Nusa Tenggara, Maluku, and Papua; and

(f) foreign service suppliers are required to appoint national trade enterprises as agent, single agent, distributor, or single distributor.

48. Sector: Distribution Services

Subsector: Direct Selling only for Multi-Level Marketing (KBLI 47999)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(i) (Definitions) of Chapter 8 (Trade in Services).

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of joint venture subject to following conditions:

(a) no more than 51 per cent of the equity participation in a joint venture shall be owned by foreigners;

(b) permit requirement for foreign service suppliers may vary from that applicable to Indonesian service suppliers;

(c) foreign service suppliers are required to include Indonesian product in the list of products; and

(d) must join an Indonesian direct selling association.

49. Sector: Distribution Services

Subsector: Franchising (CPC 8929) Wholesale Trade Services of Food, Beverages and Tobacco with minimum space above 5,000 square metres

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of joint venture subject to following conditions:

(a) no more than 51 per cent of the equity participation in a joint venture shall be owned by foreigners;

(b) foreign service suppliers are only permitted to supply the services with minimum of business space above 5,000 square metres;

(c) permit requirements for foreign service suppliers may vary from that applicable to Indonesian service suppliers;

(d) foreign service suppliers are only permitted to operate in the suburbs of the provincial capitals in the Island of Kalimantan, Sulawesi, Nusa Tenggara, Maluku, and Papua and have to be located in the suburbs of provincial capitals;

(e) foreign service suppliers are required to appoint national trade enterprises as agent, single agent, distributor, or single distributor; and

(f) foreign service suppliers are required to cooperate with at least 100 Indonesian Small and Medium Enterprises yearly as a supplier and retailer, along with training and development with due regard to the principle of mutual need, mutually reinforcing, and mutually beneficial.

50. Sector: Education Services

Subsector: Technical and Vocational Secondary Education Services (electronic, automotive) (CPC 92230)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of joint venture subject to following conditions:

(a) mutual recognition arrangement between relevant institutions on credits, programs, and certifications is required;

(b) foreign education services supplier must establish partnership with domestic partner;

(c) foreign language instructors must be native and Indonesian speakers;

(d) foreign education services supplier must be listed in the Ministry of Education and Culture's List of Accredited Foreign Education and its domestic partner must be accredited;

(e) foreign education services supplier in cooperation with domestic partner may open education institution in the cities of Jakarta, Surabaya, Bandung, Yogyakarta, and Medan;

(f) commercial presence shall be established in the form of yayasan (foundation);

(g) numbers of educators shall include at least 30 per cent of Indonesian educators; and

(h) numbers of employees other than educators and the head shall include at least 80 per cent of Indonesian nationals.

51. Sector: Education Services

Subsector: Post-Secondary Technical and Vocational Education Services (Polytechnique Machine and Electrical) (CPC 92310)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of joint venture subject to following conditions:

(a) no more than 51 per cent of the equity participation in a joint venture shall be owned by foreigners;

(b) mutual recognition arrangement between relevant institutions on credits, programs, and certifications is required;

(c) foreign education services supplier must establish partnership with domestic partner;

(d) foreign language instructors must be native and Indonesian speakers;

(e) foreign education services supplier must be listed in the Ministry of Education and Culture's List of Accredited Foreign Education and its domestic partner must be accredited;

(f) foreign education services supplier in cooperation with domestic partner may open education institution in the cities of Jakarta, Surabaya, Bandung, Yogyakarta, and Medan;

(g) commercial presence shall be established in the form of yayasan (foundation);

(h) numbers of educators shall include at least 30 per cent of Indonesian educators;

(i) numbers of employees other than educators and the head shall include at least 80 per cent of Indonesian nationals; and

(j) permit requirements for foreign service suppliers may vary from that applicable to Indonesian service suppliers.

52. Sector: Education Services

Subsector:

(a) Adult Education Services (CPC 924) only for Language Course and Training

(b) Other Education Services (CPC 92900) only for football and chess

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of joint venture subject to following conditions:

(a) mutual recognition arrangement between relevant institutions on credits, programs, and certifications is required;

(b) foreign education services supplier must establish partnership with domestic partner;

(c) foreign language instructors must be native and Indonesian speakers;

(d) foreign education services supplier must be listed in the Ministry of Education and Culture's List of Accredited Foreign Education and its domestic partner must be accredited;

(e) foreign education services supplier in cooperation with domestic partner may open education institution in the cities of Jakarta, Surabaya, Bandung, Yogyakarta, and Medan;

(f) commercial presence shall be established in the form of yayasan (foundation);

(g) numbers of educators shall include at least 30 per cent of Indonesian educators; and

(h) numbers of employees other than educators and the head shall include at least 80 per cent of Indonesian nationals.

53. Sector: Environmental Services

Subsector: Sewage Services (CPC 9401) only for wastewater management

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of joint venture subject to following conditions:

(a) no more than 51 per cent of the equity participation in a joint venture shall be owned by foreigners; and

(b) permit requirements for foreign service suppliers may vary from that applicable to Indonesian service suppliers.

54. Sector: Environmental Services

Subsector:

(a) Refuse Disposal Services (CPC 9402) Solid Waste Disposal Services only for integrated hazardous waste treatment facility services for oil sludge and waste mercury treatment in a particular area. The product will be used as anew material or energy power

(b) Refuse Disposal Services (CPC 9402) Solid Waste Disposal Services only for in site hazardous waste treatment facility services for the treatment of waste of mining product and waste of fly ash and bottom ash of coal product

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of joint venture subject to following conditions:

(a) no more than 51 per cent of the equity participation in a joint venture shall be owned by foreigners;

(b) permit requirements for foreign service suppliers may vary from that applicable to Indonesian service suppliers; and

(c) the services supplier must be equipped with modern and sophisticated technology and environmental safety.

55. Sector: Environmental Services

Subsector: Refuse Disposal Services (CPC 94020) only for non-hazardous garbage, trash, waste, and rubbish

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(i) (Definitions) of Chapter 8 (Trade in Services).

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of a joint venture and allows permit requirements for foreign service suppliers to vary from that applicable to Indonesian service suppliers.

56. Sector: Environmental Services

Subsector: Sanitation and similar services (CPC 9403) only for public sanitation facilities

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of joint venture subject to following conditions:

(a) no more than 51 per cent of the equity participation in a joint venture shall be owned by foreigners;

(b) new permit subject to an economic needs test; and

permit requirement for foreign service suppliers may vary from that applicable to Indonesian service suppliers.

57. Sector: Environmental Services

Subsector:

(a) Cleaning Services of Exhaust Gases (CPC 9404) only for air pollution control

(b) Other Environmental Protection Services (CPC 9409) only for Laboratory Services for Environment (Laboratory which has the ability and authority to test and examine the environmental quality parameter according to the current laws and regulations on environment)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of joint venture subject to following conditions:

(a) no more than 51 per cent of the equity participation in a joint venture shall be owned by foreigners; and

(b) permit requirements for foreign service suppliers may vary from that applicable to Indonesian service suppliers.

58. Sector : Environmental Services

Subsector : Water Management (13) only for drinkable water (KBLI 36001)

Obligations Concerned: National Treatment. Market Access

Description : Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(i) (Definitions) of Chapter 8 (Trade in Services).

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of joint venture and allows permit requirements for foreign service suppliers to vary from that applicable to Indonesian service

suppliers.

(13) Water management includes a series of supplying services activities related to surface water purification from the water source, water distribution directly from the water terminal, water tank transportation, with the purpose of selling drinkable water to consumers.

59. Sector: Health Related and Social Services

Subsector: Hospital Services for specialist and subspecialist medical services in Class A and B hospitals and provide more than 250 beds (CPC 9311)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1 (t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be subject to following conditions:

(a) in the form of joint venture with no more than 51 per cent of the equity participation shall be owned by foreigners and approval subject to the social function of hospital services offered;

(b) may only employ foreign health professionals if there are not sufficient qualified Indonesian nationals;

(c) the hospital shall be managed by Board of Directors chaired by Indonesian medical doctor; and

(d) foreign hospital may only establish for specialistic services and sub-specialist services of a class A or class B hospital.

60. Sector: Other Human Health Services

Subsector: Acupuncture Services (CPC 93191)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(i) (Definitions) of Chapter 8 (Trade in Services).

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of joint venture subject to following conditions:

(a) no more than 51 per cent of the equity participation in a joint venture shall be owned by foreigners;

(b) the health management in structural level (14) shall be Indonesian nationals; and

(c) may only employ foreign health professionals to the extent that there are not sufficient qualified Indonesian nationals.

(14) "Health management in structural level" is as regulated in the Law No. 44 of 2009 conceming Hospital.

61. Sector: Other Health Services

Subsector: Veterinary Services exclusively cover only for Poultry Farms Consultant Services (CPC 93209)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of joint venture subject to following conditions:

(a) no more than 51 per cent of equity participation in a joint venture shall be owned by foreigners;

(b) operated in an Animal Hospital (Rumah Sakit Hewan); and

(c) permit requirement for foreign service suppliers may vary from that applicable to Indonesian service suppliers.

62. Sector: Social Services

Subsector: Social Services (CPC 933)

(a) Social welfare services for the elderly

(b) Social welfare services for persons with disabilities

(c) Social welfare training and education social workers and care workers

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of a joint venture and may only employ foreign health professionals if there are not sufficient qualified Indonesian nationals.

63. Sector : Tourism and Travel Related Services

Subsector : Hotel (15) (only for 5-star hotels) (CPC 64110)

Obligations Concerned : National Treatment. Market Access

Description : Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be subject to the following conditions:

(a) permit requirements for foreign service suppliers may vary from that applicable to Indonesian service suppliers;

(b) supply of services in certain provinces or areas are subject to an economic needs test; and

(c) 100 per cent of equity participation can be owned by foreign service suppliers.

Any non-conforming measure adopted or maintained after the entry into force of this Agreement in relation to the paragraph above shall be deemed to be an existing non- conforming measure and subject to Article 12 (Schedules of Non-Conforming Measures) of Chapter 8 (Trade in Services).

(15) Starred Hotel is a service business which provides accommodation and food and beverages facilities and other services, except casino and other activities prohibited by law; for reasons of public moral, religion, security and public order.

64. Sector : Tourism and Travel Related Services

Subsector : Hotel (16) (3- and 4-star hotels) (CPC 64110)

Obligations Concerned : National Treatment. Market Access

Description : Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be subject to the following conditions:

(a) permit requirements for foreign service suppliers may vary from that applicable to Indonesian service suppliers;

(b) supply of services in certain provinces or areas are subject to an economic needs test; and

(c) 100 per cent of equity participation can be owned by foreign service suppliers.

(16) Starred Hotel is a service business which provides accommodation and food and beverages facilities and other services, except casino and other activities prohibited by law; for reasons of public moral, religion, security and public order.

65. Sector : Tourism and Travel Related Services

Subsector : Hotel (17) (only for 1 or 2 star hotels) (CPC 64110)

Obligations Concerned : National Treatment. Market Access

Description : Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of joint venture and the supply of services in certain provinces or areas to be subject to an economic needs test.

(17) Starred Hotel is a service business which provides accommodation and food and beverages facilities and other services, except casino and other activities prohibited by law; for reasons of public moral, religion, security and public order.

66. Sector: Tourism and Travel Related Services

Subsector:

(a) Motel Lodging Services (CPC 64120)

(b) Letting Services of Furnished Accommodations (CPC 64193)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of joint venture subject to following conditions:

(a) the domestic partner is an Indonesian Small and Medium Enterprise; and

(b) the supply of services in certain provinces or areas to be subject to an economic needs test.

67. Sector: Tourism and Travel Related Services

Subsector: Meal Serving Services with Full Restaurant Services (CPC 64210)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of a joint venture and the supply of services in certain provinces or areas to be subject to an economic needs test.

Any non-conforming measure adopted or maintained after the entry into force of this Agreement in relation to the paragraph above shall be deemed to be an existing non- conforming measure and subject to Article 12 (Schedules of Non-Conforming Measures) of Chapter 8 (Trade in Services).

68. Sector: Tourism and Travel Related Services

Subsector

(a) Beverage Serving Services without Entertainment (CPC 64310)

(b) Beverage Serving Servicesâ with Entertainment (CPC 64320)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of joint venture and the supply of services in certain provinces or areas to be subject to an economic needs test.

69. Sector: Tourism and Travel Related Services

Subsector: Travel Agency and Tour Operator Services (CPC 74710) only for tour operator services

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of a joint venture and with the maximum number of service suppliers to be 30 Tour Operators.

70. Sector: Tourism and Travel Related Services

Subsector: Tour Leader Services (CPC 74720)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services).

71. Sector : Tourism and Travel Related Services

Subsector : Tourist Resorts (18) including hotel (3, 4, and 5 stars), excluding marina facilities and hotel management)

Obligations Concerned : National Treatment. Market Access

Description : Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence and the supply of services in certain provinces or areas to be subject to an economic needs test.

Any non-conforming measure adopted or maintained after the entry into force of this Agreement in relation to the paragraph above shall be deemed to be an existing non- conforming measure and subject to Article 12 (Schedules of Non-Conforming Measures) of Chapter 8 (Trade in Services).

(18) Tourist Resort is an area built to accommodate the facilities needed for the tourist such as hotels, marinas, golf course, cultural open stage and other facilities, except casino and other activities prohibited by law, for reasons of public moral, religion, security and public order.

72. Sector: Tourism and Travel Related Services

Subsector: International Hotel Operator (CPC 91135)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence and supply of services in certain provinces or areas to be subject to an economic needs test.

73. Sector: Tourism and Travel Related Services

Subsector: Tourism Consultancy Services (CPC 91136)

Obligations Concerned: Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be subject to the following conditions:

(a) cooperation with a national company; and

(b) required to do: a joint venture, a joint operation and a contract management.

74. Sector Recreational, Cultural and Sporting Services excluding Audio Visual Services Subsector Theater and Opera House (CPC 96193)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of joint venture provided that no more than 51 per cent of equity participation owned by foreigners.

75. Sector Recreational, Cultural and Sporting Services excluding Audio Visual Services Subsector Museum Services limited to Museums of Jewellery (CPC 96321)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(i) (Definitions) of Chapter 8 (Trade in Services).

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence in the form of joint venture with no more than 51 per cent of equity participation owned by foreigners and foreign service supplier should renew the permit every five years.

76. Sector: Recreational, Cultural and Sporting Services excluding Audio Visual Services Subsector Golf Courses and Other Facilities within the Tourist Resorts (CPC 96413)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be subject to the following conditions:

(a) supply of services in certain provinces or areas are subject to an economic needs test; and

(b) 51 per cent of equity participation owned by foreign service suppliers.

77. Sector: Recreational, Cultural and Sporting Services excluding Audio Visual Services Subsector Marina Facilities

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be subject to the following conditions:

(a) supply of services in Eastern Part of Indonesia, Kalimantan, Bengkulu, Jambi, and Sulawesi; and

(b) 100 per cent of equity participation permitted to be owned by foreign service suppliers.

78. Sector: Recreational, Cultural and Sporting Services excluding Audio Visual Services Subsector Hotel management

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services).

79. Sector: Transportation Services Maritime Transportation Services

Subsector: Maintenance and Repair of Vessels (CPC 8868**) only for vessels classification 10,000 GT and above and for eastern part of Java and eastern part of Indonesia

Obligations Concerned: National. Treatment Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(i) (Definitions) of Chapter 8 (Trade in Services).

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of joint venture subject to following conditions:

(a) permit requirement for foreign service suppliers may vary from that applicable to Indonesian service suppliers; and

(b) only for vessel classification above 50,000 deadweight tonnage (DWT).

80. Sector: Transportation Services Maritime Transportation Services

Subsector: Pushing and Towing Services for Maritime Transport (CPC 7214)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(i) (Definitions) of Chapter 8 (Trade in Services).

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of a joint venture, and allows permit requirements for foreign service suppliers to vary from that applicable to Indonesian service suppliers.

81. Sector: Transportation Services Maritime Transportation Services Subsector Vessel Salvage and Re-floating Services (CPC 7454)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of a joint venture and allows permit requirements for foreign service suppliers to vary from that applicable to Indonesian service suppliers.

82. Sector: Transportation Services. Maritime Transportation Services

Subsector: Passenger Transportation (CPC 7221)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of a joint venture.

83. Sector: Transportation Services. Internal Waterways Transport

Subsector: Maintenance and Repair of Vessels (internal waterways) (CPC 8868**) only for vessels classification 10000 GT and above and for eastern part of Java and eastern part of Indonesia

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(i) (Definitions) of Chapter 8 (Trade in Services).

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of a joint venture subject to following conditions:

(a) permit requirements for foreign service suppliers may vary from that applicable to Indonesian service suppliers; and

(b) foreign service suppliers are only permitted to operate in the eastern part of Java and eastern part of Indonesia.

84. Sector: Transportation Services. Maritime Transportation Services

Subsector: Container Handling Services (CPC 7411) only for maritime cargo handling services

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(i) (Definitions) of Chapter 8 (Trade in Services).

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of a joint venture subject to following conditions:

(a) no more than 51 per cent of equity participation shall be owned by foreigners with 49 per cent through Foreign Direct Investment and remaining percentage through other mechanism subject to domestic regulations;

(b) permit requirements for foreign service suppliers may vary from that applicable to Indonesian service suppliers;

(c) foreign service suppliers are only permitted to operate only in main port such as: Tanjung Priok, Tanjung Perak, Belawan, Semarang, and Makassar; and

(d) access to and use of port facilities in the port which is opened for international shipping are permitted.

85. Sector: Transportation Services

Subsector:

(a) Aircraft repair and maintenance services

(b) Computer reservation system (CRS)

(c) Selling and marketing

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of a joint ventures.

86. Sector: Transportation Services

Subsector: Road Freight Transportation (CPC 7123)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of a joint venture and allows permit requirements for foreign service suppliers to vary from that applicable to Indonesian service suppliers.

87. Sector: Transportation Services. Road Transportation Services

Subsector: Maintenance and Repair of Road Transport Equipment (CPC 8867) excluding motorcycle

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(i) (Definitions) of Chapter 8 (Trade in Services).

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of a joint venture subject to following conditions:

(a) no more than 35 per cent of equity participation owned by foreigners;

(b) the foreign services supplier shall have manufacturing activities in Indonesia, including its local group companies, relating to the maintenance and repair of automobiles; and

(c) permit requirement for foreign service suppliers may vary from that applicable to Indonesian service suppliers.

88. Sector:Transportation Services

Subsector: Supporting Services for Road Transport (CPC 744)

(a) toilets

(b) restaurants

(c) telecommunication facilities

(d) rest stop facilities for motor vehicle crew

(e) air and noise pollution reduction facilities

(f) air quality and emission monitoring facilities

(g) cleaning facilities

(h) general motor vehicle repair facilities

(i) trading facilities

(j) shopping complex

(k) general lodging and freight terminals

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of a joint venture and allows permit requirements for foreign service suppliers to vary from that applicable to Indonesian service suppliers.

89. Sector: Transportation Services

Subsector: Maritime Freight Forwarding Services (CPC 7480**)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(i) (Definitions) of Chapter 8 (Trade in Services).

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii)

(Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of joint venture and allows permit requirements for foreign service suppliers to vary from that applicable to Indonesian service suppliers.

90. Sector: Transportation Services

Subsector: Supporting Services for Road Transport: only for highway, bridge and tunnel operation services (CPC 74420) limited to highway services

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(i) (Definitions) of Chapter 8 (Trade in Services).

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of joint venture and allows permit requirements for foreign service suppliers to vary from that applicable to Indonesian service suppliers.

91. Sector: Transportation Services

Subsector: Storage and Warehousing Services Outside Port Area and 1st Area for:

(a) Storage Services of Frozen or Refrigerated Goods (CPC 7421)

(b) Other Storage or Warehousing Services (CPC 7429)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(i) (Definitions) of Chapter 8 (Trade in Services).

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of a joint venture with no more than 30 per cent of equity participation owned by foreigners and allows permit requirements for foreign service suppliers to vary from that applicable to Indonesian service suppliers.

92. Sector: Other Services

Subsector: Core Analysis and Other Lab Test, only for isotope analysis

(a) According to Indonesia Proposal of Energy Services Classification is under: Isotope Analysis (1A.2.7.3)

(b) According to W 120 is under: Business Services on Technical Testing and Analysis Services (CPC 8676)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of a joint operation through a representative office in Indonesia and allows permit requirements for foreign service suppliers to vary from that applicable to Indonesian service suppliers.

93. Sector: Other Services

Subsector: Liquefaction and Gasification only for coal

(a) According to Indonesia Proposal of Energy Services Classification is under

(i) Coal Liquefaction (2.4.4.4)

(ii) Coal Gasification (2.4.4.5)

(b) According to W 120 is under: Services Incidental to Manufacturing (CPC 884)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of a joint venture.

94. Sector: Other Services

Subsector: Engineering, Procurement and Construction (EPC) services limited to platform construction and offshore line pipe installation

(a) According to Indonesia Proposal of Energy Services Classification is under: Engineering, Procurement and Construction (EPC) Services (1A.3.2.2.)

(b) According to W 120 is under: engineering design services for industrial processes and production (CPC 86725)

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of a joint operation through a representative office in Indonesia.

95. Sector: Other Services

Subsector: Electrical Logging and Perforation

(a) According to Indonesia Proposal of Energy Services Classification is under: Electrical Logging and Perforation (EPC) Services (1A.2.8.)

(b) According to W 120 is under: Technical Testing and Analysis Services (CPC-8676)

Competency Certification in Quality Control and Handling of Aviation Fuels and Lubricants

(a) According to Indonesia Proposal of Energy Services Classification is under: Competency Certification in Quality Control and Handling of Aviation Fuels and Lubricants (4.2.2.9)

(b) According to W 120 is under: Other Education Services (CPC 92900)

Competency Certification in Power Plant

(a) According to Indonesia Proposal of Energy Services Classification is under: Competency Certification in Power Plant (4.2.2.11)

(b) According to W 120 is under: Other education services (CPC 92900)

(c) Land Clearing Services

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of a joint operation through a representative office in Indonesia.

96. Sector: Other Services

Subsector: Other Human Health Services (CPC 93199) only for SPA services

Obligations Concerned: National Treatment. Market Access

Description: Trade in Services

Indonesia reserves the right to adopt or maintain any measure with respect to trade in services as defined in Article 1(t)(iii) (Definitions) of Chapter 8 (Trade in Services) that requires supply through commercial presence to be in the form of a joint venture.

APPENDIX A. SPECIFIC COMMITMENTS FOR FINANCIAL SERVICES INDONESIA

EXPLANATORY NOTES

For the purposes of this Appendix, the use of "(1)", "(2)", and "(3)" refers to Cross-Border Supply, Consumption Abroad, and Commercial Presence respectively.

For the purposes of this Appendix:

(i) "None" means no additional conditions and limitations other than those listed in the entry four through nine of List B, and General Conditions on Non-Banking Financial Services Subsector and General Conditions on Banking Services Subsector.

(ii) "Unbound" means no commitment

(iii) "General Conditions on Non-Banking Financial Services Subsector" and "General Conditions on Banking Services Subsector" shall apply respectively to commitment of the relevant subsector, unless otherwise specified in such subsector.

Modes of Supply:

1) Cross-border Supply

2) Consumption abroad

3) Commercial presence

NON-BANKING FINANCIAL SERVICES SUBSECTOR

General Conditions on Non-Banking Financial Services Subsector

1) Notwithstanding the limitations on joint venture specified in entry four of List B, the share ownership of foreign services suppliers for non-banking financial services is bound at the prevailing laws and regulations at the date of entry into force of this Agreement. The conditions of ownership and the percentage share of ownership as stipulated in the respective shareholder agreement establishing the existing individual joint venture in non-banking financial services shall be respected. No transfer of ownership shall take place without the consent of all parties in the joint venture concerned.

2) Share of listed non-bank financial services companies in the stock exchange may be 100 per cent owned by foreign investors.

3) Alljoint venture companies shall provide training for their employees.

Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
a) Life Insurance Services (CPC 81211)	1) Unbound; 2) Unbound, except if: (a) There is no insurance company in Indonesia, either individually or group, which could handle the insurance risks of the object in question. (b) There is no insurance company in Indonesiawhich want to carry out an insurance coverage of the object in question; 3) None	1) Unbound 2) Unbound 3) None	
b) Non-Life Insurance Services	1) Unbound; 2) Unbound, except if: (a) There is no insurance company in Indonesia, either individually or	1)	

(CPC 8129) excluding CPC 81293 (Marine, Aviation and other Transportation)	group, which could handle the insurance risks of the object in question. (b) There is no insurance company in Indonesiawhich want to carry out an insurance coverage of the object in question; 3) None	Unbound 2) Unbound 3) None	
c) Reinsurance Services	1) Reinsurance service suppliers from other Parties must be rated a minimum of BBB by Standard and Poor or equivalent. 2) Reinsurance service suppliers from other Parties must be rated a minimum of BBB by Standard and Poor or equivalent. 3) None	1) None 2) Unbound 3) None	
d) Insurance Brokerage Services	1) Unbound 2) None 3) None	1) None 2) None 3) None	
e) Reinsurance Brokerage Services (CPC 8140)	1) Unbound 2) None 3) None	1) None 2) None 3) None	
f) Lending of all types, including, consumer credit, mortgage credit, factoring and financing of commercial transaction (CPC 8113) only for: - Factoring Services - Credit Card Business (Issuer and Agent of Credit Card) - Consumers Finance Services	1) None 2) None 3) None	1) None 2) None 3) None	
g) Financial Lease Services (CPC 81120)	1) None2) None 3) None	1) None 2) None 3) None	
h) Securities Business Trading for Own Account or for Account of Customers, on an Exchange or Over-the Counter Market, only for: - Listed shares - Bonds	1) Unbound 2) None 3) Commercial presence only permitted through establishment of a Securities Company that is licensed as a Securities Broker Dealer.	1) Unbound 2) None 3) None	
i) Participation in Issues of Securities, including Underwriting and Placement as Agent (whether publicly or privately), and Provision of Services Related to such issues	1) Unbound 2) None 3) Commercial presence only permitted through establishment of a Securities Company that is licensed as a Securities Underwriter	1) Unbound 2) None 3) None	
- Portfolio Management, all forms of collective investment management (19) - Asset Management Limited only to	1) Unbound 2) None 3) Commercial presence only permitted through establishment of an Investment	1) Unbound 2) None 3)	

Investment Fund Management	Advisory company	None	

(19) Portfolio Management is, as stipulated in the prevailing laws and regulations on capital market, all forms of collective investment management.

BANKING SERVICES SUBSECTOR

General Conditions on Banking Services Subsector

1) With the exception of the existing branches of foreign banks, foreign services supplier shall be in the form of a joint venture bank locally incorporated in Indonesia with the following requirements:

(a) Unbound for new licenses.

(b) Only financial institutions are permitted to establish joint venture banks.

2) The conditions of ownership and the percentage share of ownership, as stipulated in the respective shareholder agreement establishing the existing individual joint venture bank shall be respected as the basis of ownership of the foreign service suppliers and their respective Indonesian partners. No transfer of ownership shall take place without the consent of all parties in the joint venture bank.

3) Acquisition of existing local banks is allowed through the purchase of shares in the stock exchange is allowed up to 51 per cent of the shares of locally incorporated bank traded on the stock exchange.

4) Foreign bank and joint ventures bank may open their offices in the cities of Jakarta, Surabaya, Semarang, Bandung, Medan, Makasar, Denpasar, Batam, Padang, Manado, Ambon, Balikpapan, Banda Aceh, and Jayapura.

5) A person shall be a "controlling shareholder" in only one bank.

Definition:

A controlling shareholder shall mean a person who beneficially owns 10 per cent or more of the equity of interest of a bank or who beneficially own less than 10 per cent of the equity interest of a bank but has the power to control the bank. A person shall be deemed to have control of a bank if such person has the power to name director and/or commissioner of such bank and/or to direct its action.

Commercial Banking Business

a) Acceptance of Deposits and other Repayable Funds from the Public b) Lending of all types, includingConsumer Credit, Mortgage, Credit, Factoring, and Financing of Commercial Transaction c) All Payment and Money Transmission Services including Credit, Charge and Debit Cards, Travelers Check and Bankers Drafts d) Guarantees and Commitments e) Trading for Own Account or for Account of Customers, whether on an Exchange, in an over-the-Counter Market or otherwise, the following:- Money market instruments (including check, bills, certificates of deposits) - Foreign Exchange - Exchange rate and interest rate instruments, including products such as swaps, forward rate agreements - Transferable securities issued in the money market f) Cash Management, Custodial and Depository Services	1) None 2) None 3) (a) Bound only for two sub-branches and two auxiliary offices for foreign bank's branch office (b) Bound only for two branches and two sub-branches for joint-venture bank	1) None 2) None 3) (a) For foreign bank branch, expatriates may only assume executive positions, with the limitation that at least one executive position shall be held by an Indonesian national (b) Expatriate Director may only be appointed to a joint venture bank, in proportion to the foreign equity participation	

APPENDIX B. SPECIFIC COMMITMENTS FOR THE PRESENCE OF NATURAL PERSONS. INDONESIA

EXPLANATORY NOTES

1. The following sets out Indonesiaâs sectoral commitments in relation to the supply by a service supplier of one Party through the presence of natural persons of a Party in the territory of another Party apply only in relation to the sectors below.

2. Business Visitors are permitted for all sectors subject to applicable conditions and limitations in the Horizontal Section.

3. For the purposes of this Appendix, "None" means:

- no additional conditions and limitations other than those listed in the Horizontal Schedule; and

- in the case of 5. Education Services and 7. Financial Services, no additional conditions and limitations other than those listed in the Horizontal Schedule and their respective General Conditions below.

4. For the purposes of this Appendix, "Unbound" means no commitment.

5. References to "CPC" in this Appendix refers to the provisional CPC codes as used in the Provisional Central Product Classification (Statistical Papers Series M No.77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991). The appearance of ** against individual CPC listings indicates that the service specified constitutes only a part of the total range of activities covered by the CPC concordance.

6. References to "W 120" in this Appendix refers to Services Sectoral Classification List (MTN.GNS/W/120 of 10 July 1991).

7. References to "KBLI" in this Appendix refers to the Indonesia Standard Industrial Classification (Klasifikasi Baku Lapangan Usaha Indonesia) 2015.

Modes of Supply: 4) Presence of natural persons

Sector or sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
II. SECTOR SPECIFIC COMMITMENTS			
1. BUSINESS SERVICES			
Legal Services (CPC 861) - Only for advisory services on foreign law (home country law or International Law on Business and Arbitration). - For greater certainty, advisory service shall not include: (a) legal representation in Indonesian court of justice or undertake legal proceedings under any circumstances (b) notarial activities	4) Unbound except for foreign lawyers (advocate). Foreign lawyers (advocate) are allowed to work or take part in Indonesian law firm as employees or as experts in International Law,but shall not appear in courts and/or undertake legal proceedings under any circumstances.	4) Unbound except for foreign lawyers (advocate). Foreign lawyers (advocate) are: - only allowed as employees or experts in Indonesian law firm - obliged to transfer legal knowledge and professional capabilities to Indonesian Lawyers - obliged to transfer knowledge to education, legal research, or government institutions at least 10 hours each month free of charge. The share of foreign lawyers (advocate) in Indonesian law firm must not exceed 20 per cent, and shall be limited to five foreign lawyers (advocate) per firm.	

Definition: Lawyer (advocate) is person who has the profession of providing legal service in and outside the court. International law means law established by international treaties and conventions as well as customary law

Architectural Services(CPC 8671) Engineering Services (CPC 8672 excluding CPC 86721, 86725, 86726) Advisory and Consultative Engineering Services (CPC 86721)	4) As specified in the Horizontal Section.	4) Highest management in a representative office shall be Indonesian nationals.	
Engineering Design Services for Industrial Processes and Production (CPC 86725**) only for steel mill, oil & gas, gas turbine industries - Mould and dies (die-casting, forging, stamping, etc.) - Powder metallurgy	4) As specified in the Horizontal Section.	4) As specified in the Horizontal Section.	
Engineering Design Services for Industrial Processes and Production (CPC 86725**) only for materials flows, equipment layout, material handling systems, processes and process control (which may integrate computer technology) for manufacturing plants	4) As specified in the Horizontal Section.	4) As specified in the Horizontal Section.	
Integrated Engineering Services (CPC 8673)	4) As specified in the Horizontal Section.	4) Highest management in a representative office shall be Indonesian nationals.	
Urban Planning Services (CPC 86741)	4) As specified in the Horizontal Section.	4) Highest management in a representative office shall be Indonesian nationals.	
Landscape Architectural Services (CPC 86742)	4) Unbound	4) Unbound	
Clinic of Specialized Medical Services for registered health institution, which established and integrated in Class A and B hospital (CPC 93122)	4) Unbound	4) Unbound	
Clinic of Specialized Dental Services for registered health institution, which established and integrated in Class A and B hospital (CPC 93123)	4) Unbound	4) Unbound	
Specialist Nursing services for registered institutions, which established and integrated in Class A and B hospital (CPC 93191)	4) Unbound	4) Unbound	

1.2 Computer and Related Services			
Consultancy Services Related to the Installation of computer hardware (CPC 841)	4) Unbound except for Director and Technical Expert	4) Unbound except for Director and Technical Expert	
Software Implementation Services (CPC 842) only for CPC 84210	4) Unbound except for Director and Technical Expert	4) Unbound except for Director and Technical Expert	
Data Base Services (CPC 844) only for advance database services	4) Unbound except for Director and Technical Expert	4) Unbound except for Director and Technical Expert	
Maintenance and Repair Services of Office Machinery and Equipment Including Computers (CPC 845)	4) Unbound except for Director and Technical Expert	4) Unbound except for Director and Technical Expert	
1.3 Research and Development Services			
Interdisciplinary R&D (CPC 853) only for industrial activities)	4) Unbound except for Director and Technical Expert	4) Unbound except for Director and Technical Expert	
Research and Experimental Development Services on Linguistic and Languages (CPC 85204), only for foreign language	4) Unbound except for Director and Technical Expert	4) Unbound except for Director and Technical Expert	
1.4 Rental and Leasing Services without Operator			
	4) As	4) As specified	

Rental of Vessel Without Crew (CPC 83103)	specified in the Horizontal Section.	in the Horizontal Section.	
Other (CPC 832), only for Rental Services Concerning Video Tapes (CPC 83202)	4) As specified in the Horizontal Section.	4) As specified in the Horizontal Section.	
1.5 Other Business Services			
Management Consulting Services (CPC 865) for: (a) General Management Consulting Services (CPC 86501) (b) Marketing Management Consulting Services (CPC 86503) (c) Human Resources Management Consulting Services (CPC 86504)	4) Unbound	4) Unbound	
Project Management Services excluding Construction (CPC 86601)	4) Unbound except for director and technical expert	4) Unbound except for director and technical expert	
Geological and Geophysical Services, only for Geothermal Seismic Data Acquisition: (a) according to Indonesia Proposal of Energy Services Classification is under: Seismic Data Acquisition (1A.1.4.1.1,), and (b) according to W 120 Seismic Data Acquisition is under: Business Services on Subsurface Surveying Services (CPC 86752)	4) Unbound	4) Unbound	
Technical Testing and Analysis Services (CPC 8676) only for Technical Inspection Services (CPC 86764)	4) Unbound except for Director and Technical Expert	4) Unbound except for Director and Technical Expert	
Convention Services (CPC 87909) only for Meetings, Incentives, Conventions and Exhibitions (MICE)	4) As specified in the Horizontal Section.	4) As specified in the Horizontal Section.	
Investigation and Security (CPC 873) only for shoplifting investigation services (CPC 87301)	4) As specified in the Horizontal Section.	4) As specified in the Horizontal Section.	
Photographic Services (CPC 875) only for Restoration, Copying and	4) As specified in the	4) As specified in the	

Retouching Services of Photography (CPC 87507)	Horizontal Section.	Horizontal Section.	
Services Incidental of Manufacturing (CPC 884 excluding CPC 88411, 88412, 88421, 88422, 88423, 88430, 88442, 88460, 88491, 88492)	4) Unbound except for Director and Technical Expert	4) Unbound except for Director and Technical Expert	
Services Incidental to Manufacture of Metal Products, Machinery, and Technical Expert Technical Expert Equipment (CPC 885)	4) Unbound except for Director and Technical Expert	4) Unbound except for Director and Technical Expert	
Services Incidental to Energy Distribution (CPC 887) exclusively covers only consultancy services related to operation of power plant and network	4) As specified in the Horizontal Section.	4) As specified in the Horizontal Section.	
Maintenance and Repair of Equipment (excluding Maritime Vessels, Aircraft or other Transport Equipment) (CPC 8861+8866)	4) Unbound except for Director and Technical Expert	4) Unbound except for Director and Technical Expert	
Packaging Services (CPC 876)	4) Unbound	4) Unbound	
Telephone Answering Services (CPC 87903)	4) As specified in the Horizontal Section.	4) As specified in the Horizontal Section.	
Market Research Services (CPC 86401)	4) Unbound except for Director and Technical Expert	4) Unbound except for Director and Technical Expert	
2. COMMUNICATION SERVICES			
Postal Services (CPC 7511)	4) Unbound	4) Unbound	

Courier Services (CPC 7512)	4) Unbound	4) Unbound	
2.1 Telecommunication Services			
Local Services: (a) Public Switched Telephone Service (CPC 7521) (b) Teleconferencing Services (CPC 75292)	4) As specified in the Horizontal Section.	4) As specified in the Horizontal Section.	
Long Distance: (a) Public Switched Telephone Service (CPC 7521) (b) Teleconferencing Services (CPC 75292)	4) As specified in the Horizontal Section.	4) As specified in the Horizontal Section.	
International Services: (a) Public Switched Telephone Service (CPC 7521) (b) Teleconferencing Services (CPC 75292)	4) As specified in the Horizontal Section.	4) As specified in the Horizontal Section.	
Circuit Switched Public Data Network Services (CPC 7523**) (a) Local (b) International	4) As specified in the Horizontal Section.	4) As specified in the Horizontal Section.	
Circuit Switched Public Data Network Services (CPC 7523**) Long Distance	4) As specified in the Horizontal Section.	4) As specified in the Horizontal Section.	
Packet-Switched Public Data Network Services (CPC 7523**) (a) X.25 (b) Frame relay (c) Local (d) Local distance (e) International	4) As specified in the Horizontal Section.	4) As specified in the Horizontal Section.	
Telex Services (CPC 7523**) Telegraph Services (7522) Facsimile (CPC 7521 ** + 7529**)	4) As specified in the Horizontal Section.	4) As specified in the Horizontal Section.	
Private Leased Circuit Services (CPC 7522** + 7523**)	4) Unbound except for Director and Technical Expert	4) Unbound except for Director and Technical Expert	

Dedicated Network Services (CPC 75222)	4) As specified in the Horizontal Section.	4) As specified in the Horizontal Section.	
On-line Information and Database Retrieval (CPC 7523**)	4) Unbound except for Director and Technical Expert	4) Unbound except for Director and Technical Expert	
Electronic Data Interchange (EDI) (CPC 7523**)	4) As specified in the Horizontal Section.	4) As specified in the Horizontal Section.	
Enhanced or Value-Added Facsimile Services, including Store and Forward, Store and Retrieve (CPC 7523**)	4) As specified in the Horizontal Section.	4) As specified in the Horizontal Section.	
On-line Information and or Data Processing (including Transaction Processing) (CPC 843**)	4) As specified in the Horizontal Section.	4) As specified in the Horizontal Section.	
Domestic Services: Mobile Cellular Telephone Services (CPC 75213) Internet Access Services Regional and National Paging Services (CPC 75291) Public Payphone Services Voice Mail Service (CPC 7523) Electronic Mail Services (CPC 75232)	4) As specified in the Horizontal Section.	4) As specified in the Horizontal Section.	
Computer Time Sharing Services (CPC 84330) Video Text Services (CPC 75229) Electronic Mail Box (CPC 75232) File Transfer Services (CPC 75299) Home Telemeter Alarm (CPC 75299) Entertainment Services (CPC 75299) Management Information Services (CPC 75299)	4) As specified in the Horizontal Section.	4) As specified in the Horizontal Section.	
2.2 Audio Visual Services			
Motion Picture and Video Tape Production (CPC 9611)	4) As specified in the Horizontal Section.	4) As specified in the Horizontal Section.	
	4) As	4) As specified	

Motion Picture and Video Tape Distribution Services (CPC 9611)	specified in the Horizontal Section.	in the Horizontal Section.	
Motion Picture Projection Services (CPC 9612)	4) As specified in the Horizontal Section.	4) As specified in the Horizontal Section.	
Sound Recording (KBLI 592)	4) As specified in the Horizontal Section.	4) As specified in the Horizontal Section.	
3. CONSTRUCTION AND RELATED ENGINEERING SERVICES			
Construction Work for Buildings (CPC 512) except for one- and two-dwelling buildings (CPC 51210)	4) As specified in the Horizontal Section.	4) Highest management in a representative office shall be Indonesian nationals.	
Construction Work for Civil Engineering (CPC 513)	4) As specified in the Horizontal Section.	4) Highest management in a representative office shall be Indonesian nationals.	
Assembly and Erection of Prefabricated Constructions (CPC 514)	4) As specified in the Horizontal Section.	4) Highest management in a representative office shall be Indonesian nationals.	
Installation Work (CPC 516)	4) As specified in the Horizontal Section.	4) Highest management in a representative office shall be Indonesian nationals.	
Building Completion and Finishing Work (CPC517)	4) As specified in the Horizontal	4) Highest management in a representative office shall be	

	Section.	Indonesian nationals.	
Pre-Erection Work at Construction Site (CPC 511) excluding Site Investigation Work (CPC 51110) and site Formation and Clearance Work (CPC 51113)	4) As specified in the Horizontal Section.	4) Highest management in a representative office shall be Indonesian nationals.	
Special Trade Construction (CPC 515)	4) As specified in the Horizontal Section.	4) Highest management in a representative office shall be Indonesian nationals.	
Renting Services Related Equipment for Construction or Demolition of Building or Civil Engineering Works with Operator (CPC 518)	4) As specified in the Horizontal Section.	4) Highest management in a representative office shall be Indonesian nationals.	
4. DISTRIBUTION SERVICES			
Wholesale Trade Services of Food, Beverages, and Tobaccoâ with Minimum Space above 5,000-metre square (CPC 6222) Wholesale Trade Services of Textile, Clothing and Footwear with minimum space above 5,000-metre square (CPC 6223)	4) As specified in the Horizontal Section.	4) As specified in the Horizontal Section.	
Direct Selling only for Multi-Level Marketing (KBLI 47999)	4) As specified in the Horizontal Section.	4) As specified in the Horizontal Section.	
Franchising (CPC 8929) Wholesale Trade Services of Food, Beverages, and Tobacco with minimum space above 5,000-metre square	4) As specified in the Horizontal Section.	4) As specified in the Horizontal Section.	
5. EDUCATION SERVICES			
General Conditions for Education Services. Temporary entry for natural persons engaged in education activities in Indonesia is subject to approval by the Ministry of Education and Cultural. Approval is granted on case-by-case basis:			

Secondary Education Services	4) As specified in the Horizontal Section.	4) As specified in the Horizontal Section.	
Technical and Vocational Secondary Education Services (electronic, automotive) (CPC 92230)	4) None	4) None	
Higher Education Services	4) As specified in the Horizontal Section.	4) As specified in the Horizontal Section.	
Post-Secondary Technical and Vocational Education Services (Polytechnique Machine and Electrical) (CPC 92310)	4) As specified in the Horizontal Section.	4) As specified in the Horizontal Section.	
Adult Education Services only for Language Course and Training (CPC 924)	4) As specified in the Horizontal Section.	4) As specified in the Horizontal Section.	
Other Education Services only for Football and Chess (CPC 92900)	4) As specified in the Horizontal Section.	4) As specified in the Horizontal Section.	
6. ENVIRONMENTAL SERVICES			
Sewage Services (CPC 9401) only for wastewater management	4) As specified in the Horizontal Section.	4) As specified in the Horizontal Section.	
Refuse Disposal Services (CPC 9402) Solid Waste Disposal Services only for: (a) integrated hazardous waste treatment facility services for oil sludge and waste mercury treatment in a particular area. The services provider must be equipped with modern and sophisticated technology and environmental safety. The product will be used as a new material or energy power (b) in site hazardous waste treatment facility services for the treatment of waste of mining product and waste of fly ash and bottom ash of coal product	4) None	4) None	
Refuse Disposal Services (CPC 94020) only for non-hazardous garbage, trash, waste and rubbish	4) Unbound	4) Unbound	
Sanitation and Similar Services (CPC 9403) only for public sanitation facilities	4) Unbound	4) Unbound	

Cleaning Services of Exhaust Gases (CPC 9404) only for air pollution control	4) As specified in the Horizontal Section.	4) As specified in the Horizontal Section.	
Other Environmental Protection Services (CPC 9409) only for laboratory services for environment (laboratory which has the ability and authority to test and examine the environmental quality parameter according to the current laws and regulations on environment)	4) As specified in the Horizontal Section.	4) As specified in the Horizontal Section.	
7. FINANCIAL SERVICES			
General Conditions for Non-Banking Financial Services Subsector. (1) In addition to the Horizontal Schedule, temporary entry will be granted to technical expert(s) or advisor(s) for no longer than three months per person for any given year. (2) Director, Manager, and Technical Expert or Advisor can be assumed by foreign natural person with maximum stay of three years and can be extended.			
Non-Life Insurance Services (CPC 8129) excluding CPC 81293 (Marine, Aviation and other Transportation)	4) Unbound except for Director and Technical Expert	4) Unbound except for Director and Technical Expert	
Reinsurance Services	4) Unbound except for Director and Technical Expert	4) Unbound except for Director and Technical Expert	
Life Insurance Services (CPC 81211)	4) Unbound except for Director and Technical Expert	4) Unbound except for Director and Technical Expert	
Insurance Brokerage Services (CPC 81401)	4) Unbound except for Director and Technical Expert	4) Unbound except for Director and Technical Expert	
	4)		

Reinsurance Brokerage Services (CPC 8140)	Unbound except for Director and Technical Expert	4) Unbound except for Director and Technical Expert	
Financial Lease Services (CPC 81120)	4) As specified in the Horizontal Section.	4) As specified in the Horizontal Section.	
Lending of all types, including, inter alia, consumer credit, mortgage credit, factoring and financing of commercial transaction (CPC 8113) only for: - Factoring Services - Credit Card Business (Issuer and Agent of Credit Card) - Consumers Finance Services	4) As specified in the Horizontal Section.	4) As specified in the Horizontal Section.	
Securities Business Trading for Own Account or for Account of Customers, on an Exchange or Over-the Counter Market - Listed shares - Bonds	4) As specified in the Horizontal Section.	4) As specified in the Horizontal Section.	
Participation in Issues of Securities, including Underwriting and Placement as Agent (whether publicly or privately), and Provision of Services Related to such issues	4) As specified in the Horizontal Section.	4) As specified in the Horizontal Section.	
- Portfolio Management, all forms of collective investment management (20) - Asset Management limited only to Investment Fund Management	4) Unbound except for Director	4) Unbound except for Director	
Investment Advisory Services limited only to Investment Advisory in Capital Market	4) Unbound except for Director	4) Unbound except for Director	

(20) Portfolio management is, as stipulated in the prevailing laws and regulations on capital market, all forms of collective investment management.

Commercial Banking Business			
General Conditions on Commercial Banking Business 1. With respect to the presence of natural persons, no economic needs test will apply. A non-Indonesian employed as a manager or as a technical expert shall have at least two Indonesian understudies during his or her term. 2. Notwithstanding the Horizontal Schedule, a temporary entry will be granted to technical			

experts or advisers of branch office of the foreign bank and joint venture bank for no longer than three months per person for any given year.			
(a) Acceptance of Deposits and other Repayable Funds from the Public (b) Lending of all types, including Consumer Credit, Mortgage, Credit, Factoring, and Financing of Commercial Transaction (c) All Payment and Money Transmission Services including Credit, Charge and Debit Cards, Travelers Check and Bankers Drafts (d) Guarantees and Commitments (e) Trading for Own Account or for Account of Customers, whether on an Exchange, in an over-the-Counter Market or otherwise, the following: - Money market instruments (including â check, bills, certificates of deposits) - Foreign Exchange - Exchange rate and interest rate instruments, including products such as swaps, forward rate agreements - Transferable securities issued in the money market (f) Cash Management, Custodial and Depository Services	4) As specified in the Horizontal Section and the General Conditions.		
8. HEALTH RELATED AND SOCIAL SERVICES			
Hospital Services for specialist and subspecialist medical services in Class A and B hospitals and provide more than 250 beds (CPC 9311)	4) Unbound	4) Unbound	
Other Human Health Services only for Acupuncture Services which established and integrated in Class A or B hospital (CPC 93191)	4) Unbound	4) Unbound	
Other Veterinary Services (CPC 93209) only for Poultry Farms Consultant Services	4) None	4) None	
Social Services (CPC 933) (a) Social welfare services for the elderly (b) Social welfare services for persons with disabilities (c) Social welfare training and education social workers and care workers	4) Unbound	4) Unbound	
9. TOURISM AND TRAVEL RELATED SERVICES			
9.1 Hotels and Restaurants			
Hotels (21) (only for 3, 4, and 5 star hotels) (CPC 64110)	4) Only for the following specific positions: (i) the Director and Manager (Top Management Level in Hotel business) comprised of: - General Manager - Food and Beverage Manager - Resident Manager - Comptroller - Marketing Director (only for 4- and		

	5-star hotels) (ii) Technical Expert (Highly Skilled Professionals) comprised of: - Executive Chef - Sous Chef (only for 4- and 5-star hotels) - Specialty Cook		
Hotels (CPC 64110) (only for 1- or 2- star hotels)	4) Unbound	4) Unbound	
Motel Lodging Services (CPC 64120)	4) Unbound	4) Unbound	
Letting Services of Furnished Accommodations (CPC 64193)	4) Unbound	4) Unbound	
Meal Serving Services with Full Restaurant Services (CPC 64210)	4) As specified in the Horizontal Section	4) As specified in the Horizontal Section	
Beverage Serving Services without Entertainment (CPC 64310)	4) Unbound	4) Unbound	
Beverage Serving Services with Entertainment (CPC 64320)	4) Unbound	4) Unbound	
9.2 Travel Agencies and Tour Operators			
Tour Operator (CPC 74710**)	4) Unbound except for Technical Expert	4) Unbound except for Technical Expert	
9.4 Other			
Tourist Resorts including (22) hotel (3, 4 and 5 stars) excluding marina facilities and hotel management)	4) Unbound except for Manager (Resort Manager)	4) Unbound except for Manager (Resort Manager)	
International Hotel Operator (CPC 91135)	4) As specified in the Horizontal Section	4) As specified in the Horizontal Section	
Tourism Consultancy Services (CPC 91136)	4) As specified in the Horizontal Section	4) Foreign Technical Expert are required to have recommendation from Tourism Professional Association	

(21) Starred Hotel is a service business which provides accommodation; food and beverages facilities; and other services, except casino and

other activities prohibited by law, for reasons of public moral, religion, security and public order.

(22) Tourist Resort is an area built to accommodate the facilities needed for the tourist such as hotels, marinas, golf course, cultural open stage and other facilities, except casino and other activities prohibited by law; for reasons of public moral, religion, security and public order.

10. RECREATIONAL, CULTURAL AND SPORTING SERVICES (OTHER THAN AUDIO VISUAL SERVICES)			
10.1. Entertainment Services (including theatre, live bands and circus services)			
Theatre and Opera House (CPC 96193)	4) As specified in the Horizontal Section	4) As specified in the Horizontal Section	
10.2. Libraries, archives, museums and other cultural services			
Museums Services limited to Museums of Jewellery (CPC 96321)	4) As specified in the Horizontal Section	4) As specified in the Horizontal Section	
10.3. Sporting and Other Recreational Services			
Golf Courses and Other Facilities only within the tourist resorts (CPC 96413)	4) Unbound except for Manager (Resort Manager)	4) Unbound except for Manager (Resort Manager)	
10.4. Other			
Marina Facilities	4) Unbound	4) Unbound	
Hotel Management	4) Unbound	4) Unbound	
11. TRANSPORTATION SERVICES			
11.1 Maritime Transport Services			
Passenger and Freight Transportation excluding cabotage and auxiliary services			
	4) As specified		

International Passenger Transport (CPC 7211)	in the Horizontal Section	4) As specified in the Horizontal Section	
International Freight Transport (CPC 7212)	4) As specified in the Horizontal Section	4) As specified in the Horizontal Section	
Maintenance and Repair of Vessels (CPC 8868**)	4) Unbound	4) Unbound	
Pushing and Towing Services for Maritime Transport (CPC 7214) (Excluding Cabotage)	4) Unbound	4) Unbound	
Vessel Salvage and Re-floating Services	4) Unbound	4) Unbound	
11.2 Internal Waterways Transport Services			
Passenger Transportation (CPC 7221) (Excluding Cabotage)	4) As specified in the Horizontal Section	4) As specified in the Horizontal Section	
Maintenance and Repair of Vessels (internal waterways) (CPC 8868**)	4) Unbound	4) Unbound	
11.3 Maritime Auxiliary Services			
Container Handling Services (CPC 7411) only for Maritime Cargo Handling Services	4) As specified in the Horizontal Section	4) As specified in the Horizontal Section	
11.4 Air Transport Services			
Aircraft Repair and Maintenance Services	4) As specified in the Horizontal Section	4) As specified in the Horizontal Section	
Computer Reservation System (CRS)	4) As specified in the Horizontal Section	4) As specified in the Horizontal Section	
	4) As		

Selling and Marketing	specified in the Horizontal Section	4) As specified in the Horizontal Section	
11.5 Road Transport Services			
Road Freight Transportation (CPC 7123)	4) As specified in the Horizontal Section	4) As specified in the Horizontal Section	
Maintenance and Repair of Road Transport Equipment (CPC 8867, excluding motorcycle)	4) Unbound	4) Unbound	
Supporting Services for Road Transport Terminal (CPC 744)	4) As specified in the Horizontal Section	4) As specified in the Horizontal Section	
11.6 Supporting and Auxiliary Transport Services			
Maritime Freight Forwarding Services (CPC 7480**)	4) Unbound	4) Unbound	
Storage and Warehousing Services Outside Port Area and 1st Area for: (a) Storage Services of Frozen or Refrigerated Goods (CPC 7421) (b) Other Storage or Warehousing Services (CPC 7429)	4) Unbound	4) Unbound	
12. OTHER SERVICES			
12.1 Energy Services			
Core Analysis and Other Lab Test, only for Isotope Analysis (a) according to Indonesia Proposal of Energy Services Classification is under: Isotope Analysis (1A.2.7.3) (b) according to W 120 is under: Business Services on Technical Testing and Analysis Services (CPC 8676)	4) As specified in the Horizontal Section	4) Excluding the following functions: (a) Health and Safety Environment (b) supply chain management, covering procurement, material, and logistic (c) quality control, including inspection activity	
Liquefaction and Gasification only for Coal (a) according to Indonesia Proposal of Energy Services Classification is under: - Coal Liquefaction (2.4.4.4) - Coal Gasification (2.4.4.5) (b) according to W 120 is under Services Incidental to Manufacturing (CPC 884)	4) As specified in the Horizontal Section	4) Excluding the following functions: (a) Health and Safety Environment (b) supply chain management, covering procurement, material, and logistic (c) quality control, including	

		inspection activity	
Engineering, Procurement and Construction (EPC) services limited to platform construction (a) according to Indonesia Proposal of Energy Services Classification is under: Engineering, Procurement and Construction (EPC) Services (1A.3.2.2.) (b) according to W 120 is under: engineering design services for industrial processes and production (CPC-86725)	4) As specified in the Horizontal Section	4) Excluding the following functions: (a) Health and Safety Environment (b) supply chain management, covering procurement, material, and logistic (c) quality control, including inspection activity	
Engineering, Procurement and Construction (EPC) services limited to offshore line pipe installation (a) According to Indonesia Proposal of Energy Services Classification is under: Engineering, Procurement and Construction (EPC) Services (1A.3.2.2.) (b) According to W 120 is under: engineering design services for industrial processes and production (CPC-86725)	4) As specified in the Horizontal Section	4) Excluding the following functions: (a) Health and Safety Environment (b) supply chain management, covering procurement, material, and logistic (c) quality control, including inspection activity	
Electrical Logging and Perforation (a) According to Indonesia Proposal of Energy Services Classification is under: Electrical Logging and Perforation (EPC) Services (1A.2.8.) (b) According to W 120 is under: Technical Testing and Analysis Services (CPC-8676)	4) Unbound, except for directors and technical experts.	4) Excluding the following functions: (a) Health and Safety Environment (b) supply chain management, covering procurement, material, and logistic (c) quality control, including inspection activity	
Competency Certification in Quality Control and Handling of Aviation Fuels and Lubricants (a) According to Indonesia Proposal of Energy Services Classification is under: Competency Certification in Quality Control and Handling of Aviation Fuels and Lubricants (4.2.2.9) (b) According to W 120 is under: Other Education Services (CPC 92900)	4) Unbound, except for directors and technical experts.	4) Excluding the following functions: (a) Health and Safety Environment (b) supply chain management, covering procurement, material, and logistic (c) quality control, including inspection activity	
Competency Certification in Power Plant (a) According to Indonesia Proposal of Energy Services Classification is under: Competency Certification in Power Plant (4.2.2.11) (b) According to W 120 is under: Other education services (CPC 92900)	4) Unbound, except for directors and technical experts.	4) Excluding the following functions: (a) Health and Safety Environment (b) supply chain management, covering procurement, material, and logistic (c) quality control, including inspection activity	
Land Clearing Services	4) Unbound, except for directors	4) Excluding the following functions: (a) Health and Safety Environment (b) supply chain management, covering	

	and technical experts.	procurement, material, and logistic (c) quality control, including inspection activity	
Other Human Health Services (CPC 93199) only for SPA services	4) Unbound	4) Unbound	

ANNEX 3. SCHEDULE OF RESERVATIONS AND NON-CONFORMING MEASURES FOR SERVICES. MALAYSIA

LIST A. EXPLANATORY NOTES

1. This List A sets out, pursuant to Article 12 (Schedules of Non-Conforming Measures) of Chapter 8 (Trade in Services), Malaysiaâs existing measures that are not subject to some or all of the obligations imposed by:

(a) Article 4 (National Treatment) of Chapter 8 (Trade in Services);

(b) Article 5 (Market Access) of Chapter 8 (Trade in Services);

(c) Article 9 (Most-Favoured-Nation Treatment) of Chapter 8 (Trade in Services); or

(d) Article 10 (Local Presence) of Chapter 8 (Trade in Services).

2. Each entry in this List A sets out the following elements:

(a) Sector refers to the sector for which the entry is made;

(b) Subsector, where referenced, refers to the specific subsector for which the entry is made;

(c) Level of Government indicates the level of government maintaining the listed measures;

(d) Obligations Concemed specifies the obligations referred to in paragraph 1 that, pursuant to Article 12 (Schedules of Non-Conforming Measures) of Chapter 8 (Trade in Services), do not apply to the listed measures;

(e) Description sets out the non-conforming measure for which the entry is made; and

(f) Measures identifies the laws, regulations or other measures, for which the entry is made. A measure cited in the Measures element:

(i) means the measure as amended, continued or renewed, as of the date of entry into force of this Agreement, and

(ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure.

3. In accordance with Article 12 (Schedules of Non-Conforming Measures) of Chapter 8 (Trade in Services), the Articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the non-conforming measure identified in the Description element of that entry.

4. The Schedules of other Parties shall not be used to interpret Malaysia's commitments or obligations under Chapter 8 (Trade in Services) or other Chapters of this Agreement.

1. Sector: All sectors

Subsector: -

Level of Government: Central and Regional

Obligations Concerned: National Treatment (Article 4) Local Presence (Article 10)

Description: Trade in Services

Only Malaysian nationals or permanent residents can register a sole proprietorship or partnership in Malaysia. Foreigners can register a Limited Liability Partnership (LLP), but the compliance officer shall be a citizen or permanent resident of Malaysia that resides in Malaysia.

Foreigners are not allowed to establish or join cooperative societies in Malaysia.

Measures:

Registration of Businesses Act 1956 [Act 197] Limited Liability Partnerships Act 2012 [Act 743] Co-operative Societies Act 1993 [Act 502]

Business Names Ordinance 1932 [Sarawak Cap. 64] (1958 Edition)

Business, Professions and Trade Licensing Ordinance 1955 [Sarawak Cap. 33] (1958 Edition)

2. Sector : Fisheries

Subsector : Marine capture fisheries

Level of Government : Central and Regional

Obligations concerned : National Treatment (Article 4) Most-Favoured-Nation Treatment (Article 9) Local Presence (Article 10)

Description : Trade in Services

No foreign fishing vessel shall load or unload any fish, fuel, or supplies, or tranship any fish, or fish or attempt to fish or conduct any techno-economic research or waters survey of any fishery, in Malaysian fisheries waters (1) unless authorised to do so.

An application for a permit to be issued in respect of a foreign fishing vessel to fish in Malaysian fisheries waters shall be made through a Malaysian agent who shall undertake legal and financial responsibility for the activities to be carried out by such vessel.

For the purposes of this entry, "fishing vessel" means any boat, craft, ship, or other vessel which is used or equipped to be used for, or of a type used for:

(a) fishing; or

(b) 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.

Measures :

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]

(1) 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.

3. Sector: Patent agent services

Trademark agent services

Copyright representatives

Industrial design agent services

Geographical indication agent services

Subsector: -

Level of Government: Central and Regional

Obligations Concerned: National Treatment (Article 4) Local Presence (Article 10)

Description: Trade in Services

Only a person who is residing in Malaysia or is a permanent resident of Malaysia, and who is registered with the Intellectual

Property Corporation of Malaysia (MyIPO), is allowed to carry out a business, practice or act as a patent agent in Malaysia.

Only a person who is residing in Malaysia or is a permanent resident of Malaysia or has principal place of business in Malaysia, and who is registered with MyIPO, is allowed to carry out a business, practice, or act as a trademark, industrial design or geographical indication agent in Malaysia.

Any person who is residing in Malaysia or is a permanent resident of Malaysia, or a company registered under Malaysian law, and carries on business in Malaysia, is allowed to act as a copyright representative.

Measures:

Patents Act 1983 [Act 291]

Trade Marks Act 1976 [Act 175]

Industrial Designs Act 1996 [Act 552] Geographical Indications Act 2000 [Act 602] Copyright Act 1987 [Act 332]

4. Sector: Professional services covering: Engineering services

Quantity surveying services Land surveying services Architectural services

Subsector: -

Level of Government: Central and Regional

Obligations Concerned: National Treatment (Article 4) Local Presence (Article 10)

Description: Trade in Services

Any qualified persons, who are resident in Malaysia and registered with the relevant professional boards are allowed to provide consultancy practices and supply engineering, quantity surveying, land surveying and architectural services.

Engineering services and architectural services must be authenticated by a registered professional in Malaysia.

Engineering, quantity surveying and architectural consultancy practices must be registered with the relevant professional boards.

For each of these establishments, a two thirds majority of its directors shall be registered and authorised professionals. This shall also apply to multi-disciplinary practices (MDP) comprising registered and authorised professional architects, professional engineers or quantity surveyors.

Measures:

Registration of Engineers Act 1967 (Revised 1974) [Act 138]

Registration of Engineers Regulations 1990 [P.U.(A) 128/90]

Licensed Land Surveyors Act 1958 (Revised 1992) [Act 458]

Architects Act 1967 [Act 117] Architects Rules 1996 [P.U.(A) 379/96]

Quantity Surveyors Act 1967 (Revised 1992) [Act 487]

Quantity Surveyors Rules 1973 [P.U.(A) 366/73]

Lembaga Pembangunan Industri Pembinaan Malaysia Act 1994 [Act 520]

Land Surveyors Ordinance 2001 [Sarawak Cap. 40]

Administrative Guidelines

5. Sector: Real estate services on a fee or contract basis

Subsector: -

Level of Government: Central and Regional

Obligations Concerned: National Treatment (Article 4) Local Presence (Article 10)

Description: Trade in Services

Only registered persons and _ authorised foreigners registered with the Board of Valuers, appraisers, estate agents and property managers can provide real estate services for a fee or on contract basis.

Measures:

Valuers, Appraisers and Estate Agents Act 1981 [Act 242]

Valuers, Appraisers and Estate Agents Rules 1986 [P.U. (A) 64/1986]

Valuation and Property Services Rules 1999 [P.U.(A) 382/99]

6. Sector: Communications services

Subsector: -

Level of Government: Central

Obligations Concerned: National Treatment (Article 4) Most-Favoured-Nation Treatment (Article 9) Local Presence (Article 10)

Description: Trade in Services

Licences for the supply of telecommunications services in Malaysia are divided into individual licences and class licences, depending on the character of the service.

The following persons or classes of persons shall be ineligible to apply for an individual licence:

(a) a foreign company defined under the Companies Act 2016 [Act 777];

(b) an individual or a sole proprietorship; (c) apartnership; and

(d) such other persons or classes of persons as may be decided by the Minister from time to time.

The following persons or classes of persons shall be ineligible to be registered as a class licensee:

(a) a foreign individual who is not a permanent resident; and

(b) a foreign company as defined under the Companies Act 2016 [Act 777].

Foreigners are not permitted to apply for Content Applications Service Providers (CASP) services, a special subset of applications service providers that refers to satellite broadcasting, subscription broadcasting, terrestrial free to air television or terrestrial radio broadcasting.

The Minister charged with the responsibility for Communications and Multimedia may, for good cause or as the public interest may require, permit either of the above to apply to be registered as any one of the licensees mentioned above.

Measures:

Communications and Multimedia Act 1998 [Act 588]

Communications and Multimedia (Licensing) Regulations 2000 [P.U.(A) 129/2000]

7. Sector: Education services

Subsector: -

Level of Government: Central

Obligations Concerned: National Treatment (Article 4) Market Access (Article 5) Most-Favoured-Nation Treatment (Article 9) Local Presence (Article 10)

Description: Trade in Services

Education services, skill training centres and vocational institutions can only be provided by education services suppliers that are registered and established in Malaysia, and with authorisation.

Measures:

Education Act 1996 [Act 550]

Private Higher Education Institutions Act 1996 [Act 555]

National Skills Development Act 2006 [Act 652] Administrative Guidelines

8. Sector: Private healthcare services

Subsector: -

Level of Government: Central and Regional

Obligations Concerned: National Treatment (Article 4) Market Access (Article 5) Local Presence (Article 10)

Description: Trade in Services

Private healthcare facilities and healthcare services can only be provided by services suppliers that are registered and established, or obtained through acquisition, mergers or take- overs, in Malaysia, and with authorisation.

Medical Specialty Services

Foreigners are not allowed to provide medical specialty services unless they are granted a Full Registration Certificate by the Malaysian Medical Council and are registered as specialists with the National Specialist Register.

Specialised Dental Services

Foreigners are not allowed to provide specialised dental services unless they are granted a Temporary Practicing Certificate and recognised as specialists by the Malaysian Dental Council.

Nursing Services

Foreigner are not allowed to practice Midwifery in Malaysia except eleven (11) Specialised Nursing Services as listed in AFAS 8 (CPC 93191).

Allied Health Services

Foreigners are not allowed to provide allied health services unless such services are registered and established in Malaysia with authorisation.

Pharmacists

Foreign pharmacists are not allowed to prepare, dispense, assemble or sell medicinal products unless they are registered and established in Malaysia with authorisation by the Pharmacy Board Malaysia and the relevant regulatory bodies.

Traditional and Complementary Medicine

Traditional and complementary medicine services can only be provided by services suppliers that are registered in Malaysia, and with authorisation.

Measures:

Medical Act 1977 [Act 50] Medical Regulations 2017([P.U. (A) 188/2017] Denial Act 2078 [Act 804]

Private Healthcare Facilities and Services Act 1998 [Act 586]

Private Healthcare Facilities and Services (Private Medical Clinics or Private Denial Clinics) Regulations 2006 [P.U. (A) 137/2006]

Private Healthcare Facilities and Services (Private Hospitals and Other Private Healthcare Facilities) Regulations 2006 [P.U.(A) 138/2006]

Registration of Pharmacists Act 1957 [Act 371] Poisons Act 1952 (Revised 1989) [Act 366] Allied Health Professions Act 2016 [Act 774]

Traditional and Complementary Medicine Act 2016 [Act 775]

Administrative Guidelines

9: Sector: Customs agents and brokers

Subsector: -

Level of Government: Central

Obligations Concerned: National Treatment (Article 4) Market Access (Article 5) Most-Favoured-Nation Treatment (Article 9)

Description: Trade in Services

Foreigners are not allowed to act as customs agents and brokers.

Foreigners are not allowed to own more than 49 per cent of equity shareholding in any entity providing and supplying customs agents and brokers services.

Measures:

Customs Act 1967 (Revised 1980) [Act 235] Customs Regulations 1977 [P.U.(A) 162/77] Customs Standing Orders No.45/2003

10. Sector: Tour operators and tourist guide services

Subsector: -

Level of Government: Central and Regional

Obligations Concerned: National Treatment (Article 4) Most-Favoured-Nation Treatment (Article 9)

Description Trade in Services Foreigners are not allowed to provide tour operators and tourist guide services unless authorisation is obtained.

Measures:

Tourism Industry Act 1992 [Act 482]

Administrative Guidelines

11. Sector: Transport services

Subsector: International maritime transport services

Level of Government: Central and Regional

Obligations Concerned: National Treatment (Article 4) Market Access (Article 5) Most-Favoured-Nation Treatment (Article 9) Local Presence (Article 10)

Description: Trade in Services

Foreign shipping vessels are not permitted to provide and supply domestic shipping services.

Malaysia Intemational Ship Registry

Foreign persons may provide international maritime services in domestic waters only through a representative office, regional office or locally incorporated joint venture or corporation with Malaysian individuals or Malaysian- controlled corporations or both. Aggregate foreign shareholding in the joint venture or corporation shall be the majority shares including the voting shares.

All joint ventures or corporations seeking to register ships under this registry shall appoint a ship manager prior to registration of a ship, who shall be:

(a) a Malaysian citizen having his or her permanent residence in Malaysia; or

(6) a company incorporated in Malaysia and having its principal place of business in Malaysia.

Malaysia Ship Registry

Only ships registered on the Malaysia Ship Registry may provide domestic maritime services.

Foreign persons may only register a ship on the Malaysia Ship Registry through a representative office, regional office or locally incorporated joint venture or corporation with Malaysian individuals or Malaysian-controlled corporations or both.

Aggregate foreign shareholding in the joint venture or corporation shall not be the majority shares including the voting shares.

All joint ventures or corporations seeking to register ships under this registry shall satisfy the following conditions:

(a) majority of senior managers and board of directors shall be Malaysians; and

(b) incorporated in Malaysia and having main business operations in Malaysia.

Measures:

Merchant Shipping Ordinance 1952 [Ordinance 70/1 952]

Merchant Shipping Ordinance 1960 (Sabah) [Ordinance 11/1960]

Merchant Shipping Ordinance 1960 (Sarawak) [Ordinance 2/1960]

Merchant Shipping (Amendment and Extension) Act 2007 [Act A1316]

Administrative Guidelines

12. Sector: Construction and related engineering services

Subsector: -

Level of Government: Central

Obligations Concerned: National Treatment (Article 4) Market Access (Article 5) Most-Favoured-Nation Treatment (Article 9)

Description: Trade in Services

Only an entity incorporated in Malaysia registered with the Malaysian Construction Development Board (CIDB) and locally incorporated either through a representative office, regional office or joint venture corporation, with Malaysian individuals or Malaysian-controlled corporations, may be permitted to provide construction and related services.

Any entity incorporated in Malaysia, whose foreign equity exceeds more than 30 per cent by way of a joint venture corporation or consortium with Malaysian individuals or Malaysian- controlled corporations, is subject to the registration requirements by CIDB.

The senior management and board of directors of each foreign entity shall be of Malaysian majority that shall have control over its management and investment.

Measures:

Registration of Engineers Act 1967 (Revised 1974) [Act 138]

Registration of Engineers Regulations 1990 [P.U. (A) 128/90]

Licensed Land Surveyors Act 1958 (Revised 1991) [Act 458]

Architects Act 1967 [Act 117] Architects Rules 1996 [P.U.(A) 379/96]

Quantity Surveyors Act 1967 (Revised 1992) [Act 487]

Quantity Surveyors Rules 1973 [P.U. (A) 366/73]

Lembaga Pembangunan Industri Pembinaan Malaysia Act 1994 [Act 520]

Administrative Guidelines

13. Sector: Freight road transportation services

Subsector: -

Level of Government: Central

Obligations Concerned: National Treatment (Article 4) Market Access (Article 5) Local Presence (Article 10)

Description: Trade in Services

Only entities that are registered and established in Malaysia are allowed to provide freight road transportation services in Malaysia.

Foreigners are not allowed to own more than 49 per cent of equity shareholding in any entity providing and supplying freight transportation services covering transportation of containerised freight based on a fee or contractual basis.

Measures:

Land Public Transport Act 2010 [Act 715]

Land Public Transport Agency (APAD) Licensing Policy Guidelines

14. Sector: Legal services (other than arbitration)

Subsector:-

Level of Government: Central and Regional

Obligations Concerned: National Treatment (Article 4) Market Access (Article 5) Most-Favoured-Nation Treatment (Article 9) Local Presence (Article 10)

Description: Trade in Services

Peninsular Malaysia and the Federal Territory of Labuan

Foreign law firms and foreign lawyers are not permitted to practice save as provided under the Legal Profession Act 1976 [Act 166] and the Legal Profession (Licensing of International Partnerships and Qualified Foreign Law Firms and Registration of Foreign Lawyers) Rules 2014 [P.U. (A) 148/2014].

Foreign law firms from recognised jurisdictions must apply to the Selection Committee to be established as a Qualified Foreign Law Firm (QFLF) or an International Partnership (IP) with a Malaysian law firm. A maximum of five QFLF licences may be issued initially and only to foreign law firms with proven expertise in International Islamic Finance.

Only foreign lawyers from recognised jurisdictions can apply to work in a QFLF, an IP or a Malaysian law firm. Such foreign lawyers must be resident in Malaysia for not less than 182 days in any calendar year.

A QFLF and an IP, and a registered foreign lawyer working in a Malaysian law firm are subject to the provisions of the Legal Profession Act 1976 [Act 166].

Foreign lawyers providing legal services in Malaysia on a "fly in and fly out" basis shall be subject to the provisions under Section 37(2B)(b) of the Legal Profession Act 1976 [Act 166].

Sabah and Sarawak

Foreign law firms and foreign lawyers are not permitted to practice in Sabah or Sarawak.

Measures:

Legal Profession Act 1976 [Act 166]

Legal Profession (Licensing of International Partnerships and Qualified Foreign Law Firms and Registration of Foreign Lawyers) Rules 2014 [P.U. (A) 148/2014]

Labuan Companies Act 1990 [Act 441]

Labuan Financial Services and Securities Act 2010 [Act 704]

Advocates Ordinance of Sabah 1953 [Sabah Ordinance Cap. 2]

Advocates Ordinance of Sarawak 1953 [Sarawak Ordinance Cap. 110]

15. Sector: Wholesale and retail trade services

Subsector: -

Level of Government: Central and Regional

Obligations Concerned: National Treatment (Article 4) Market Access (Article 5) Most-Favoured-Nation Treatment (Article 9)

Local Presence (Article 10)

Description: Trade in Services

Foreigners are not allowed to operate supermarkets, mini markets, provision shop or general vendor, permanent wet markets, permanent pavement markets, fuel stations with or without kiosks, news agents, medical halls, Malaysian cuisine restaurants, bistros and textile stores.

Measures:

Guidelines on Foreign Participation in the Distribution Trade Services in Malaysia 2020

Franchise Act 1998 [Act 590] Companies Act 2016 [Act 777]

16. Sector: Veterinary services covering only equine animals in equestrians or turf clubs

Subsector:-

Level of Government: Central and Regional

Obligations Concerned: National Treatment (Article 4) Market Access (Article 5) Local Presence (Article 10)

Description: Trade in Services

Veterinary services related to equine animals in equestrians or turf clubs shall be registered and established subject to authorisation by the Malaysian Veterinary Council.

Measures: Veterinary Surgeons Act 1974 [Act 147] Administrative Guidelines

LIST B. EXPLANATORY NOTES

1. This List B sets out, pursuant to Article 12 (Schedules of Non-Conforming Measures) of Chapter 8 (Trade in Services), the specific sectors, subsectors or activities, for which Malaysia may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

(a) Article 4 (National Treatment) of Chapter 8 (Trade in Services); (b) Article 5 (Market Access) of Chapter 8 (Trade in Services);

(c) Article 9 (Most-Favoured-Nation Treatment) of Chapter 8 (Trade in Services); or

(d) Article 10 (Local Presence) of Chapter 8 (Trade in Services).

2. Each eniry in this List sets out the following elements:

(a) Sector refers to the sector for which the entry is made;

(b) Subsector, where referenced, refers to the specific subsector for which the entry is made;

(c) Obligations Concemed specifies the obligations referred to in paragraph 1 that, pursuant to Article 12 (Schedules of Non-Conforming Measures) of Chapter 8 (Trade in Services), do not apply to the sectors, subsectors, or activities, listed in the entry;

(d) Description sets out the scope of the sectors, subsectors or activities, covered by the entry; and

(e) Existing Measures where specified, identifies, for transparency purposes, a non-exhaustive list of existing measures that apply to the sectors, subsectors, or activities covered by the entry.

3. In accordance with Article 12 (Schedules of Non-Conforming Measures) of Chapter 8 (Trade in Services), the Articles of this Agreement specified in the Obligations Concerned element of an entry do not apply to the sectors, subsectors and activities, identified in the Description element of that entry.

4. With respect to the entries in this List on Most-Favoured-Nation Treatment relating to bilateral or multilateral international agreements, the absence of language regarding the scope of the reservation for differential treatment resulting from an amendment of those bilateral or multilateral international agreements in force or signed prior to the date of entry into force of this Agreement is without prejudice to Malaysiaâs interpretation of the scope of that reservation.

5. For the purposes of this List, "CPC", where referenced, refers to the activity covered by the non-conforming measure,

according to the Provisional Central Product Classification (Statistical Papers Series M No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991). The use of "**" against individual CPC codes indicates that the specific commitment for that code does not extend to the total range of services covered under that code.

6. The Schedules of other Parties shall not be used to interpret Malaysiaâs commitments or obligations under Chapter 8 (Trade in Services) or other Chapters of this Agreement.

1. Sector: Land and real estate

Subsector:-

Obligations Concerned: National Treatment (Article 4) Market Access (Article 5) Most-Favoured-Nation Treatment (Article 9)

Description: Trade in Services

Acquisitions or dealings of land or activities on land by non-citizens and juridical persons owned by foreign nationals must be approved by the relevant state authority, subject to such conditions and restrictions as may be imposed by that authority.

Existing Measures:

Federal Constitution

Land Acquisition Act 1960 [Act 486] Land Conservation Act 1960 [Act 385] National Land Code [Act 56 of 1965]

Federal Lands Commissioner Act 1957 (Revised 1988) [Act 349]

National Land Code (Penang and Malacca Titles) Act 1963 [Act 518]

Strata Titles Act 1985 [Act 318] Strata Management Act 2013 [Act 757]

Federal Lands Commissioner Act 1957 (Revised 1988) [Act 349]

Land (Group Settlement Areas) Act 1960 [Act 530]

Malay Reservations Enactment 1933 [F.M.S. Cap 142]

Malay Reservations Enactment 1930 [Enactment 29]

Kelantan Malay Reservations Enactment 1930 [No.18 of 1930]

Kelantan Land Settlement Act 1955 (Revised 1991) [Act 460]

The Reservations Enactment 1353 [No. 7 of 1353]

Perlis Land Settlement Enactment 1966 [No. 16 of 1966]

Johore Malay Reservation Enactment 1936 [No. 1 of 1936]

Terengganu Malay Reservation Enactment 1360 [No. 17 of 1360]

Terengganu Settlement Enactment 1356 [No. 65 of 1356]

Malay Reservations (Selangor) (Amendment) Enactment No. 15/1961

Malay Reservations (Selangor) (Amendment) Enactment No.7/1985

Customary Land Enactment 1926 [Cap 215]

Customary Tenure (Lengkongan Land) Enactment 1960 [No. 4 of 1960]

Undang of Rembau (Lands) Enactment 1949 [No. 2 of 1949]

Land Ordinance [Sabah Cap 68]

Sabah Land Acquisition Ordinance [Sabah Cap 69]

Sarawak Land Code 1958 [Chapter 81]

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]

2. Sector: All sectors

Subsector: -

Obligations Concerned: National Treatment (Article 4) Market Access (Article 5) Most-Favoured-Nation Treatment (Article 9) Local Presence (Article 10)

Description: Trade in Services

Malaysia reserves the right to adopt or maintain any measure affecting the:

(a) full or partial devolvement to the private sector of services provided in the exercise of governmental authority;

(b) divestment of its equity interests in, or the assets of, a juridical person that is wholly or partially owned by the Government of Malaysia; and

(c) privatisation of government-owned entities or assets.

Existing Measures:

Minister of Finance (Incorporation) Act 1957 [Act 375]

Companies Act 2016 [Act 777] Privatisation Master Plan Guidelines on Privatisation Bursa Listing Requirements

3. Sector: All sectors

Subsector:-

Obligations Concerned: National Treatment (Article 4) Market Access (Article 5) Most-Favoured-Nation Treatment (Article 9)

Description: Trade in Services

Malaysia reserves the right to adopt or maintain any measure relating to Bumiputera, Bumiputera status companies, trust companies and institutions, to meet development and social economic policy objectives.

Existing Measures: Federal Constitution

Policies and Ministerial Statements Treasury Instructions

Treasury Circulars

New Economic Policy (NEP) National Development Policy (NDP)

4. Sector: Mining and quarrying

Subsector: Oil and Gas

Obligations Concerned: National Treatment (Article 4) Market Access (Article 5) Most-Favoured-Nation Treatment (Article 9) Local Presence (Article 10)

Description: Trade in Services

Petroliam Nasional Berhad (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.

PETRONAS and its successor reserve the right to adopt or maintain any measure relating to the oil and gas upstream industry including related activities.

Existing Measures:

Petroleum Development Act 1974 [Act 144] Other Implementing Measures

5. Sector : All sectors

Subsector: -

Obligations Concerned : Most-Favoured-Nation Treatment (Article 9)

Description : Trade in Services

Malaysia reserves the right to adopt or maintain any measure that accords more favourable treatment to any service supplier or financial service supplier under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of the Second Protocol. (2)

Malaysia reserves the right to adopt or maintain any measure that accords differential treatment to Member States of ASEAN under any ASEAN agreement open to participation by any Member State of ASEAN, in force or signed after the date of entry into force of the Second Protocol.

With regard to the sectors listed below, Malaysia reserves the right to adopt or maintain any measure that accords rights, preferences and differential treatment to countries under any international agreement in force or signed after the date of entry into force of the Second Protocol:

(a) Aviation matters;

(b) Maritime and Port;

(c) Broadcasting;

(d) Space Transportation;

(e) Fisheries; and

(f) Financial Services.

Existing Measures: -

(2) For greater certainty, this right extends to any differential treatment accorded pursuant to a subsequent review or amendment of the relevant bilateral or multilateral international agreement.

6. Sector: All sectors

Subsector: -

Obligations Concerned: Most-Favoured-Nation Treatment (Article 9)

Description: Trade in Services

Liberalisation of measures in existing or future policies limiting foreign equity or interests in companies and businesses in Malaysia shall be carried out in a preferential and differentiated manner to those investments that match Malaysiaâs specific development requirements with the abilities and facilities provided by foreign juridical persons and their home countries. The objective is to maximise economic benefits of foreign participation in the Malaysian economy. This non-conforming measure applies to all countries for an indefinite duration.

Existing Measures: -

7. Sector: Manufacturing Related Services

Subsector: Marketing and distribution of explosives, weapons, ammunitions, as well as_ military- related equipment or devices, and similar products

Obligations Concerned: National Treatment (Article 4) Market Access (Article 5) Most-Favoured-Nation Treatment (Article 9) Local Presence (Article 10)

Description: Trade in Services

Malaysia reserves the right to adopt or maintain any measure affecting the arms and explosives sector.

Existing Measures:

Industrial Co-ordination Act 1975 [Act 156]

Explosives Act 1957 [Act 207]

Arms Act 1960 [Act 206]

8. Sector: Gaming, betting and gambling services including manufacturing, supply and suppliers of equipment, wholesale and retail of gambling services

Subsector: -

Obligations Concerned: National Treatment (Article 4) Market Access (Article 5) Most-Favoured-Nation Treatment (Article 9) Local Presence (Article 10)

Description: Trade in Services

Malaysia reserves the right to adopt or maintain any measure relating to the provision of gaming, betting and gambling services including manufacturing, supply and suppliers of equipment, wholesale and retail of gambling services.

Existing Measures:

Lotteries Act 1952 [Act 288]

Common Gaming Houses Act 1953 [Act 289]

Pool Betting Act 1967 (Revised 2018) [Act 809]

Betting Act 1953 [Act 495]

Racing (Totalisator Board) Act 1961 [Act 494]

Racing Club (Public Sweepstakes) Act 1965 [Act 404]

Customs (Prohibition of Imports) Order 2017 [P.U. (A) 103/2017]

9. Sector: Application of atomic energy for nuclear power generation including nuclear fuel cycle and electric power generation and fuel cycle; and electric power plants based on fossil fuel or materials

Subsector: -

Obligations Concerned: National Treatment (Article 4) Market Access (Article 5) Most-Favoured-Nation Treatment (Article 9) Local Presence (Article 10)

Description: Trade in Services

Malaysia reserves the right to adopt or maintain any measure relating to application of atomic energy for nuclear power generation including nuclear fuel cycle and electric power generation and fuel cycle; and electric power plants based on fossil fuel or materials.

Existing Measures:

Atomic Energy Licensing Act 1984 [Act 304]

Electricity Supply Act 1990 [Act 447]

10. Sector : Cultural services

Subsector: -

Obligations Concerned : National Treatment (Article 4) Market Access (Article 5) Most-Favoured-Nation Treatment (Article 9)

Description : Trade in Services

Malaysia reserves the right to review the following products following their importation and distribution in the Malaysian market to ensure their consistency with Malaysia's decency standards:

(a) books, magazines, periodicals or newspapers, or works of art and films, imported into Malaysia; and

(b) programming licensed for broadcast on television, cable and satellite stations.

In addition, prior approval is required for any arts, filming and performances by a foreign artist, and such activities shall comply with the Central Agency for Application for Filming and Performance by Foreign Artistes (PUSPAL) Guidelines.

Malaysia reserves the right to adopt or maintain any measure relating to differential treatment to countries under any existing or future bilateral or multilateral international agreement (3) with respect to cultural industries, such as audiovisual cooperation agreements. For greater certainty, government supported subsidy programmes for the promotion of cultural activities are not subject to the limitations or obligations of this Agreement.

For the purposes this entry, "cultural industries" mean persons engaged in any of the following activities:

(a) publication, distribution, or sale of books, magazines, periodical publications, or printed or electronic newspapers, excluding the printing and typesetting of any of the foregoing;

(b) production, distribution, sale or display of recordings of movies or videos;

(c) production, distribution, sale or display of music recordings in audio or video format;

(d) production, distribution, or sale of printed music scores or scores readable by machines; or

(e) radio broadcasts aimed at the public in general, as well as all radio, television and cable television related activities, satellite programming services, and broadcasting networks.

Existing Measures

Printing Presses and Publishing Act 1984 [Act 301]

Akta Perbadanan Kemajuan Filem Nasional Malaysia 1981 [Act 244]

Akta Perbadanan Kemajuan Kraftangan Malaysia 1979 [Act 222]

Dasar Industri Kreatif Negara (DIKN) 2010

Central Agency Committee for Application for Filming and Performance by Foreign Artistes (PUSPAL) Guidelines

(3) For greater certainty, this right extends to any differential treatment accorded pursuant to a subsequent review or amendment of the relevant bilateral or multilateral intemational agreement.

11. Sector: Wholesale and distribution services

Subsector: -

Obligations Concerned: National Treatment (Article 4) Market Access (Article 5) Most-Favoured-Nation Treatment (Article 9) Local Presence (Article 10)

Description: Trade in Services

Malaysia reserves the right to adopt or maintain any measure relating to the wholesale and distribution services for:

(a) rice;

(b) sugar;

(c) flour;

(d) liquor and alcoholic beverages;

(e) tobacco, manufactured tobacco substitutes and cigarettes products;

(f) fabrics and apparels of batik; (g) glass and glassware products; (h) _ biodiesel;

(i) machinery and mechanical appliances or part thereof, including power generating machinery and machinery for a specific industry;

(j) motor vehicles including motorcycles and scooters, passenger cars and commercial vehicles;

(k) base metals and articles of base metal industry or products;

(l) cement and cement products; and

(m) electrical machines and apparatus having individual functions (HS 8543).

Existing Measures:

Excise Act 1976 [Act 176]

Free Zones Act 1990 [Act 438]

12. Sector: Sewage and refuse disposal, sanitation and other environmental protection services

Subsector:-

Obligations Concerned: National Treatment (Article 4) Market Access (Article 5) Most-Favoured-Nation Treatment (Article 9) Local Presence (Article 10)

Description: Trade in Services

Malaysia reserves the right to adopt or maintain any measure relating to the collection, treatment, and disposal of hazardous waste and other environmental protection services including production, marketing, supplying and distribution of any products derived from by-products of sewage and sludge treatment, holistic wastewater management (including sullage, water run-off), trade effluent or industrial waste (organic and non-organic), water recycling and resource recovery.

Existing Measures:

Environmental Quality Act 1974 [Act 127] Water Services Industry Act 2006 [Act 655]

Green Technology Master Plan Malaysia 2017- 2030

13. Sector: Air transport services

Subsector: -

Obligations Concerned: National Treatment (Article 4) Market Access (Article 9) Most-Favoured-Nation Treatment (Article 9) Local Presence (Article 10)

Description: Trade in Services

Malaysia reserves the right to adopt and maintain any measure affecting:

(a) aircraft repair and maintenance services;

(b) selling and marketing of air transport services;

(c) computer reservation system (CRS) services;

(d) aircraft leasing without crew;

(e) aircraft leasing with crew;

(f) airfreight forwarding services;

(g) cargo handling;

(h) aircraft catering services;

(i) refuelling services;

(j) aircraft line maintenance;

(k) ramp handling;

(l) baggage handling;

(m) passenger handling; and

(n) air transport services covering passenger and freight transportation frequencies and routing by air.

Existing Measures:

Administrative Guidelines

14. Sector: Passenger road transportation services covering taxi services and scheduled passenger road transportation

Subsector: -

Obligations Concerned: National Treatment (Article 4) Market Access (Article 5) Most-Favoured-Nation Treatment (Article 9) Local Presence (Article 10)

Description: Trade in Services

Malaysia reserves the right to adopt or maintain any measure relating to passenger and scheduled passenger road _ transportation services covering urban and suburban regular transportation, railway, taxi services; and bus, taxi, and rail station services, and any electronic application related transportation services.

Existing Measures: -

15. Sector: Legal services covering mediation and Shari'a law

Subsector: -

Obligations Concerned: National Treatment (Article 4) Market Access (Article 5) Most-Favoured-Nation Treatment (Article 9) Local Presence (Article 10)

Description: Trade in Services

Malaysia reserves the right to adopt or maintain any measure relating to mediation and Shari'a law.

Existing Measures: -

16. Sector: All sectors

Subsector: -

Obligations Concerned: National Treatment (Article 4) Market Access (Article 5) Most-Favoured-Nation Treatment (Article 9)

Description:

Trade in Services

Malaysia reserves the right to adopt or maintain any measure related to the non-internationalisation of the Ringgit which includes:

(a) the requirement for international settlement to be made in foreign currency;

(b) limitation on the access to Ringgit financing by non-residents for use outside Malaysia; and

(c) limitation on the use of the Ringgit in Malaysia by non-residents.

Existing Measures:

Central Bank of Malaysia Act 2009 [Act 701]

Financial Services Act 2013 [Act 758]

Islamic Financial Services Act 2013 [Act 759]

Foreign Exchange Policy Notices

17. Sector: All sectors

Subsector: -

Obligations Concerned: Market Access (Article 5)

Description: Trade in Services

The purchase of a financial service by a resident from a financial service supplier abroad shall be subject to the requirements, restrictions and conditions imposed by Central Bank of Malaysia.

Existing Measures:

Central Bank of Malaysia Act 2009 [Act 701]

Financial Services Act 2013 [Act 758]

Islamic Financial Services Act 2013 [Act 759]

Foreign Exchange Policy Notices

18. Sector: Social services

Subsector: -

Obligations Concerned: National Treatment (Article 4) Market Access (Article 5) Most-Favoured-Nation Treatment (Article 9) Local Presence (Article 10)

Description: Trade in Services

Malaysia reserves the right to adopt or maintain any measure with respect to the provision of law enforcement and correctional services, and the following services to the extent they are social services established or maintained for a public purpose:

(a) income security or insurance;

(b) social security or insurance;

(c) social welfare;

(d) public education;

(e) public training;

(f) health; and

(g) child care.

Existing Measures: -

19. Sector: Veterinary services

Subsector: -

Obligations Concerned: National Treatment (Article 4) Market Access (Article 5) Most-Favoured-Nation Treatment (Article 9) Local Presence (Article 10)

Description: Trade in Services

Malaysia reserves the right to adopt or maintain any measure with respect to veterinary services excluding services delivered to equine animals in equestrians or turf clubs.

Existing Measures:

Veterinary Surgeons Act 1974 [Act 147]

Administrative Guidelines

20. Sector: Private healthcare services*

Subsector: -

Obligations Concerned: National Treatment (Article 4) Market Access (Article 5) Most-Favoured-Nation Treatment (Article 9) Local Presence (Article 10)

Description: Trade in Services

Malaysia reserves the right to adopt or maintain any measure with respect to:

(a) allied health services;

(b) pathology laboratories;

(c) dental clinics;

(d) general dental practitioners;

(e) general medical practitioners; general nurses including midwifery;

(f) medical clinics;

(g) private hospitals;

(h) private psychiatric hospitals;

(i) private ambulatory care centres;

(j) private nursing homes;

(k) private psychiatric nursing homes;

(l) private maternity homes;

(m) private blood banks;

(n) private haemodialysis centres;

(o) private hospices;

(p) private community mental health centres; and

(q) any other private healthcare facilities, services or health related services as the Minister of Health may specify.

* Any such measure shall be implemented in a manner consistent with entry 8 in Annex I.

Existing Measures:

Medical Act 1977 [Act 50]

Medical Regulations 2017([P.U. (A) 188/2017]

Denial Act 2078 [Act 804]

Private Healthcare Facilities and Services Act 1998 [Act 586]

Private Healthcare Facilities and Services (Private Hospitals and Other Private Healthcare Facilities) Regulations 2006 [P.U.(A) 138/2006]

Private Healthcare Facilities and Services (Private Medical Clinics or Private Denial Clinics) Regulations 2006 [P.U. (A) 137/2006]

Allied Health Professions Act 2016 [Act 774]

Nurses Act 1950 [Act 14]

Nurses Registration Regulations 1985 [P.U. (A) 494/85]

Midwives Act 1966 [Act 436]

Midwives Regulations 1990 [P.U. (A) 181/90]

21. Sector: Traditional and complementary medicine services

Subsector: -

Obligations Concerned: National Treatment (Article 4) Market Access (Article 5) Most-Favoured-Nation Treatment (Article 9) Local Presence (Article 10)

Description: Trade in Services

Malaysia reserves the right to adopt or maintain any measure with respect to traditional and complementary medicine services.

Existing Measures:

Traditional and Complementary Medicine Act 2076 [Act 775]

Administrative Guidelines

22. Sector: Distribution services

Subsector: -

Obligations Concerned: National Treatment (Article 4) Market Access (Article 5) Most-Favoured-Nation Treatment (Article 9) Local Presence (Article 10)

Description: Trade in Services

Malaysia reserves the right to adopt or maintain any measure relating to distribution services covering hypermarkets, superstores, departmental stores, specialty stores, franchise businesses and convenience stores.

Existing Measures:

Franchise Act 1998 [Act 590]

Guidelines on Foreign Participation in the Distribution Trade Services in Malaysia 2020

Guidelines on Convenience Stores with Foreign Interest

23. Sector: Utilities in relation to gas supply, power generation, power distribution, power transmission, renewable energy, energy services, energy efficiency services, water services and sewerage services

Subsector -

Obligations Concerned: National Treatment (Article 4) Market Access (Article 5) Most-Favoured-Nation Treatment (Article 9) Local Presence (Article 10)

Description: Trade in Services

Malaysia reserves the right to adopt or maintain any measure relating to utilities in relation to gas supply, power generation, power distribution, power transmission, renewable energy, energy services, energy efficiency services, solar panels, water services and sewerage services.

Existing Measures:

Water Services Industry Act 2006 [Act 655]

Waters Act 1920 [Act 418]

Electricity Supply Act 1990 [Act 447]

Gas Supply Act 1993 [Act 501]

Renewable Energy Act 2071 [Act 725]

Electricity Ordinance Sarawak [Cap. 50]

Environmental Quality Act 1974 [Act 127]

State Waters Laws

Green Technology Master Plan Malaysia 2017- 2030

24. Sector: Armed escort services and armed guard services

Subsector: -

Obligations Concerned: National Treatment (Article 4) Market Access (Article 5) Most-Favoured-Nation Treatment (Article 9) Local Presence (Article 10)

Description: Trade in Services

Malaysia reserves the right to adopt or maintain any measure relating to armed escort services and armed guard services.

Existing Measures: -

25. Sector: Building surveying services

Subsector: -

Obligations Concerned: National Treatment (Article 4) Market Access (Article 5) Most-Favoured-Nation Treatment (Article 9) Local Presence (Article 10)

Description: Trade in Services

Malaysia reserves the right to adopt or maintain any measure relating to building surveying services.

Existing Measures: -

26. Sector: Education services

Subsector: -

Obligations Concerned: National Treatment (Article 4) Market Access (Article 5) Most-Favoured-Nation Treatment (Article 9) Local Presence (Article 10)

Description: Trade in Services

Malaysia reserves the right to adopt or maintain any measure relating to:

(a) preschools;

(b) primary and secondary school education services covering the Malaysian National Curriculums;

(c) religious schools;

(d) distance learning;

(e) tuition centres;

(f) military training education; and

(g) higher education services covering public higher education institutions, nursing education, polytechnics, Â§ community colleges, military studies and religious studies.

Existing Measures: -

27. Sector: Research services

Subsector: -

Obligations Concerned: National Treatment (Article 4) Market Access (Article 5) Most-Favoured-Nation Treatment (Article 9) Local Presence (Article 10)

Description: Trade in Services

Malaysia reserves the right to adopt or maintain any measure relating to research services.

Any such measure shall not decrease the level of foreign ownership permitted in the research industry related to research and experimental services in agricultural science covering agriculture, biodiversity, food, agro-based industries, fisheries, social science and humanities, excluding research and experimental services in law, linguistics and languages.

Existing Measures: -

28. Sector: Postal services including courier and express delivery services

Subsector: -

Obligations Concerned: National Treatment (Article 4) Market Access (Article 5) Most-Favoured-Nation Treatment (Article 9) Local Presence (Article 10)

Description: Trade in Services

Malaysia reserves the right to adopt or maintain any measure relating to postal services, including courier and express delivery services.

Existing Measures:

Postal Services Act 2012 [Act 741]

Customs Act 1967 [Act 235]

29. Sector : All sectors

Subsector: -

Obligations Concerned : National Treatment (Article 4)

Description : Trade in Services

Where the constitution of a company imposes a prescribed foreign shareholding limit, the company may restrict certain entitlements with respect to shares that have exceeded the prescribed limit (5) (excess shares).

Existing Measures :

Companies Act 2016 [Act 777]

Securities Industry (Central Depositories) Act 1991 [Act 453]

Securities Industry (Central Depositories) (Foreign Ownership) Regulations 1996 [P.U.(A) 513/96]

(5) For example, a company may still grant certain entitlements i.e. dividend payment to the foreigner holding the excess shares but such foreigner may not be entitled to vote. For the purposes of this entry, the term âforeignerâ can be found in the Securities Industry (Central Depositories) (Foreign Ownership) Regulations 1996 [P.U.(A) 513/96).

30. Sector: All sectors

Subsector: -

Obligations Concerned: National Treatment (Article 4) Market Access (Article 5)

Description: Trade in Services

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 or take-overs and mergers.

Existing Measures:

Capital Market and Services Act 2007 [Act 671] Companies Act 2076 [Act 777]

Financial Services Act 2013 [Act 758]

Islamic Financial Services Act 2013 [Act 759]

The Malaysian Code on Take-overs and Mergers 2016

31. Sector: All sectors

Subsector: -

Obligations Concerned: National Treatment (Article 4) Market Access (Article 5) Most-Favoured-Nation Treatment (Article 9)

Description: Trade in Services

Malaysia reserves the right to adopt or maintain any measure relating to employment of expatriates.

Existing Measures:

Immigration Act 1959/63 [Act 155]

Employment (Restriction) Act 1968 (Revised 2017) [Act 796]

Expatriate Services Division (ESD) Online Guidebook

Policies and Ministerial Statements

32. Sector : All sectors

Subsector: -

Obligations Concerned : National Treatment (Article 4) Market Access (Article 5) Most-Favoured-Nation Treatment (Article 9)

Description : Trade in Services

Malaysia reserves the right to adopt or maintain any measure relating to activities restricted to designated juridical persons (6) where such activities are liberalised to those other than the designated juridical persons, or in the event where such designated juridical persons no longer operate on a non-commercial basis.

Corporations in which the government has an interest shall, in acquiring services, give first consideration to services suppliers in which the government has an interest. This requirement does not prevent the acquisition of services from other services suppliers where their services are competitive in terms of price, quality and delivery.

Existing Measures :

Industrial Co-ordination Act 1975 [Act 156]

Policies and Ministerial Statements Administrative Guidelines

(6) For illustrative purposes, examples of designated juridical persons include Padiberas Nasional Berhad (BERNAS) and Kualiti Alam Sdn. Bhd.

36. Sector: Mining and quarrying

Subsector: -

Obligations Concerned: National Treatment (Article 4) Most-Favoured-Nation Treatment (Article 9)

Description: Trade in Services

Non-citizens and juridical persons owned by foreign nationals will need to seek the approval of the relevant state authority, and subject to such conditions and restrictions as may be imposed by the relevant state authority. Joint ventures with state or state-linked juridical persons may be required.

Existing Measures:

Mineral Development Act 1994 [Act 525] State Mineral Laws National Mineral Policy 2

37. Sector: Agriculture

Subsector: -

Obligations Concerned: National Treatment (Article 4) Most-Favoured-Nation Treatment (Article 9)

Description: Trade in Services

Non-citizens and juridical persons owned by foreign nationals will need to seek the approval of the relevant state authority, and are subject to such conditions and restrictions as may be imposed by the relevant state authority.

Existing Measures:

National Land Code [Act 56 of 1965]

Sarawak Land Code 1958 [Cap 81]

Sabah Land Ordinance 1950 [Cap 68]

Town and Country Planning Act 1976 [Act 172]

Plant Quarantine Act 1976 [Act 167]

National Agricultural Policy

Administrative Guidelines

Customs Prohibition of Imports and Exports Orders

38. Sector: Forestry

Obligations Concerned: National Treatment (Article 4) Most-Favoured-Nation Treatment (Article 9)

Description: Trade in Services

Non-citizens and juridical persons owned by foreign nationals will need to seek the approval of the relevant state authority, and are subject to such conditions and restrictions as may be imposed by the relevant state authority.

Extraction and harvesting of timber are closed to foreign investors in Peninsular Malaysia and Sabah. However, for Sarawak, local involvement and majority local control are required. Forest areas opened for such activities are subject to an Annual Allowable Cut to enable the resources to be managed sustainably.

Services incidental to extraction and harvesting of timber are closed to foreign investors in Peninsular Malaysia and Sabah. However, for Sarawak, the maximum foreign equity ownership allowed is 30 per cent.

Existing Measures:

National Forestry Act 1984 [Act 313]

Sabah Forest Enactment 1968 [No. 2 of 1968]

Sarawak Forest Ordinance 2075 [Cap. 71]

International Trade in Endangered Species Act 2008 [Act 686]

Wildlife Conservation Act 2010 [Act 716] State Forestry Laws Administrative Guidelines

39. Sector: All sectors

Subsector: -

Obligations Concerned: National Treatment (Article 4) Market Access (Article 5) Most-Favoured-Nation Treatment (Article 9) Local Presence (Article 10)

Description: Trade in Services

Malaysia reserves the right to adopt or maintain any measure that it considers necessary for the protection of its essential security interests.

Existing Measures: Strategic Trade Act 2070 [Act 708]

40. Sector: All sectors

Subsector: -

Obligations Concerned: National Treatment (Article 4) Market Access (Article 5)

Description: Trade in Services

Malaysia reserves the right to adopt or maintain any measure with respect to the supply of a service by the presence of natural persons, subject to Chapter 9 (Movement of Natural Persons).

Existing Measures: -

41. Sector: All sectors

Subsector: -

Obligations Concerned: Market Access (Article 5)

Description: Trade in Services

Malaysia reserves the right to adopt or maintain any measure relating to Article 5 (Market Access) of Chapter 8 (Trade in Services) in the following sectors, subsectors or activities, subject to the limitations and conditions listed in the table below.

Malaysia remains unbound in respect of the supply of a service by a service supplier of a Party through the presence of natural persons of a Party in the territory of Malaysia, except as indicated in Malaysiaâs Schedule in Annex 4 (Schedules of Specific Commitments on the Movement of Natural Persons).

Existing Measures: -

For the purposes of the table below:

(a) "(1)", "(2)", and "(3)" in the "Limitations on Market Access"column refer to the modes for the supply of a service as defined in subparagraphs (t)(i) through (iii) of Article 1 (Definitions) of Chapter 8 (Trade in Services);

(b) "Unbound" means no market access commitment in the specified sector, subsector, or activity for the given mode of supply; and

(c) "None" means no limitations on market access in the specified sector, subsector, or activity for the given mode of supply.

Sector or Subsector	**Limitations on Market Access**
BUSINESS SERVICES	
Professional Services	
Accounting and auditing services (CPC 8621)	(1) None (2) None (3) Only through a locally registered partnership with Malaysian accountants or Malaysian accounting firms and the aggregate foreign interests shall not exceed 51 per cent.
Bookkeeping services, except tax returns (CPC 8622)	(1) None (2) None (3) Only through a locally registered partnership with Malaysian accountants or Malaysian accounting firms and the aggregate foreign interests shall not exceed 51 per cent.
Taxation services (CPC 8630)	(1) None (2) None (3) Only through a locally registered partnership with Malaysian accountants or Malaysian accounting firms and the aggregate foreign interests shall not exceed 51 per cent.
Architectural services (CPC 8671)	(1) None (2) None (3) (a) Architectural services may be supplied only by natural persons. (b) For multi-disciplinary practices (Architecture, Engineering or Quantity Surveying), foreign equity up to a maximum of 30 per cent for joint ventures by professionals who are registered in the country of origin. Foreign directorship is not

	allowed.
Engineering services (CPC 8672)	(1) None (2) None (3) (a) Engineering services may be supplied only by natural persons. (b) For multi-disciplinary practices (Architecture, Engineering or Quantity Surveying), foreign equity up to a maximum of 30 per cent for joint ventures by professionals who are registered in the country of origin. Foreign directorship is not allowed.
Integrated engineering services (CPC 8673) Covering (CPC 86731, 86732, 86733, 86739)	(1) None (2) None (3) Only through a representative office, regional office, or locally incorporated joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both for the purposes of services contracts awarded in Malaysia. The aggregate foreign shareholding in the joint venture corporation shall not exceed 30 per cent. Establishment of such joint venture corporation is only for a duration necessary to complete the services contract.
Urban planning services (CPC 86741)	(1) None (2) None (3) Only through a locally registered partnership with Malaysian Registered Landscape Architects or Malaysian-controlled corporations or both and aggregate foreign shareholding in the JV corporation shall not exceed 40 per cent.
Landscaping services covering the provision of advisory, planning and designing services for the aesthetic landscaping of golf courses and theme parks (CPC 86742*)	(1) None (2) None (3) Only through a locally incorporated joint venture corporation with Malaysian registered landscape architects or Malaysian-controlled corporations or both and the aggregate foreign shareholding in the joint venture corporation shall not exceed 51 per cent.
Veterinary services (CPC 932) Services delivered to equine animals in equestrians or turf clubs	(1) None (2) None (3) Only through a locally incorporated joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and the aggregate share of foreign interest shall not exceed 51 per cent.
Research and development services	
Research and development services on natural sciences and engineering (CPC 851** research and development services involving Malaysia's natural resources, biodiversity and genetic materials and CPC 85105 research and development services on medical sciences and pharmacy) Limited to industrial activities and defined as any systematic or intensive study carried out in the	(1) None (2) None (3) Only for contract research and development company and research and development company locally

field of science or technology with the object of using the results of the studyfor the production or improvement of materials, devices, products, produce or processes but does not include: i. Quality control of products or routine testing of materials, devices, products or produce; ii, Research in the social sciences or humanities; iii. Routine data collection; iv. Efficiency surveys or management studies; and v. Market research or sales promotion	incorporated as a joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and aggregate foreign equity shall not exceed 70 per cent.
Research and experimental development services on cultural sciences, sociology and psychology (CPC 85201 and 85202)	(1) None (2) None (3) Only through a locally incorporated joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and the aggregate foreign shareholding in the joint venture corporation shall not exceed 51 per cent.
Research and experimental development services covering CPC 85203 and 85204	(1) Unbound (2) Unbound (3) Unbound
Research and experimental development services on economics (CPC 85202)	(1) None (2) None (3) Only through a locally incorporated joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and the aggregate foreign shareholding in the joint venture corporation shall not exceed 51 per cent.
Research and experimental development services on other social sciences and humanities (CPC 85209)	(1) None (2) None (3) Only through a locally incorporated joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and the aggregate foreign shareholding in the joint venture corporation shall not exceed 51 per cent.
Interdisciplinary research and development services (CPC 8530**) Covering industrial activities covering all science and engineering disciplines, including biotechnology and information communication technology; and defined as any systematic or intensive study carried out in the field of science or technology with the object of using the results of the study for the production or improvement of materials, devices, products, produce or processes but does not include: (a) quality control of products or routine testing of materials, devices, products or produce; (b) research in the social sciences or humanities; (c) routine data collection; (d) efficiency surveys or management studies; and (e) market research or sales promotion.	(1) None (2) None (3) Only for contract research and development company and research and development company locally incorporated as a joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and the aggregate foreign equity shall not exceed 70 per cent. For interdisciplinary research and development services involving Malaysiaâs natural resources, biodiversity and genetic materials the aggregate foreign equity shall not exceed 49 per cent.
Leasing or rental services without operator	
Leasing or rental services concerning goods transport without operator (CPC 83102)	(1) None (2) None (3) Foreign equity shall not exceed 51 per cent.

Leasing or rental relating to ships, excluding cabotage and offshore trades (CPC 83103)	(1) None (2) None (3) Only through a representative office, regional office or Malaysian-controlled corporation acting as an agent.
Rental of cargo Vessels without crew (Bareboat Charter) for international shipping (CPC 83103)	(1) None (2) None (3) Only through a representative office, regional office or locally-incorporated joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and Bumiputera shareholding in the joint venture corporation of at least 40 per cent.
Leasing or rental services concerning aircraft without operators (CPC 83104)	(1) None (2) None (3) Only through a representative office, regional office or Malaysian-controlled corporation acting as an agent.
Leasing or rental services, without operator relating to construction and mining equipment and industrial plant and equipment (CPC 83107**)	(1) None (2) None (3) Only through a representative office, regional office or Malaysian-controlled corporation acting as an agent.
Leasing or rental services concerning other machinery and equipment without operator (CPC 83109)	(1) None (2) None (3) Foreign shareholding shall not exceed 51 per cent
Leasing or rental services concerning personal and household goods (CPC 832)	(1) None (2) None (3) Foreign shareholding shall not exceed 51 per cent
Leasing or rental services concerning furniture and other household appliances (CPC 83203)	(1) None (2) None (3) Only through a representative office, regional office or Malaysian-controlled corporation acting as an agent.
Other business services	
Advertising services	
(a) Sale or leasing services of advertising space or time (CPC 8711)	(1) Commercial presence is required. (2) None (3) Only through a locally incorporated joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and the aggregate foreign shareholding in the joint venture corporation shall not exceed 51 per cent. Advertisement through electronic media subject to guidelines on local content
(b) Planning, creating, and placement services of advertising (CPC 8712)	(1) Commercial presence is required. (2) None (3) Only through a locally incorporated joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and the aggregate foreign shareholding in the joint venture corporation shall not exceed 51 per cent.

	Advertisement through electronic _media subject to guidelines on local content
(c) Other advertising services (GPC 8719)	(1) Commercial presence is required. (2) None (3) Only through a locally incorporated joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and the aggregate foreign shareholding in the joint venture corporation shall not exceed 51 per cent. Advertisement through electronic media subject to guidelines on local content
Market research services (CPC 86401	(1) None (2) None (3) Only through a locally incorporated joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and Bumiputera shareholding in the joint venture is at least 51 per cent.
Public opinion polling services (CPC 86402)	(1) None (2) None (3) Only through a locally incorporated joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and the aggregate foreign shareholding in the joint venture corporation shall not exceed 51 per cent.
Management consulting services	
(a) Covering advisory, guidance and operational assistance services concerning management of the transmission of non-conventional energy (CPC 8650**)	(1) None (2) None (3) Only through a locally incorporated joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and Bumiputera shareholding in the joint venture corporation is at least 30 per cent.
(b) Covering advisory, guidance and operational assistance on environmental management services including risk assessment services (CPC 8650**)	(1) None (2) None (3) Only through a locally incorporated joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and Bumiputera shareholding in the joint venture corporation is at least 30 per cent.
(c) Covering advisory and guidance in the field of pharmacy as follows: (i) basic material manufacturing consultancy in the manufacture of drugs in raw material form; (ii) new systems of drug delivery; (iii) biotechnology - new techniques for influencing the process and products of living cells; (iv) new techniques in drug development and methods of producing drugs and vaccine; and (v) vaccine production. (CPC 8650**)	(1) None (2) None (3) Only through a locally incorporated joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and Bumiputera shareholding in the joint venture corporation is at least 30 per cent.
(d) Covering advisory and guidance on International	(1) None (2) None (3) Only through a locally incorporated joint venture corporation with

Value-Added Network Services, rural telecom development, and human resource development, in telecommunications (CPC 8650**)	Malaysian individuals or Malaysian-controlled corporations or both and Bumiputera shareholding in the joint venture corporation is at least 30 per cent.
Project management services other than for construction (CPC 86601)	(1) None (2) None (3) Only through a locally incorporated joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and Bumiputera shareholding in the joint venture corporation is at least 51 per cent.
Services incidental to energy distribution (CPC 887)	(1) None (2) None (3) Foreign equity shall not exceed 51 per cent.
Technical testing and analysis services	
(a) Composition and purity Testing and analysis services (CPC 86761)	(1) None (2) None (3) Only through a locally incorporated joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and Bumiputera shareholding in the joint venture corporation is at least 30 per cent.
(b) Testing and analysis services of physical properties (CPC 86762)	(1) None (2) None (3) Only through a locally incorporated joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and Bumiputera shareholding in the joint venture corporation is at least 30 per cent.
(c) Testing and analysis services of integrated mechanical and electrical | systems (CPC 86763)	(1) None (2) None (3) Only through a locally incorporated joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and Bumiputera shareholding in the joint venture corporation is at least 30 per cent.
(d) Other technical testing and analysis services (CPC 86769)	(1) None (2) None (3) Only through a locally incorporated joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and Bumiputera shareholding in the joint venture corporation is at least 30 per cent.
Technical Testing and AnalysisServices covering (CPC 86764)	(1) Unbound (2) Unbound (3) Unbound
Alarm monitoring system services CPC 87303	(1) None (2) None (3) Foreign equity shall not exceed 51 per cent
Services incidental to energy distribution CPC 887** Consulting services related to the advisory, guidance and operational assistance concerning management of the transmission of non- conventional energy, power plant	(1) Unbound (2) Unbound (3) Foreign equity shall not exceed 51 per cent

and network	
Services incidental to agriculture covering only specialised consultancy, advisory and operational assistance on crop management, including value added services such as preservation techniques, etc. (CPC 881**)	(1) None (2) None (3) Only through a locally incorporated joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and Bumiputera shareholding in the joint venture corporation is at least 30 per cent.
Services incidental to fishing covering only specialised consultancy, advisory and operational assistance on fisheries management, including value added services such as preservation techniques, etc. (CPC 882**)	(1) None (2) None (3) Only through a locally incorporated joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and Bumiputera shareholding in the joint venture corporation is at least 30 per cent.
Services incidental to manufacturing (CPC 884** and CPC 885** except 88442)	(1) None (2) None (3) Only through a locally incorporated joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and Bumiputera shareholding in the joint venture corporation is at least 30 per cent.
Printing and publishing	
Covering book binding services (CPC 88442 **)	(1) None (2) None (3) Foreign equity shall not exceed 30 per cent
Executive search services (CPC 87201)	(1) None (2) None (3) Foreign equity shall not exceed 51 per cent
Subsurface surveying services. Covering offshore 3-D seismic site surveys â 3-D seismic site surveys offshore in support of resource exploration and development (CPC 86752)	(1) Unbound (2) None (3) Unbound
Surface surveying services covering CPC 86753	(1) None (2) None (3) Unbound
Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment) (CPC 8866) Covering medical, precision and optical instruments, watches and clocks	(1) None (2) None (3) Foreign equity shall not exceed 51 per cent
Building cleaning services (CPC 8741)	(1) None (2) None (3) Foreign equity shall not exceed 51 per cent
Specialty photography except aerialphotography (CPC 875*)	(1) None (2) None (3) Foreign equity shall not exceed 51 per cent
Packaging Services (CPC 8760) Excludes services that consist solely of printing information on packaging materials	(1) Unbound (2) None (3) Only through a locally incorporated joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and the aggregate foreign shareholding in

	the joint venture corporation shall not exceed 51 per cent.
Translation and interpretation services (CPC 87905)	(1) None (2) None (3) Joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and aggregate foreign shareholding in the joint venture corporation shall not exceed 51 per cent foreign equity
Printing and publishing covering CPC 88442 **	(1) None (2) None (3) Foreign equity shall not exceed 51 per cent
Convention Centre (CPC 87909)	(1) None (2) None (3) Only through joint venture with Malaysian individuals or Malaysian-controlled corporations or both and aggregate foreign shareholding in the joint venture corporation shall not exceed 70 per cent
Student Placement Services, covering promoting, recruiting and facilitating students for studies outside Malaysia (CPC 87909)	(1) None (2) None (3) None
Operational Headquarters (OHQ) Services (CPC 87909)	(1) None (2) None (3) None except OHQ must operate in Malaysia and fulfil criteria as set out in the Guidelines on Setting up Operational Headquarters in Malaysia.
International Procurement Centre (IPC) / Regional Distribution Centre (RDC)	(1) None (2) None (3) None except that an IPC/RDC must be locally incorporated, conducts its business in Malaysia and fulfils the criteria of an IPC.
COMMUNICATIONS SERVICES	
Courier services	
Courier services (CPC 7512) Courier services in respect of documents and parcels, excluding letters and postcards	(1) None (2) None (3) Only through joint venture with Malaysian individuals or Malaysian-controlled corporations or both and the aggregate foreign shareholding in the joint venture corporation shall not exceed 51 per cent.
TELECOMMUNICATION SERVICES	
Basic Telecommunications Telex services (CPC 7523)	(1) None (2) None (3) Foreign shareholding shall not exceed 70 per cent
Telex services (CPC 7523)	(1) None (2) None (3) Foreign shareholding shall not exceed 70 per cent

Telegraph services (CPC 7522)	(1) None (2) None (3) Only through locally incorporated JV corporation with Malaysian individuals or Malaysian-controlled corporations; â or foreign shareholding of up to 70 per cent is allowed
Data and message transmission services (CPC 7523)	(1) None (2) None (3) Foreign shareholding of up to 70 per cent is allowed
Basic Telecommunications Paging services (CPC 75291)	(1) None (2) None (3) Foreign shareholding of up to 70 per cent is allowed
Other telecommunication services	(1) None (2) None (3) Foreign shareholding of up to 70 per cent is allowed
Mobile telephone service (CPC 75213)	(1) None (2) None (3) Foreign shareholding of up to 70 per cent is allowed
Mobile data services (CPC 7523)	(1) None (2) None (3) Foreign shareholding of up to 70 per cent is allowed
Interconnection services (CPC 7525 and 76250)	(1) None (2) None (3) Foreign shareholding of up to 70 per cent is allowed
Audiovisual Services (CPC 96113) (CPC 96112) (2) None (CPC 96114)	(1) None (2) None (3) Only through a locally incorporated joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and the aggregate foreign shareholding shall exceed 51 per cent
Motion picture projection services (CPC 96121, CPC 96122)	(1) None (2) None (3) Foreign equity shall not exceed 51 per cent
Broadcasting services (CPC 7524*)	(1) None (2) None (3) Unbound
Sound Recording services	(1) None (2) None (3) Foreign equity shall not exceed 51 per cent
CONSTRUCTION AND RELATED ENGINEERING SERVICES	
Pre-erection Work at Construction Site (CPC 511, 512, 513, 514, 515, 516 and 517)	(1) Unbound (2) None (3) None except through a representative office, regional office or locally incorporated joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both. Aggregated foreign shareholding in the joint venture corporation shall not exceed 51 per cent
DISTRIBUTION SERVICES	
Wholesale and retail trade business	

Commission agents' services (CPC 621**) Only for textiles, clothing, and footwear	(1) Unbound except for commission agents that must be established and registered in Malaysia (2) None (3) Only through a locally incorporated joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and Bumiputera shareholding in the joint venture corporation is at least 51 per cent
Wholesale, and Retail Trade Business covering (CPC 6111, 6113, 6121, 6130, 6221, 6222, 6223, 6224, 6225, 6226, 6227, 6228, 631 and 632)	(1) None (2) None (3) Entry is limited to: (a) Equity Structure The aggregate foreign equity shall not exceed 51 per cent (b) Minimum Capital Requirement Minimum foreign capital investment requirement in respective business type of formats are as per the Guidelines on Foreign Participation in Distributive Trade Services
Franchising (CPC 8929)	(1) None (2) None (3) Foreign equity shall not exceed 51 per cent
EDUCATION SERVICES	
Primary education services covering international schools only (CPC 921)	(1) Unbound (2) None (3) Only through a joint venture with foreign equity not exceeding 51 per cent
General secondary education services covering international schools only (CPC 9221)	(1) Unbound (2) None (3) Only through a joint venture with foreign equity not exceeding 51 per cent
Technical and vocational secondary education services (CPC 9223)	(1) Unbound (2) None (3) Only through a joint venture with foreign equity not exceeding 51 per cent
Technical and vocational secondary school-type education services for handicapped students (CPC 9224)	(1) Unbound (2) None (3) Only through a joint venture with foreign equity not exceeding 51 per cent
Other Higher Education Services provided by privately funded higher education institutions excluding private higher education institutions with Government of Malaysia equity or that receive assistance from Governmentof Malaysia (CPC 92390)	(1)Unbound, except for requirement for commercial presence (2) None (3) Only through a joint venture with foreign equity not exceeding 51 per cent and subject to the requirement of a needs test if necessary
Adult education services provided by privately funded education institutions excluding private education institutions with Government of Malaysia equity or that receive assistance from Government of Malaysia (CPC 924)	(1)Unbound, except for requirement for commercial presence (2) None (3) Only through a joint venture with foreign equity not exceeding 51 per cent and subject to the requirement of a needs test if necessary
Other education services covering CPC 929 / 9290 / 92900	(1) Unbound (2) None (3) Only through a joint venture with foreign equity not exceeding 51 per cent

ENVIRONMENTAL SERVICES	
Wastewater management. Covering only removal, treatment, and disposal of industrial effluents. Only for services contracted by the private sector. Does not include public works functions owned and operated by federal, provincial, district, or municipalities, or contracted out by them. (CPC 9401)	(1) Unbound (2) None (3) Only through a locally incorporated joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and the aggregate foreign shareholding in the joint venture corporation shall not exceed 51 per cent
Refuse disposal services. Covering private industrial waste management services covering treatment and disposal services (CPC 9402**)	(1) Unbound (2) None (3) Only through approval of the National Solid Waste Management Technical Evaluation Committee and approved license from the National Solid Waste Management Department. The aggregate foreign equity shall not exceed 51 per cent
Refuse disposal services. Covering solid waste disposal services, only for: (a) integrated biomass treatment facility services; and (b) the services provider must be equipped with high technology specifically built â_ for biomass solid waste disposal services and fulfil all environmental safety requirements. The product will be used as a new material for energy purposes (CPC 9402**)	(1) Unbound (2) None (3) Only through a locally incorporated joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and the aggregate foreign shareholding in the joint venture corporation shall not exceed 51 per cent
Protection of ambient air climate. Covering only services provided at industrial premises to remove air pollutants including monitoring of mobile emissions and implementation of control systems or reduction programmes. Only for services contracted by the private sector. Does not include public works functions owned and operated by federal, state, district or municipalities, or contracted out by them. (CPC 9404 - corresponds to cleaning services of exhaust gases)	(1) Unbound (2) None (3) Only through a locally incorporated joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and the aggregate foreign shareholding in the joint venture corporation shall not exceed 51 per cent
Noise abatement services. Covering only monitoring programmes, and installation of noise reduction and screen in residential, commercial, and industrial premises. Only for services contracted by the private sector. Does not include public works functions owned and operated by federal, state, district or municipalities, or contracted out by them. (CPG 9405)	(1) Unbound (2) None (3) Only through a locally incorporated joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and the aggregate foreign shareholding in the joint venture corporation shall not exceed 51 per cent
Nature and landscape protection services covering only contaminated soil clean-up and remediation. Only for services contracted by the private sector. Does not include public works functions owned and operated by federal, state, district or municipalities, or contracted out by them. (CPC 94060**)	(1) Unbound (2) None (3) Only through a locally incorporated joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and the aggregate foreign shareholding in the joint venture corporation shall not exceed 51 per cent
HEALTH RELATED AND SOCIAL SERVICES	

Ambulance services (CPC 93192**) Covering only sernices provided through a vehicle equipped for transporting patients to the hospital	(1) Unbound (2) None (3) Unbound
Specialised medical services (CPC 93122) covering forensic medicine, nuclear medicine, geriatrics, micro vascular surgery, neurosurgery, cardiothoracic surgery, plastic surgery, clinical immunology and oncology, traumatology, anaesthesiology, intensive care specialist, child psychiatry and physical medicine	(1) None (2) None (3) Specialised medical services may be supplied only by a natural person
Dental Services (CPC 93123) Covering at least five (5) dental specialties in the fields of: Oral Surgery, Orthodontics, Periodontics, Pediatric Dentistry, OralPathology/Oral Medicine, and Special Care Dentistry; with competency/competencies in the field of orthognathic surgery, cranio-facial surgery, dental oncology, dental-facial trauma or cleft lip and cleft palate	(1) None (2) None (3) Foreign equity in the PDSC shall not exceed 70 per cent
Specialised Nursing Services (CPC 93191) - Intensive Care Nursing - Coronary Care Nursing - Peri-Operative Nursing - Neonatal Nursing - Pediatric Nursing - Emergency and Trauma Care - Oncology Nursing - Gerontology - Renal Nursing - Orthopedic Nursing - Opthalmology Nursing	(1) None (2) None (3) Services may be supplied by a natural person. The setting up of individual or joint group practices is not permitted
Private hospital services (CPC 93110*)	(1) None (2) None (3) Only through a locally incorporated joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and aggregate foreign shareholding in the joint venture corporations shall not exceed 70 per cent
Other human health services (CPC 93199) covering pharmacy services in the manufacturing sector only	(1) None (2) None (3) Foreign equity shall not exceed 70 per cent
Welfare services delivered through residential institutions to old person and the handicapped (CPC 93311)	(1) None (2) None (3) Foreign equity shall not exceed 51 per cent
Vocational rehabilitation services for the handicapped (CPC 93324)	(1) None (2) None (3) Foreign equity shall not exceed 51 per cent
TOURISM AND TRAVEL RELATED SERVICES	
Travel agencies and tour operators services for inbound travel only (CPC 7471)	(1) None (2) None (3) Joint venture with Malaysian individuals or Malaysian-controlled corporations or both and the aggregate foreign shareholding in the joint venture corporation shall not exceed 70 per cent.
Hotel and restaurant services (CPC 64110)	(1) None (2) None (3) Joint venture corporation with Malaysia individuals or Malaysianâcontrolled corporations or both and aggregate foreign shareholding in the

	joint venture corporation shall not exceed 70 per cent foreign equity (for 4&5 star hotel)
Food serving services (CPC 642)	(1) None (2) None (3) Joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and aggregate foreign shareholding in the joint venture corporation shall not exceed 70 per cent foreign equity
Beverage serving services for consumption on the premises (CPC 643)	(1) None (2) None (3) Joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and aggregate foreign shareholding in the joint venture corporation shall not exceed 70 per cent foreign equity
Tourist Guide Services (CPC 7472)	(1) None (2) None (3) Unbound*
RECREATIONAL, CULTURAL AND SPORTING SERVICES	
Other sports and recreational sports services (CPC 96590) Covering only internet and mobile gaming services For greater certainty, gaming services do not include gambling and betting.	(1) None (2) None (3) Unbound
Other entertainment services covering CPC 96191, 96192, 96194	(1) None (2) None (3) Entertainment services may be supplied only by a natural person
Services provided by authors, composers, sculptors, entertainers and other individual artists (CPC 96192)	(1) None (2) None (3) Foreign shall not exceed 51 per cent
Theme Park (A family based recreational area/amusement centre which may consist of rides, mechanical and/or high-tech simulation equipment with various kinds of amusement facilities built around a theme or several themes. Activities to be offered will contain elements of entertainment, edutainment, adventure and excitement. The concept of the parkcan either be outdoor or indoor or a combination of both)	(1) None (2) None (3) Only through joint venture with Malaysian individuals or Malaysian-controlled corporations or both and aggregate foreign shareholding in the joint venture corporation shall not exceed 70 per cent
Library Services (CPC 96311)	(1) None (2) None (3) Foreign shall not exceed 51 per cent
Sports events management services (CPC 96411, 96412)	(1) None (2) None (3) None except only through a Malaysian-controlled corporation acting as the local sponsor
TRANSPORT SERVICES	
Maritime transport services Supporting services for	(1) None (2) None (3) Only through a representative office, regional office, or locally-incorporated joint venture

maritime transport. Vessel salvage and refloating services except on_ inland waters (CPC 74540)	corporation with Malaysian individuals or Malaysian-controlled corporations or both and Bumiputera shareholding in the joint venture corporation of at least 30 per cent maritime services,
International transportation excludes cabotage (CPC 7211, 7212)	(1) None (2) None (3) Only through a representative office, regional office or locally-incorporated joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and aggregate foreign shareholding in the joint venture corporation shall not exceed 51 per cent. Malaysian registered vessels To register a vessel in Malaysia, the following conditions must be met: a) Owner of that vessel must be a Malaysian citizen or corporation incorporated in Malaysia; b) Majority shareholding to be held by Malaysians; c) Majority of the board of directors to be Malaysians; and d) Principal place of business to be in Malaysia
Maintenance and repair vessels (CPC 8868**) This is limited to businesses related to maintenance and repair of ocean-going vessels at anchor or alongside and maintenance and repair of local vessels.	(1) Unbound (2) None (3) Only through a representative office, regional office, or locally-incorporated joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and the aggregate foreign shareholding in the joint venture corporation shall not exceed 51 per cent.
Supporting services for maritime transport. Classification Societies (7) (Except for statutory services for Malaysia flag vessels)	(1) None (2) None (3) Only through a representative office, regional office or locally-incorporated joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and aggregate foreign shareholding in the joint venture corporation shall not exceed 51 per cent
Rail Transport Services Maintenance and repair of rail transport equipment (CPC 88688**)	(1) None (2) None (3) Only through a_ representative office, regional office or locally-incorporated joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and aggregate foreign shareholding in the joint venture corporation shall not exceed 51 per cent
Road transport services. Freight Transportation Covering Private Carriers Class C License (CPC 7123)	(1) None (2) None (3) Foreign equity shall not exceed 51 per cent
Maintenance and repair services not elsewhere classified of trailers and semi trailers on a fee or contract basis (CPC	(1) None (2) None (3) Foreign equity shall not exceed 51 per cent

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Private services provided by car parks, parking lots and parking garages, whether or not roofed (CPC 74430)	(1) None (2) None (3) Foreign equity shall not exceed 51 per cent
Services Auxiliary to all modes of transport. Maritime Cargo Handling Services (CPC 741 **) (Limited only for sea transport) Maritime Cargo Handling services limited to activities exercised by terminal operators but not including the direct activities of dockers, when this work force is organized independently of the stevedoring or operator companies. The activities covered include the organization and supervision of the loading/discharging of cargo to/from a ship; the lashing/unlashing of cargo and the reception/delivery and safekeeping of cargoes before shipment or after discharge.	(1) None (2) None (3) Only through a representative office regional office or locally incorporated joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both. Aggregate foreign shareholding in the joint venture corporation shall not exceed 49 per cent
OTHER SERVICES	
Skills training services 1) automated manufacturing technology; 2) advanced materials technology; 3) biotechnology; 4) electronics; 5) information technology; and 6) avionics/aviation technology (CPC 97090)	(1) None (2) None (3) Only through a representative office, regional office or locally incorporated joint venture corporation with Malaysian individuals or Malaysian-controlled corporations or both. Aggregate foreign shareholding in the joint venture corporation shall not exceed 70 per cent

(7) Provision of rules on construction and safety of ships and issuance of certificate should be in accordance with specified rules stated in domestic legislation. Exclude survey and classification of Malaysian flag vessels which requires specific authorization by the relevant authority.

42. Sector: Communication services

Subsector: -

Obligations Concerned: National Treatment (Article 4) Market Access (Article 5) Most-Favoured-Nation Treatment (Article 9) Local Presence (Article 10)

Description: Trade in Services

Malaysia reserves the right to adopt or maintain any measure relating to spectrum allocations, universal service and numbering, and electronic addressing.

Existing Measures:

Communications and Multimedia Act 1998 [Act 588]

Communications and Multimedia (Licensing) Regulations 2000 [P.U. (A) 129/2000]

Communications and Multimedia (Spectrum) Regulations 2000 [P.U. (A) 128/2000]

Spectrum Plan

Numbering and Electronic Addressing Plan (NEAP)

43. Sector: Financial services

Subsector: -

Obligations Concerned: National Treatment (Article 4) Market Access (Article 5)

Description: Trade in Services

Malaysia reserves the right to adopt or maintain any measure relating to financial services that are not stipulated in the Appendix to this List (Specific Commitments for Financial Services â Malaysia).

In relation to the financial services in the Appendix to this List (Specific Commitments for Financial Services - Malaysia), Malaysia reserves the right to adopt or maintain any measure subject to the terms, conditions, limitations or qualifications specified therein.

In respect of offshore banks, offshore investment banks, commercial banks, investment banks, offshore direct insurance companies, offshore reinsurance companies, offshore insurance brokers, offshore insurance underwriting managers, offshore insurance managers, direct insurance companies, reinsurance companies and representative offices of commercial banks and investment banks, the limitations on market access and national treatment in the Financial Services Horizontal Commitments as specified in the Appendix to this List (Specific Commitments for Financial Services - Malaysia) shall apply in addition to specific limitations to the Financial Services Activities as specified in the Appendix to this List (Specific Commitments for Financial Services - Malaysia).

For greater certainty, Malaysia's commitments as specified in the Appendix to this List (Specific Commitments for Financial Services - Malaysia) cannot be interpreted as applying to the supply of Shariah-compliant financial services, unless specific entries are made in the banking, insurance or capital markets subsectors accordingly. This approach is consistent with Malaysia's commitments under the WTO and other existing free trade agreements.

For greater certainty, Malaysia reserves the right to adopt or maintain any measure relating to financial services other than those recognised or should have been recognised by the Government of Malaysia owing to the circumstances existing at the date of entry into force of this Agreement for Malaysia. Malaysia also reserves the right to adopt or maintain any measure relating to the supply of financial services in any mode of supply in which those services were not technically feasible at the date of entry into force of this Agreement for Malaysia.

Existing Measures: -

44. Sector: Financial services

Subsector: -

Obligations Concerned: Most-Favoured-Nation Treatment (Article 9)

Description: Trade in Services

Malaysia reserves the right to adopt or maintain any measure that accords rights, preferences and differential treatment to countries under any international agreement in force or signed after the date of entry into force of this Agreement.

Existing Measures: -

45. Sector: Credit Reporting Services

Subsector: -

Obligations Concerned: National Treatment (Article 4) Market Access (Article 5) Most-Favoured-Nation Treatment (Article 9) Local Presence (Article 10)

Description: Trade in Services

Malaysia reserves the right to adopt or maintain any measure relating to credit reporting services.

Existing Measures:

Central Bank of Malaysia Act 2009 [Act 701] Credit Reporting Agencies Act 2070 [Act 710]

Credit Reporting Agencies (Registration) Regulation 2014 [P.U. (A) 142/2014]

Credit Reporting Agencies (Compounding of Offences) Regulations 2014 [P.U. (A) 275/2014]

Administrative Guidelines

46. Sector: Maritime cabotage and government cargo

Subsector: -

Obligations Concerned: National Treatment (Article 4) Most-Favoured-Nation Treatment (Article 9)

Description: Trade in Services

Malaysia reserves the right to adopt or maintain any measure relating to maritime cabotage and government cargo.

Existing Measures: Administrative Guidelines

47. Sector: Advertising for liquor and alcoholic beverages, tobacco, tobacco manufactured substitutes, and cigarettes products and electrical machines and apparatus having individual functions (HS 8543)

Subsector: -

Obligations Concerned: National Treatment (Article 4) Local Presence (Article 10)

Description: Trade in Services

Malaysia reserves the right to adopt or maintain any measure relating to advertising of liquor and alcoholic beverages, tobacco, tobacco manufactured substitutes, and cigarettes products and electrical machines and apparatus having individual functions (HS 8543).

Existing Measures: -

48. Sector : All sectors

Subsector: -

Obligations Concerned : National Treatment (Article 4) Market Access (Article 5) Most-Favoured-Nation Treatment (Article 9) Local Presence (Article 10)

Description : Trade in Services

Malaysia reserves the right to adopt or maintain any measure relating to the Shared Prosperity Vision 2030 and the New Industrial Masterplan. (8)

Existing Measures :

Shared Prosperity Vision 2030

New Industrial Masterplan

Policies and Ministerial Statements

(8) Any such measure shall be implemented in a manner consistent with Malaysia's commitments under Annex 1.

49. Sector: All sectors

Subsector: -

Obligations Concerned: National Treatment (Article 4)

Description: Trade in Services

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 relating to Bumiputera or affirmative action for the socially disadvantaged.

Existing Measures: -

APPENDIX . SPECIFIC COMMITMENTS FOR FINANCIAL SERVICES. MALAYSIA

1. This Appendix shall be read together with entry 43 in List B of Malaysiaâs Schedules in Annex 3 (Schedules of Reservation and Non-Conforming Measures for Services).

2. For the purposes of this Appendix:

(a) "(1)", "(2)", "(3)", and "(4)" in the "Limitations on Market Access" and "Limitations on National Treatment" columns respectively refer to the modes for the supply of a service as defined in Article 1 (t) (Definitions) of Chapter 8 (Trade in Services);

(b) "Unbound" means no market access or national treatment commitment in the specified sector, subsector, or activity for the given mode of supply;

(c) "Unbound" means Unbound due to lack of technical feasibility; and

(d) "None" means no limitations on market access or national treatment in the specified sector, subsector or activity for the given mode of supply.

Measures inconsistent with both Article 5 (Market Access) and Article 4 (National Treatment) of Chapter 8 (Trade in Services) shall be inscribed in the "Limitations on Market Access" column in the table below. In this case, the inscription will be considered to provide a condition or qualification to Article 4 (National Treatment) of Chapter 8 (Trade in Services).

Modes of Supply:

1) Cross-border supply

2) Consumption abroad

3) Commercial presence

4) Presence of Natural Persons

Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
FINANCIAL SERVICES HORIZONTAL COMMITMENTS			
A. Offshore banks, offshore investment banks, offshore direct insurance companies, offshore reinsurance companies, offshore insurance brokers, offshore insurance underwriting managers, and offshore insurance managers	(1) Unbound* except as otherwise specified in this Appendix. (2) Unbound* except as otherwise specified in this Appendix. (3) Entry is confined to Labuan. Entry is limited to establishment of a branch registered or a subsidiary incorporated in Malaysia. (4) Unbound except for presence of natural persons in respect of supply of a service through the mode of commercial presence.	(1) Unbound* except as otherwise specified in this Appendix. (2) Unbound* except as otherwise specified in this Appendix. (3) None (4) Unbound except for presence of natural persons in respect of supply of a service through the mode of commercial presence.	
	(1) Unbound* except as otherwise specified in this Appendix. (2) Unbound* except as otherwise specified in this Appendix. (3) The 13 wholly foreign-owned commercial banks	(1) Unbound*	

B. Commercial banks and investment banks	are permitted to remain wholly owned by their existing shareholders. (9) Unbound for new licences. Entry is limited to equity participation by foreign banks in Malaysian-owned or controlled commercial banks and investment banks and aggregate foreign shareholding in a commercial bank or an investment bank shall not exceed 30 per cent. Foreign commercial banks and investment banks are required to be locally incorporated in accordance with the Financial Services Act 2013 [Act 758]. A commercial bank is not allowed to acquire any share in another commercial bank but may acquire shares in one investment bank. An investment bank is not allowed to acquire any share in a commercial bank or another investment bank. Other persons are not permitted to acquire five per cent or more of shareholding in a commercial bank or investment bank if the person already holds five per cent or more of shareholding in another licensed financial institution. Entry is also permitted through the setting up of representative offices. Representative offices can only undertake research, exchange of information, and liaison services. (4) Unbound except the following: (a) Unless otherwise specified, presence of natural persons is offered only in respect of supply of a service through the mode of commercial presence; (b) Five senior managers and 10 specialists or experts for each commercial bank or investment bank. A senior manager is an individual possessing proprietary knowledge and authority essential to the establishment, control, and operation of the services of the financial service supplier. Specialists or experts for each commercial bank or investment bank for areas relating to: (i) trade financing; (ii) corporate finance; (iii) treasury management; (iv) information technology; (v) risk management; (vi) capital market products; (vii) derivatives instruments; (viii) credit risk management; and (ix) internal control; (c) For each representative office of a commercial bank or investment bank, two foreign nationals. Only one foreign national for the two top posts; and (d) Entry shall be limited to a maximum period of five years.	except as otherwise specified in this Appendix. (2) Unbound* except as otherwise specified in this Appendix. (3) None except as indicated in the respective activities listed below. Acquisition by a foreign bank of an aggregate of five per cent or more of shareholding in a Malaysian-owned or controlled commercial bank or investment bank must meet the following criteria: (a) The foreign bank has the ability to facilitate trade and contribute to financial and economic development of Malaysia; (b) The country of the foreign bank has significant trade and investment interests in Malaysia; and (c) The country of the foreign bank does not have significant representation in the Malaysian banking industry. (4) Unbound except for the categories of natural persons teferred to under market access.	
	(1) Unbound* except as otherwise specified in this Appendix. (2) Unbound* except as otherwise specified in this Appendix. (3) Foreign insurance companies are required	(1) Unbound* except as otherwise specified in this Appendix. (2) Unbound* except as	

C. Direct insurance and reinsurance companies	to be locally incorporated in accordance with the Financial Services Act 2013 [Act 758]. Branches of foreign insurance companies that were required to be locally incorporated in accordance with the insurance Act 1996 (Repealed by the Financial Services Act 2013 [Act 758]) are permitted to hold foreign shareholding not exceeding 51 per cent. (10) Foreign shareholding not exceeding 51 per cent is also permitted for the existing foreign shareholders (11) of locally incorporated insurance companies which were the original owners of these companies. Provided aggregate foreign shareholding in such companies does not exceed 51 per cent. New entry by foreign insurance companies is limited to equity participation in locally incorporated insurance companies and aggregate foreign shareholding in such company shall not exceed 30 per cent. Unbound for new licenses. An insurance company is not allowed to acquire more than five per cent share: (a) in another insurance company in Malaysia that carries on the same class of insurance business as that carried on by it; or (b) in an insurance broking company. Other persons holding more than five per cent shareholding in an insurance company are not permitted to acquire more than five per cent shareholding in: (a) another insurance company carrying on the same class of insurance business as that carried on by the insurance company in which the persons a shareholder; or (b) an insurance broking company. Unbound for reinsurance companies. (4) Unbound except the following: (a) Unless otherwise specified, presence of natural persons is offered only in respect of supply of a service through the mode of commercial presence; (b) Five senior managers and 10 specialists or experts for each locally incorporated insurance company. A senior manager is an individual possessing proprietary knowledge and authority essential to the establishment, control, and operation of the services of the financial service supplier. Specialists or experts for each insurance institution for areas relating to: (i) Underwriting of specialised classes of general business; (ii) information technology: (iii) actuarial functions; (iv) risk management; (v) investment management; (vi) product development; (vii) customer service; and (viii) servicing of foreign and regional business; and (c) Entry shall be limited to a maximum period of five years.	otherwise specified in this Appendix. (3) None except as indicated in the respective activities listed below. Acquisition by a foreign insurance company of an aggregate of more than five per cent shareholding in a locally incorporated insurance company must meet at least one of the following criteria: (a) The foreign insurance company has the ability to facilitate trade and contribute to the financial and economic development of Malaysia; (b) The country of the foreign insurance company has significant trade and investment interests in Malaysia; (c) The country of the foreign insurance company does not have a significant representation in the Malaysian insurance industry; or (d) The foreign insurance company has the ability to provide technical expertise and know-how to contribute to the financial and economic development of Malaysia. Unbound for reinsurance companies. (4) Unbound except for the categories of natural persons	

		teferred to under market access.	

(9) Refers to the 13 wholly foreign-owned commercial banks specified in Malaysia's Schedule of Specific Commitments under GATS.

(10) Refers to the branches of foreign insurance companies specified in Malaysia's Schedule of Specific Commitments under GATS.

(11) Refers to the existing foreign shareholders specified in Malaysia's Schedule of Specific Commitments under GATS.

I. FINANCIAL SERVICES ACTIVITIES			
A BANKING AND OTHER FINANCIAL SERVICES, EXCLUDING INSURANCE			
Acceptance of deposits, and other repayable funds from the public, wholesale and retail	(1) Soliciting, advertising, and acceptance of deposits in Malaysia are not allowed. (2) None (3) Only permitted through a commercial bank, an investment bank or an offshore bank. Offshore banks in Labuan are permitted to accept foreign currency deposits only. Offshore investment banks in Labuan are not permitted to accept deposits. (4) Unbound except as indicated in the Financial Services Horizontal Commitments.	(1) None (2) None (3) For commercial banks, unbound for branching (including off-premises Automated Teller Machines) and networking with Automated Teller Machines in Malaysia. (4) Unbound except as indicated in the Financial Services Horizontal Commitments.	
Lending of all types, including consumer credit,	(1) Financial services associated with lending to residents in any currency in excess of an equivalent of RM25 million must be undertaken jointly with commercial banks or investment banks in Malaysia. (2) Financial services associated with lending to residents in any currency in excess of an equivalent of RM25 million must be undertaken jointly with commercial banks or investment banks in Malaysia. (3) Entry as a non-bank (12) is limited to: (a) foreign financial institutions through the establishment of a locally incorporated joint venture company and aggregate foreign shareholding in such company shall not exceed 30 per cent; or (b) a representative office. Representative offices can only undertake research and liaison services. Provision of factoring services by a	(1) None (2) None (3) Foreign-controlled banking institutions in Malaysia are allowed to extend credit facilities (including factoring and leasing) up to a maximum of 50 per cent of the total credit facilities obtained by non-resident controlled companies from banking institutions. For commercial banks, unbound for	

mortgage credit, factoring, and financing of commercial transactions	commercial bank requires the setting up of a separate entity and shareholding by a foreign-controlled commercial bank shall not exceed 30 per cent. Investment banks are not permitted to provide consumer credit and home mortgages. Only commercial banks are permitted to provide overdraft facilities. Offshore banks and offshore investment banks are permitted to lend in foreign currencies only. (4) For banks, unbound except as indicated in the Financial Services Horizontal Commitments. For non-banks, unbound except one foreign national for a management post which is not the Chief Executive Officer post, for each establishment. For each representative office of a non-bank, two foreign nationals subject to only one foreign national for the two top posts. Entry shall be limited to a maximum period of five years.	branching (including off-premises Automated Teller Machines) and networking with Automated Teller Machines in Malaysia. (4) For banks, unbound except as indicated in the Financial Services Horizontal Commitments. For non-banks, unbound except for the categories of natural persons referred to under market access.	
Financial leasing	(1) Leasing services to residents in any currency must be undertaken jointly with leasing companies or investment banks in Malaysia. (2) Leasing services to residents in any currency must be undertaken jointly with leasing companies or investment banks in Malaysia. (3) Provision of leasing services by a commercial bank requires the setting up of a separate entity and shareholding by a foreign- controlled commercial bank shall not exceed 49 per cent. Entry as a non-bank is limited to: (a) foreign financial institutions through the establishment of a locally incorporated joint venture company and aggregate foreign shareholding in such company shall not exceed 49 per cent; or (b) a representative office. Representative offices can only undertake research and liaison services. Entry is permitted through the establishment of a branch or subsidiary in Labuan by reputable foreign leasing companies. Such offshore entity can only transact in foreign currencies. Offshore banks and offshore investment banks are permitted to carry on financial leasing business in foreign currencies only. (4) Unbound except two foreign nationals, one for a management post which is not the Chief Executive Officer post and one technical post, for each establishment. For each representative office, two foreign nationals subject to one foreign national for the two top posts. Entry shall be limited to a maximum period of five years. For offshore leasing companies, unbound except for presence of natural persons in respect of supply of a service through the mode of commercial presence.	(1) None (2) None (3) None (4) Unbound except for the categories of natural persons teferred to under market access. For offshore leasing companies, unbound except for presence of natural persons in respect of supply of a service through the mode of commercial presence.	

(12) Means any non-bank for scheduled businesses as referred to in Malaysia's Schedule of Specific Commitments under GATS.

	(1) Electronic fund transfer system requires approval. (2) None (3) Offshore banks are permitted to extend	(1) None (2) None (3) For commercial banks, unbound for branching (including off- premises Automated Teller	

All payment and money transmission services, namely credit and debit cards, travellers cheques and bankers drafts	payment and money transmission services to non-residents only. Only commercial banks are permitted to issue credit cards or debit cards, or to provide checking account services. Sale or purchase of foreign currency and purchase of travellers cheques other than by commercial banks require money changer's licence. Entry is limited to establishment of a locally incorporated joint venture company and aggregate foreign shareholding in such company shall not exceed 30 per cent. (4) For banks, unbound except as indicated in the Financial Services Horizontal Commitments. For non-banks, unbound except one foreign national for a management post which is not the Chief Executive Officer post for each establishment. Entry shall be limited to a maximum period of five years.	Machines) and networking with Automated Teller Machines in Malaysia. Branching (including dispensers) is permitted for travellers cheques companies with foreign shareholding not exceeding 30 per cent. (4) For banks, unbound except as indicated in the Financial Services Horizontal Commitments. For non-banks, unbound except for the category of natural persons referred to under market access.	
Charge cards	(1) None (2) None (3) Entry is limited to establishment of a company incorporated in Malaysia. Approval of the Central Bank is required. (4) Unbound except two senior managers for each establishment. Entry shall be limited to a maximum period of five years.	(1) None (2) None (3) None (4) Unbound except for the category of natural persons referred to under market access.	
Guarantees and commitments	(1) None except banks established in Malaysia may be given the right of first refusal. (2) None except banks established in Malaysia may be given the right of first refusal. (3) None (4) Unbound except as indicated in the Financial Services Horizontal Commitments herein, and in the Horizontal Commitments in the Schedule of Malaysia in Annex 4 (Schedules of Specific Commitments on the Movement of Natural Persons).	(1) None (2) None (3) None (4) Unbound except as indicated in the Financial Services Horizontal Commitments herein, and in the Horizontal Commitments in the Schedule of Malaysia in Annex 4 (Schedules of Specific Commitments on the Movement of Natural Persons).	
Money and foreign exchange broking services	(1) Broking services, involving the Ringgit and financial instruments issued in Malaysia must be effected through authorised dealers and money and foreign exchange brokers incorporated in Malaysia. (2) Broking services, involving the Ringgit and financial instruments issued in Malaysia must be effected through authorised dealers and money and foreign exchange brokers incorporated in Malaysia. (3) Entry is limited to: (a) equity participation in existing institutions (13) and aggregate foreign shareholding in such institutions shall not exceed 30 per cent; or (b) the establishment of a branch or subsidiary, by a money and foreign exchange broker, registered or incorporated in Labuan. Money and foreign exchange broking services by offshore entities are confined to foreign currencies only. (4) Unbound except for offshore money and foreign exchange brokers. For	(1) None (2) None (3) None (4) Unbound except for offshore money and foreign exchange brokers. For offshore money and foreign exchange brokers, unbound except for presence of natural persons in respect of supply of a service through the mode of commercial presence.	

	offshore money and foreign exchange brokers, unbound except for presence of natural persons in respect of supply of a service through the mode of commercial presence.		

(13) Refers to the existing institutions specified in Malaysia's Schedule of Specific Commitments under GATS.

Trading for own account or account of customers in the following: (a) money market instruments; (b) foreign exchange; (c) transferable securities; (d) exchange rate and interest rate instruments; (e) derivative products, including futures and options; and (f) other negotiable instruments, including bullion.	(1) Dealing in securities for account of customers is limited to securities traded on recognised stock exchanges. Dealing in derivatives for account of customers is limited to derivatives contracts traded on the derivatives market of a Specified Exchange and are not contracts prohibited by the Malaysian regulatory authorities. (2) None (3) Transactions by offshore banks and offshore investment banks in Labuan must be conducted in foreign currencies, except for the sale or purchase of currencies with authorised banks in Malaysia. Transactions by offshore banks and offshore investment banks in Labuan for own account are limited to instruments created and issued by offshore companies in Labuan and foreign companies abroad. Trading for accounts of customers by offshore banks, offshore investment banks, and offshore companies in Labuan is confined to non-resident customers and in instruments created and issued by offshore companies in Labuan and foreign companies abroad. Trading in shares of Malaysian companies by offshore banks, offshore investment banks, and offshore companies in Labuan is confined to non-resident customers who are not offshore companies registered or incorporated in Labuan. Only commercial banks, offshore banks, and offshore investment banks are permitted to trade in foreign currency. None for trading for own account in: (a) securities that are listed on the Malaysian stock exchange; and (b) standardised derivatives listed on the Malaysian derivatives exchange. Trading for accounts of customers by a non-bank in securities that are listed on the Malaysian stock exchange is only permitted through equity participation in an_ existing locally incorporated company licensed by the Securities Commission Malaysia to deal in securities. Aggregate foreign shareholding in such a company is limited to 49 per cent. Authorisation will not be granted unless the application is determined, by the Securities Commission Malaysia, to be in the best interest of Malaysia. Authorisation includes grant of license, registration or approval, as the case may be. Trading for accounts of customers by a non-bank in standardised derivatives that are listed on the Malaysian derivatives exchange is only permitted through equity participation in an_ existing locally incorporated company or establishment of a_ locally incorporated company licensed by the Securities Commission Malaysia to deal in derivatives. Aggregate foreign shareholding in such a company is limited to 30 per cent. Authorisation will not be granted unless the application is determined, by the Securities Commission Malaysia, to be in the best interest of Malaysia. Authorisation includes grant of license, registration or approval, as the case may be. (4) For banks, unbound except as indicated in the Financial Services Horizontal Commitments. For non-banks, unbound except as indicated in the Horizontal Commitments of the Schedule of Malaysia in	(1) None (2) None (3) None (4) For banks, unbound except as indicated in the Financial Services Horizontal Commitments. For non-banks, unbound except as indicated in the Horizontal Commitments of the Schedule of Malaysia in Annex 4 (Schedules of Specific Commitments on the Movement of Natural Persons).	

	Annex 4 (Schedules of Specific Commitments on the Movement of Natural Persons).		
Services related to the issues of all kinds of securities and placement as agents (whether publicly or privately) (excluding issuing and rating houses)	(1) Participation in issues and services related to such issues requires authorisation. (2) Participation in issues and services related to such issues requires authorisation. (3) Participation by offshore banks and offshore investment banks in Labuan is limited to non-resident customers and for issues of securities outside Malaysia. Only persons who are authorised by the Securities Commission Malaysia and/or the Malaysian stock exchange are permitted to make submissions related to the issues of securities and offer services related to the issues of securities and placement as agents. Participation by a non-bank is permitted only through equity participation in an existing locally incorporated company licensed by the Securities Commission Malaysia to deal in securities. Aggregate foreign shareholding in such a company is limited to 49 per cent. Authorisation will not be granted unless the application is determined, by the Securities Commission Malaysia, to be in the best interest of Malaysia. Authorisation includes grant of licence, registration or approval, as the case may be. Unbound for appointment as principal dealers. (4) For banks, unbound except as indicated in the Financial Services Horizontal Commitments. For non-banks, unbound except as indicated in the Horizontal Commitments of the Schedule of Malaysia in Annex 4 (Schedules of Specific Commitments on the Movement of Natural Persons).	(1) None (2) None (3) None (4) For banks, unbound except as indicated in the Financial Services Horizontal Commitments. For non-banks, unbound except as indicated in the Horizontal Commitments of the Schedule of Malaysia in Annex 4 (Schedules of Specific Commitments on the Movement of Natural Persons).	
Underwriting	(1) Commercial presence is required (2) Authorisation is required (3) Participation as a non-bank is only permitted through equity participation in an existing locally incorporated company licensed by the Securities Commission Malaysia to deal in securities. Aggregate foreign shareholding in such a company is limited to 49 per cent. Authorisation will not be granted unless the application is determined, by the Securities Commission Malaysia, to be in the best interest of Malaysia. Authorisation includes grant of licence, registration, or approval, as the case may be. Commercial banks are permitted to underwrite corporate bonds only. Offshore banks and offshore investment banks are permitted to underwrite foreign currency denominated securities created and issued by offshore companies in Labuan and foreign companies abroad. (4) For commercial banks, investment banks, offshore banks, and offshore investment banks, unbound except as indicated in the Financial Services Horizontal Commitments. For non-banks, unbound except as indicated in the Horizontal Commitments of the Schedule of Malaysia in Annex 4 (Schedules of Specific Commitments on the Movement of	(1) Unbound (2) None (3) None (4) For commercial banks, investment banks, offshore banks, and offshore investment banks, unbound except as indicated in the Financial Services Horizontal Commitments. For non-banks, unbound except as indicated in the Horizontal Commitments of the Schedule of Malaysia in	

	Natural Persons).	Annex 4 (Schedules of Specific Commitments on the Movement of Natural Persons).	
Asset management as follows: (a) cash or portfolio management; (b) all forms of collective investment management; and (c) custodial and depository services.	(1) Commercial presence is required. (2) None (3) Asset management by offshore banks, offshore investment banks and offshore companies is confined to non-resident customers and foreign currency assets. Asset management by offshore banks, offshore investment banks and offshore companies in Malaysian equities or equity linked investments is confined to non-residents which are not offshore companies registered in Labuan. Asset management by a commercial bank requires establishment as a separate entity. Shareholding by a foreign-controlled commercial bank shall not exceed 30 per cent. Entry as a non-bank to undertake fund management activities is only permitted through equity participation in an existing locally incorporated company or establishment of a locally incorporated company licensed by the Securities Commission Malaysia to carry on fund management activities. Aggregate foreign shareholding in such a company is limited to 30 per cent. Authorisation will not be granted unless the application is determined, by the Securities Commission Malaysia, to be in the best interest of Malaysia. Authorisation includes grant of licence, registration or approval, as the case may be. (4) For banks, unbound except as indicated in the Financial Services Horizontal Commitments. For non-banks, unbound except as indicated in the Horizontal Commitments of the Schedule of Malaysia in Annex 4 (Schedules of Specific Commitments on the Movement of Natural Persons).	(1) None (2) None (3) None (4) For banks, unbound except as indicated in the Financial Services Horizontal Commitments. For non-banks, unbound except as indicated in the Horizontal Commitments of the Schedule of Malaysia in Annex 4 (Schedules of Specific Commitments on the Movement of Natural Persons).	
Advisory, intermediation, and other auxiliary financial services, including credit reference and _ analysis,	(1) Commercial presence is required. (2) Services other than investment and portfolio advice to residents must be undertaken jointly with commercial banks in Malaysia. (3) Entry as a non-bank is only permitted through: (a) equity participation in an existing locally incorporated company or establishment of a locally incorporated company licensed by the Securities Commission Malaysia to carry on corporate finance advisory activities. Aggregate foreign shareholding in such a company is limited to 30 per cent; (b) equity participation in an existing locally incorporated company or establishment of a locally incorporated company licensed by the Securities Commission Malaysia to carry on financial planning activities. Aggregate foreign shareholding in such a company is limited to 49 per cent; (c) equity participation in an existing locally incorporated company or establishment of a locally incorporated company licensed by the Securities Commission Malaysia to carry on investment advisory activities. Aggregate foreign shareholding in such a company is limited to 30 per cent; or (d) a representative office. Representative offices (including those of commercial banks, investment banks and securities companies) are permitted to	(1) None (2) None (3) None (4) For banks, unbound except as indicated in the Financial Services Horizontal Commitments. For non-banks, unbound except as indicated in the	

investment advice on acquisitions, and corporate restructuring and strategy	undertake information research and liaison services only. Representative offices are not permitted to publish and circulate research work in Malaysia. Authorisation to carry on the activities as mentioned in (a), (b) and (c) above will not be granted unless the application is determined, by the Securities Commission Malaysia, to be in the best interest of Malaysia. Authorisation includes grant of licence, registration or approval, as the case may be. Offshore banks, offshore investment banks and offshore companies in Labuan can only provide services to non-resident customers. (4) For banks, one specialist or expert per organisation. For non-banks, unbound except as indicated in the Horizontal Commitments of the Schedule of Malaysia in Annex 4 (Schedules of Specific Commitments on the Movement of Natural Persons). For each representative office, three foreign nationals are subject to only one foreign national for the two top posts and the other two for managerial-level posts. Entry shall be limited to a maximum period of five years.	Horizontal Commitments of the Schedule of Malaysia in Annex 4 (Schedules of Specific Commitments on the Movement of Natural Persons).	
Operational headquarters (OHQ) for financial sector (provides services to commercial and investment banking institutions in activities relating to work carried out in Malaysia for its offices and related companies outside Malaysia, pertaining to general management and administration, business planning, technical support, marketing control and sales promotion planning, training and personnel management, provision of treasury and fund	(1) Unbound* (2) Unbound* (3) Only through a locally incorporated wholly foreign- owned company. A foreign-owned company, a regional office of a foreign- owned company which transfers its OHQ services to Malaysia, a regional office of a foreign-owned company established in Malaysia and a foreign-owned company which is already incorporated in Malaysia, may seek to qualify as an OHQ. An OHQ must operate in Malaysia and fulfil the following criteria: (a) carry out at least three of the OHQ service activities; (b) have a sizable network of companies outside Malaysia which includes the parent company or its head office and related companies; (c) have a well-established foreign-owned company which is sizeable in terms of assets and employees; (d) have a network of companies with a substantial number of Qualified executives, professionals, technical, and other supporting personnel; (e) be able to make decisions independently without consultation with its head office or parent company located outside Malaysia; and (f) be able to contribute to the Malaysian economy by: (i) using services such as legal, accounting etc. provided by Malaysians; (ii) creating job opportunities for Malaysians; and (iii) enabling greater inflow of foreign funds. (4) Unbound except one specialist or expert per organisation subject to the following conditions: (a) such persons must possess knowledge at an advanced level of continued expertise and must possess proprietary knowledge of the establishment's new service products and technology, research equipment and techniques, or management; and (b) entry shall be limited to a period of five years which may be renewed.	(1) Unbound* (2) None (3) None (4) None	

management services, and research and development)			
Securities broking services	(1) Trades on Malaysian stock exchanges must be transacted through locally incorporated companies in Malaysia which are participating organisations of the stock exchange. (2) Trades on Malaysian stock exchanges must be transacted through locally incorporated companies in Malaysia which are participating organisations of the stock exchange. (3) Entry as a non-bank is only permitted through equity participation in an existing locally incorporated company licensed by the Securities Commission Malaysia to deal in securities. Aggregate foreign shareholding in such a company is limited to 49 per cent. Authorisation will not be granted unless the application is determined, by the Securities Commission Malaysia, to be in the best interest of Malaysia. Authorisation includes grant of license, registration or approval, as the case may be. Representative offices (including those of commercial banks, investment banks and securities companies) are permitted to undertake information research and liaison services only. Representative offices are not permitted to publish and circulate research work in Malaysia. For stockbroking companies, unbound except as indicated in the Horizontal Commitments of the Schedule of Malaysia in Annex 4 (Schedules of Specific Commitments on the Movement of Natural Persons). For each representative office, two foreign nationals subject to only one foreign national for the two top posts. Entry shall be limited to a maximum period of five years.	(1) None (2) None (3) None (4) Unbound except for the categories of natural persons teferred to under market access.	
Commodity futures broking services	(1) Trades on any Malaysian derivatives exchange must be conducted through locally incorporated companies which are trading participants of the derivatives exchange. (2) Trades on any Malaysian derivatives exchange must be conducted through locally incorporated companies which are trading participants of the derivatives exchange. (3) Entry as a non-bank is only permitted through: (a) equity participation in an existing locally incorporated company or establishment of a locally incorporated company licensed by the Securities Commission Malaysia to deal in derivatives. Aggregate foreign shareholding in such a company is limited to 30 per cent. Authorisation will not be granted unless the application is determined, by the Securities Commission Malaysia, to be in the best interest of Malaysia. Authorisation includes grant of licence, registration or approval, as the case may be; or (b) a representative office. Representative offices (including those of commercial banks, investment banks and securities companies) are permitted to undertake information research and liaison services only. Representative offices are not permitted to publish and circulate research work in Malaysia. (4) Unbound except one foreign national for a management post per establishment, subject to market test.	(1) None (2) None (3) None (4) Unbound except for the category of natural persons referred to under market access.	
B. INSURANCE SERVICES			

Direct insurance (non-life)	(1) Soliciting and advertising in Malaysia are not allowed. Approval of the Central Bank is required for direct placement abroad of insurance of: (a) movable or immovable property located in Malaysia, including any ship or aircraft registered in Malaysia; and (b) liability of residents to third party. Approval will be granted if such insurance is not available from direct insurance companies in Malaysia. (2) Approval of the Central Bank is required for direct placement abroad of insurance of: (a) movable or immovable property located in Malaysia, including any ship or aircraft registered in Malaysia; and (b) liability of residents to third party. Approval will be granted if such insurance is not available from direct insurance companies in Malaysia. (3) Only permitted through direct insurance companies. Offshore direct insurance companies in Labuan are not permitted to accept direct insurance of Malaysian risks. (4) Unbound except as indicated in the Financial Services Horizontal Commitments	(1) None (2) None (3) Branching is permitted for direct insurance companies with aggregate foreign shareholding of less than 50 per cent. Direct insurance companies are permitted to maintain their existing network of branches (14). Unbound for special assistance to Malaysian-owned direct insurance companies to promote their development. (4) Unbound except as indicated in the Financial Services Horizontal Commitments.	
Direct insurance (life)	(1) Unbound (2) Unbound (3) Only permitted through direct insurance companies. Investment-linked insurance business and new life insurance products provided by direct insurance companies require approval. Offshore direct insurance companies in Labuan are not permitted to underwrite life insurance of residents. This limitation does not apply to ordinary life insurance of high net worth residents by offshore direct insurance companies in Labuan. (4) Unbound except as indicated in the Financial Services Horizontal Commitments.	(1) Unbound (2) Unbound (3) Branching is only permitted for direct insurance companies with aggregate foreign shareholding of less than 50 per cent. Direct insurance companies are permitted to maintain their existing network of branches (15). Unbound for special assistance to Malaysian-	

		owned direct insurance companies to promote their development. (4) Unbound except as indicated in the Financial Services Horizontal Commitments.	
Reinsurance and retrocession (non-life)	(1) Outward reinsurance is permitted only if local capacity is not available. (2) Outward reinsurance is permitted only if local capacity is not available. (3) Obligation on all insurers other than offshore direct insurance and offshore reinsurance companies to optimise national retention capacity before any outward reinsurance. Unbound for new licences. Aggregate foreign shareholding in the Malaysian Reinsurance Berhad shall not exceed 30 per cent. Entry as an offshore reinsurance company is confined to Labuan. (4) Unbound except as indicated in the Financial Services Horizontal Commitments.	(1) Voluntary cession up to 30 per cent of each class of non-life reinsurance business to the Malaysian Reinsurance Berhad. Unbound for fiscal incentives to promote reinsurance in Malaysia. (2) Voluntary cession up to 30 per cent of each class of non-life reinsurance business to the Malaysian Reinsurance Berhad. Unbound for fiscal incentives to promote reinsurance in Malaysia. (3) Unbound for measures granting special position to the Malaysian Reinsurance Berhad. (4) Unbound except as indicated in the Financial Services Horizontal	

		Commitments. For offshore reinsurance companies, unbound except as indicated in the Financial Services Horizontal Commitments.	
Reinsurance and retrocession (life)	(1) Outward reinsurance is permitted only if local capacity is not available. (2) Outward reinsurance is permitted only if local capacity is not available. (3) National retention capacity is required to be optimised before any outward reinsurance by: (a) direct life insurance and life reinsurance companies in Malaysia; and (b) offshore direct life insurance and offshore life reinsurance companies which are permitted to insure or reinsure life insurance of high net worth residents. Unbound for new licences. Aggregate foreign shareholding in the Malaysian Life Reinsurance Group Berhad shall not exceed 30 per cent. Entry as an_ offshore reinsurance company is confined to Labuan. (4) Unbound except as indicated in the Financial Services Horizontal Commitments.	(1) Unbound for fiscal incentives to promote reinsurance in Malaysia. (2) Unbound for fiscal incentives to promote reinsurance in Malaysia. (3) None (4) Unbound except as indicated in the Financial Services Horizontal Commitments. For offshore reinsurance companies, unbound except as indicated in the Financial Services Horizontal Commitments.	
Insurance intermediation - insurance broking (excluding agency)	(1) Direct insurance broking services can only be provided to offshore companies in Labuan. (2) Reinsurance broking is permitted. Direct insurance broking services can only be provided to offshore companies in Labuan. Reinsurance broking is permitted. (3) Unbound for onshore insurance broking. Broking of direct insurance of Malaysian risks by offshore insurance brokers is not permitted. This limitation does not apply to broking of reinsurance of Malaysian risks. (4) Unbound except as indicated in the Financial Services Horizontal Commitments.	(1) None (2) None (3) None (4) Unbound except as indicated in the Financial Services Horizontal Commitments.	
Insurance	(1) Insurance underwriting and insurance management are not permitted. (2) Insurance underwriting and insurance management are not permitted. (3) Unbound for onshore	(1) None (2) None (3) None (4) Unbound	

intermediation - insurance underwriting and insurance management	insurance underwriting and insurance management. An offshore insurance underwriting manager is not permitted to provide services to any person other than offshore insurance companies in Labuan. An offshore insurance manager is permitted to provide insurance management services to persons other than residents. (4) Unbound except as indicated in the Financial Services Horizontal Commitments.	except as indicated in the Financial Services Horizontal Commitments.	
Services auxiliary to insurance as follows: (a) consultancy (excludes insurance agency services to insurance industry); (b) actuarial risk assessment; (c) risk management; and (d) maritime loss adjusting.	(1) Actuarial services can only be provided to offshore insurance companies and offshore reinsurance companies in Labuan. (2) None (3) Limited to the establishment of: (a) locally incorporated companies; (b) branches; or (c) partnerships. Offshore companies are not permitted to provide services to Malaysian residents. (4) Unbound except for presence of natural persons in respect of supply of a service through the mode of commercial presence.	(1) None (2) None (3) None (4) Unbound except for presence of natural persons in respect of supply of a service through the mode of commercial presence.	

(14) Refers to the network of branches specified in Malaysia's Schedule of Specific Commitments under GATS.

(15) Refers to the network of branches specified in Malaysia's Schedule of Specific Commitments under GATS.

ANNEX 4. SCHEDULE OF SPECIFIC COMMITMENTS ON THE MOVEMENT OF NATURAL PERSONS

ANNEX 4. SCHEDULE OF SPECIFIC COMMITMENTS ON THE MOVEMENT OF NATURAL PERSONS. AUSTRALIA

1. This Schedule sets out Australia's commitments in accordance with Chapter 9 (Movement of Natural Persons). This Schedule and Chapter 9 (Movement of Natural Persons) comprise the entirety of Australia's commitments in respect of the temporary entry and temporary stay of natural persons.

2. The Schedules of other Parties shall not be used to interpret Australia's commitments or obligations under Chapter 9 (Movement of Natural Persons) or other Chapters of this Agreement.

Description of Category	**Conditions and Limitations (including length of stay)**
A. Business Visitors	
Business visitors being natural persons seeking to travel to Australia for business purposes, whose remuneration and financial support for the duration of the visit must be derived from sources outside Australia and who must not engage in making direct sales to the general public or in supplying the services themselves. Business visitors	

comprise:	
(i) Service sellers, as business visitors being natural persons not based in Australia who are sales representatives of a service supplier and are seeking temporary entry for the purpose of negotiating for the sale of services or entering into agreements to sell services for that service supplier.	Temporary entry is for an initial stay of six months up to a maximum of 12 months.
(ii) Business visitors, being natural persons seeking to travel to Australia for the purpose of participating in business negotiations or meetings.	Temporary entry is for periods of stay up to a maximum of three months.
(iii) Business visitors, being natural persons who are seeking to travel to Australia for business purposes, including investment purposes.	Temporary entry is for periods of stay up to a maximum of three months.
(iv) Business visitors, being natural persons who are seeking entry for the purposes of negotiating the sale of goods where such negotiations do not involve direct sale to the general public.	Temporary entry is for periods of stay up to a maximum of three months.
B. Intra-Corporate Transferees	
(i) Executives and Senior Managers being natural persons who are employees of an enterprise of another Party operating lawfully and actively in Australia, and who will be responsible for the entire or a substantial part of the enterprise's operations in Australia, receiving general supervision or direction principally from higher level executives, the board of directors or stockholders of the enterprise, including directing the enterprise or a department or subdivision of it; supervising and controlling the work of other supervisory, professional or managerial employees; and having the authority to establish goals and policies of the department or subdivision of the enterprise.	Temporary entry and temporary stay of such natural persons is subject to employer sponsorship. Employer sponsorship requirements, including eligible occupations, may change from time to time. Full details of employer sponsorship requirements, including eligible occupations, are available on the website of the Australian govemment department responsible for immigration matters: http://www. homeaffairs.gov.au/ Temporary entry is for an initial period of stay of up to four years, with the possibility of further stay up to a maximum stay of 14 years.
(ii) Specialists being natural persons with advanced trade, technical or professional skills and experience who are employees of an enterprise of another Party operating lawfully and actively in Australia, who are assessed as having the necessary qualifications, skills and work experience accepted as meeting the domestic standard in Australia for their nominated occupation, and who have been employed by that employer for not less than two years immediately preceding the date of the application for temporary entry. A specialist may include members of a licensed profession.	Temporary entry and temporary stay of such natural persons is subject to employer sponsorship. Employer sponsorship requirements, including eligible occupations, may change from time to time. Full details of employer sponsorship requirements, including eligible occupations, are available on the website of the Australian govemment department responsible for immigration matters: http://www. homeaffairs.gov.au/ Temporary entry is for periods of stay up to two years, with the possibility of further stay.
c. Independent Executives	

Independent executives being natural persons whose work responsibilities match the descriptionset out below and who intend, or are responsible for, the establishment in Australia, of a new branch or representative office of an enterprise which has its head of operations in the territory of another Party and which has no other branch or representative office in Australia. Independent executives will be responsible for the entire or a substantial part of the enterpriseâs operations in Australia, receiving general supervision or direction principally from higher level executives, the board of directors or stockholders of the enterprise, including directing the enterprise or a department or subdivision of it; supervising and controlling the work of other supervisory, professional or managerial employees; and having the authority to establish goals and policies of the department or subdivision of the enterprise.	Temporary entry and temporary stay of such natural persons is subject to employer sponsorship. Employer sponsorship requirements, including eligible occupations, may change from time to time. Full details of employer sponsorship requirements, including eligible occupations, are available on the website of the Australian govemment department responsible for immigration matters: http://www. homeaffairs.gov.au/ Temporary entry is for periods of stay up to a maximum of two years.
D. Contractual Service Suppliers	
Contractual service suppliers (including Independent Professionals or Specialists) Contractual service suppliers being natural persons with trade, technical or professional skills and experience who are assessed as having the necessary qualifications, skills and work experience accepted as meeting the domestic standard in Australia for their nominated occupation, and who are: (i) employees of an enterprise of another Party that has concluded a contract for the supply of a service within Australia and that does not have a commercial presence within Australia; or (ii) engaged by an enterprise lawfully and actively operating in Australia in order to supply a service under a contract within Australia.	Temporary entry and temporary stay of such natural persons is subject to employer sponsorship. Employer sponsorship requirements, including eligible occupations, may change from time to time. Full details of employer sponsorship requirements, including eligible occupations, are available on the website of the Australian govemment department responsible for immigration matters: http://www. homeaffairs.gov.au/ Labour market testing may be required for some occupations, to the extent that this is not inconsistent with Australia's commitments under the WTO. Temporary entry is for periods of stay up to 12 months, with the possibility of further stay.
E. Spouses	
Spouses of temporary entrants covered by (B), (C) and (D) are accorded full working rights where the stay of those temporary entrants is 12 months or more	For such spouses, temporary entry and temporary stay is for the same period as for the temporary entrant.

ANNEX 4. SCHEDULE OF SPECIFIC COMMITMENTS ON THE MOVEMENT OF NATURAL PERSONS. BRUNEI DARUSSALAM.

1. This Schedule sets out Brunei Darussalam's commitments under Chapter 9 (Movement of Natural Persons) in relation to the temporary entry and temporary stay of natural persons of another Party which apply only in relation to the categories of natural persons set out in the table of commitments below.

2. For the categories of natural persons set out in this Schedule, Brunei Darussalam specifies below terms, conditions, limitations and qualifications in relation to the temporary entry and temporary stay of natural persons of a Party in the territory of Brunei Darussalam.

3. Brunei Darussalam reserves the right to adopt or maintain any measure, condition or commitment in respect of requirements of requisite visa for temporary entry and temporary stay as provided under Article 5 (Schedules of Specific

Commitments on the Movement of Natural Persons) of Chapter 9 (Movement of Natural Persons) for the categories of intra-corporate transferees as specified in the table of commitments below.

Conditions and Limitations	**Description of Category (including length of stay)**
A. Intra-Corporate Transferees	
Definition: **Executives, managers or specialists:** (i) who are employees of a firm that provides services within Brunei Darussalam through a branch, subsidiary or affiliate established in Brunei Darussalam; and (ii) who have been in the prior employment of their firms outside Brunei Darussalam for a period of not less than one year immediately preceding the date of their application for admission and who are one of the following: **Executives**: Definition: Natural persons within an organisation who primarily direct the management of the organisation, exercise wide latitude in decision- making and receive only general supervision or direction from higher- level executives, the board of directors or stockholders of the business. Executives would not directly perform tasks related to the actual provision of the service or services of the organisation. **Managers**: Definition: Natural persons within an organisation who primarily direct the organisation, or a department of sub- division of the organisation, supervising and controlling the work of other supervisory, professional or managerial employees, who have the authority to hire and fire or commend hiring, firing or other personnel actions (such as promotion or leave authorisation), and exercise discretionary authority over day-to-day operations. This does not include first-line supervisors, unless the employees supervised are professionals, nor does it include employees who primarily perform tasks necessary for the provision of these services. **Specialists**: Definition: Naturals persons within an organisation who possess knowledge at an advance level of expertise and who possess priority knowledge of the organisationâs service, research equipment, techniques or management skills (Specialists may include members of licensed professions).	Entry for these intra-corporate transferees is limited to a three-year period that may be extended for up to two additional years for a total period not exceeding five years. Entry shall be granted subject to terms, conditions or limitations as prescribed under Brunei Darussalam's immigration laws and regulations. Entry shall only be granted for intra- corporate transferees supplying a service listed in Appendix A.

APPENDIX A. SECTORAL SPECIFIC COMMITMENTS FOR INTRA-CORPORATE TRANSFEREES

Sector or Subsector	**Conditions and Limitations**
Auditing Services; Architectural Services; Engineering Services; Integrated Engineering Services, which is only applicable to the following sectors: - for Transportation Infrastructure Tumkey Projects; - for Water Supply and Sanitation Works - Tumkey Projects; - for the Construction of Manufacturing - Tumkey Projects; and - for Other Tumkey Projects; Urban Planning and Landscape architectural services; Medical and Dental Services; Veterinary Services; Computer and Related Services; Research and Development Services; Rental or Leasing Services Relating to Aircraft without operators; Other Business Services; Courier Services; Telecommunication Services;	In the case of architects: The licensed practicing architects should have recognised academic and professional qualifications and be registered as a "qualified person" with the Ministry of Development in Brunei

Construction Work for Buildings; Construction Work for Civil Engineering; Assembly and Erection of Prefabricated Constructions; Installation Work; Building Completion and Finishing Work; Pre-erection work at Construction Site; Special Trade Construction; Renting Services related to Equipment for Construction or Demolition of Building or Civil Engineering Works with Operator; Educational Services; Environmental Services; Financial Services; Health Related and Social Services, except for Social Services; and Transportation Services.	Darussalam. For greater certainty, qualified persons or licensed architects are required to register if they have resided in Brunei Darussalam and practicing with a local licensed architect for a period of one year.

ANNEX 4. SCHEDULE OF SPECIFIC COMMITMENTS ON THE MOVEMENT OF NATURAL PERSONS. CAMBODIA.

1. This Schedule sets out the commitments of Cambodia and the general conditions and limitations goveming those commitments in accordance with Article 5 (Schedules of Specific Commitments on the Movement of Natural Persons) of Chapter 9 (Movement of Natural Persons) in relation to the temporary entry and temporary stay of a natural person of another Party, which apply only in relation to the categories of natural persons set out in this Schedule.

2. Cambodia remains unbound in respect of the entry of natural persons of a Party into, or their temporary stay in, the territory of Cambodia in accordance with Chapter 9 (Movement of Natural Persons), except as set out in the following commitments.

3. For greater certainty, Cambodia reserves the right to adopt or maintain any measure in respect of requirement of requisite visa and the conditions attached to temporary entry and temporary stay under such a visa for each of the categories specified below.

4. In accordance with Article 5 (Schedules of Specific Commitments on the Movement of Natural Persons) of Chapter 9 (Movement of Natural Persons), for the categories of persons set out in this Schedule, Cambodia specifies below any terms, conditions, limitations or qualifications in relation to the supply of a service by a service supplier of another Party through the presence of natural persons of that other Party in the territory of Cambodia.

5. The commitments set out below shall apply to services sectors or subsectors specified in Cambodiaâs Schedule in Annex 2 (Schedules of Specific Commitments for Services), except Restaurants (CPC 642, 643) and International Transport under Maritime Services (Freight and Passengers).

6. With respect to Tourist Guides Services (CPC 7472), notwithstanding the commitments set out below, Cambodian nationality is required for Tourist Guides.

7. For greater certainty, in accordance with Article 9.6 (Most-Favoured-Nation Treatment) and Article 11.5 (Schedules of Specific Commitments) of Chapter 8 (Trade in Services), Cambodia shall not be obliged to make commitments under Article 9.1 (Most-Favoured-Nation Treatment) and Article 11.3 and 11.4 (Schedules of Specific Commitments) of Chapter 8 (Trade in Services).

Categories of Natural Persons	**General Conditions and Limitations, including the length of stay**
A. Business Visitors	
Definition: Natural persons who: - enter Cambodia for the purposes of participating in business meetings, establishing business contacts including negotiations for the sale of services and/or other similar activities; - stay in Cambodia without receiving income from	Entry visa for business visitors shall be valid for a period of 90 days for an

sources within Cambodia; and - do not engage in making direct sales to the general public or supplying services.	initial stay of 30 days, which may be extended.
B. Persons Responsible for Setting up of a Commercial Establishment	
Definition: Natural Persons working in an executive or managerial position, receiving remuneration from a juridical person, as defined below, who are responsible for the setting up, in Cambodia, of a commercial presence of a_ service provider of a Member State, that will support employment of persons described in categories (i), (ii), and (iii) of the Intra-Corporate Transferees definitions.	The natural persons responsible for setting up of a commercial establishment are not subject to a maximum duration of stay.
C. Intra-Corporate Transferees (ICT)	
Definition: Natural persons who have been employed by a juridical person of another Member State for a period of not less than one year and who seek temporary entry to provide services through a branch, subsidiary or affiliate in Cambodia and who are: (i) **Executives**: without requiring compliance with labour market tests, natural persons within an organisation who primarily direct the management of the organisation, exercise wide latitude in decision- making, and receive only general supervision or direction from higher- level executives, the board of directors, or shareholders of the business. Executives would not directly perform tasks related to the actual supply of a service or services of the organisation; (ii) **Managers**: without requiring compliance with labour market tests, natural persons employed by a juridical person and who possess knowledge at an advanced level of expertise or proprietary knowledge of a juridical person product, service, research, equipment, techniques or management, and who primarily direct the organisation or a department of the organisation; supervise and control the work of other supervisory, professional or managerial employees; have the authority to hire and fire or recommend hiring, firing or other personnel actions; and exercise discretionary authority over day-to- day operations. They do not include first-line supervisors, unless the employees supervised are professionals, nor do they include employees who primarily perform tasks necessary for the supply of the service; or (iii) **Specialists**: Natural persons, within an organisation who possess knowledge at an advanced level of continued expertise and who possess proprietary knowledge of the organisation's services, research equipment, techniques or management.	Temporary residency and work permit are required for the natural persons in the categories defined under the Intra-Corporate Transferees. Such pennits are issued for two years and may be renewed annually up to maximum of five years in total.

ANNEX 4. SCHEDULE OF SPECIFIC COMMITMENTS ON THE MOVEMENT OF NATURAL PERSONS. INDONESIA

1. Indonesia's commitments on categories of natural persons and its respective conditions and limitations for the temporary entry and temporary stay, including length of stay, are made in accordance with Article 5 (Schedules of Specific Commitments on the Movement of Natural Persons) of Chapter 9 (Movement of Natural Persons).

2. The Schedule below shall be interpreted in the light of Chapter 9 (Movement of Natural Persons). Natural persons of another Party that fall under the categories specified in the Horizontal Schedule are permitted to enter and stay in Indonesia subject to its applicable conditions and limitations.

3. Where natural persons of another Party in categories permitted to enter and stay with respect to sectors listed in

Appendix B (Specific Commitments for The Presence of Natural Persons) of the Annex 3 (Schedule of Reservations and Non-Conforming Measures for Services of Indonesia), all conditions and limitations specified in each category of the Horizontal Schedule shall also apply, unless otherwise specified.

4. For greater certainty, Indonesia reserves the right to adopt or maintain any measures with respectto categories of natural persons other than those categories listed in this Schedule.

Description of Category	**Conditions and Limitations (including length of stay)**
A. Business Visitor.	
Definition: A natural person staying in Indonesia for the purpose of participating in business meetings, business contacts including negotiations for the sales of services, or other similar activities including those who prepare for the establishment of a commercial presence in Indonesia, attend conferences or give lectures. Such persons must not acquire remuneration from within Indonesia, and must not engage in making direct sales or supplying services to the general public.	Entry and temporary stay are permitted for a period of 60 days, extendable to a maximum of 120 days.
B. Intra-Corporate Transferees	
Director. Definition: A natural person or a group of natural persons entrusted by the shareholders of aservices providing entity with the final overall control and direction of the organisation, and legally responsible to act on behalf of the organisation inside or outside of the court. **Manager**. Definition: A natural person within the organisation who primarily directs the organisation, department, or subdivision, and exercises supervisory and control functions over other supervisory, managerial, or professional staff; does not include first line supervisors unless employees supervised are professionals; does not include employees who primarily perform tasks necessary for the provision of the service. **Technical Expert or Advisor.** Definition: A natural person employed by a service supplier who possesses a standard of high or common (i) qualifications referring to a type of work or trade requiring specific technical knowledge or (ii) knowledge essential or propriety to the service, research equipment, techniques, or management.	Entry and temporary stay are permitted for up to two years and could be extended for a maximum two times subject to two years extension each time. Must be working in a sector listed in Appendix B (Specific Commitments for The Presence of Natural Persons) of the Annex 3 (Schedule of Reservations and Non-Conforming Measures for Services of Indonesia) that is not scheduled as "unbound", and must comply with the additional conditions and limitations set out therein. Any foreign natural persons supplying services are subject to charges levied by the Government. Any foreign natural persons employed in the territory of Indonesia must hold a valid working permit issued by the Ministry of Manpower. Economic needs test applies to managers and technical experts for all sectors unless specified otherwise. Human resources or personnel function must be performed by Indonesian nationals.

ANNEX 4. SCHEDULE OF SPECIFIC COMMITMENTS ON THE MOVEMENT OF NATURAL PERSONS. LAO PDR

1. Lao PDR's commitments under Chapter 9 (Movement of Natural Persons), in relation to the temporary entry and temporary stay of natural persons of a Party into the territory of another Party, apply only in relation to the categories set out below.

2. In accordance with Article 5 (Schedules of Specific Commitments on the Movement of Natural Persons) of Chapter 9 (Movement of Natural Persons), for the categories of persons set out in this Schedule, Lao PDR specifies below any terms, conditions, limitations or qualifications in relation to the temporary entry and temporary stay of those natural persons into the territory of Lao PDR.

3. For all categories of natural persons listed in this Schedule, unless otherwise specified in the Sectoral Section, these horizontal commitments apply to all sectors/subsectors listed in this Schedule, in all cases:

(i) application for labour quota is required in accordance with Article 68 of Labour Law No.43/NA, Date 24 Dec 2013;

(ii) total number of skilled foreign natural persons (using physical labour) of any establishment shall not exceed 15 per cent of the total staff;

(iii) total number of skilled foreign natural persons (using intellectual labour) of any establishment shall not exceed 25 per cent of the total staff;

(iv) if there is a need to hire the number of skilled labour more than the regulation allows, as mentioned above, one should seek for specific consideration or approval from the government.

4. In accordance with applicable domestic laws and regulations and bilateral and multilateral agreements which Lao PDR is a signatory of, foreign skilled workers:

(i) shall obtain working permit from the Government of Lao PDR;

(ii) shall comply with Labour Law and Law on Immigration and Foreigner Management of the Lao PDR; and

(iii) shall comply with Law on Taxation, in terms of taxes and other financial obligations and other relevant regulations on other non-financial requirement.

Description of Category	**Conditions and Limitations (Including length of stay)**
A. Business Visitors	
A natural person seeking to enter or stay in the territory of Lao PDR temporarily, whose remuneration and financial support for the duration of the visit is derived from outside of Lao PDR, (i) as a representative of a goods seller or service supplier, for the purpose of negotiating the sale of goods or supply of services or entering into agreements to sell goods or supply services for that goods seller or service supplier, where such negotiations do not involve direct sale of goods or supply of services to the general public; (ii) as an employee of a juridical person as defined in Category B below only, for the purpose of establishing an investment or setting up a commercial presence, for the juridical person in the territory of another Party; (iii) for the purpose of participating in business negotiations or meetings.	The temporary stay of business visitors is subject to a maximum duration of stay of 90 days.
B. Intra-Corporate Transferees	
Natural persons who have been employed by a juridical person of another Party outside the Lao PDR for a period of not less than one year immediately preceding the request for transfer to the Lao PDR, who seek temporary entry to provide services through commercial establishment of that juridical person in the Lao PDR, who cannot be substituted by Lao PDR nationals, and who fall within one of the following categories: (i) **Executive**: natural persons within an organisation who primarily direct the management of the organisation, exercise wide latitude in decision-making, and receive only general supervision or direction from higher-level executives, the board of directors, or shareholders of the business. Executives would not directly perform tasks related to the actual supply of a service or services of the organisation; and (ii) **Manager**: natural persons who possess knowledge at an advanced level of expertise or proprietary	For the natural persons in the categories defined under intra-corporate transferees, temporary residency and work permit will be issued

knowledge of a juridical entity product, service, research, equipment, techniques, or management, and who primarily direct the organisation or a department of the organisation; supervise and control the work of other supervisory, professional or managerial employees; have the authority to hire and fire or recommend hiring, firming or other personnel actions; and exercise discretionary authority over day-to- day operations. They do not include first-line supervisors, unless the employees supervised are professionals, nor do they include employees who primarily perform tasks necessary for the supply of the service; or (iii) **Specialist**: natural persons within an organisation who possess knowledge at an advanced level of continued expertise and who possess proprietary knowledge of the organisation's services, research equipment, techniques, or management and where there are shortages of Lao PDR nationals with requisite skills.	for one year which may be renewed every six months for up to three years as long as conditions indicated for each category are satisfied.

APPENDIX A. SECTORAL SPECIFIC COMMITMENTS

1. For the purposes of this Appendix, the term âCPCâ means the Provisional Central Product Classification (Statistical Papers Series M No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991). Letters indicated against individual sectors or subsectors and numbers in brackets are references to the Services Sectoral Classification list (MTN.GNS/W/120 dated 10 July 1991).

2. Hotel and other lodging services (CPC 64110) and beverage serving services without entertainment (CPC 64310): No commitment, except that the following persons are permitted to enter and stay in Lao PDR for a period of up to six months, with provision for extension, subject to approval of the competent authority of the Government of Lao PDR: general manager, sales and marketing manager, operation manager, congress manager and tourism consultant.

3. Meal serving services with full restaurant services (CPC 64210) and travel agencies and tour operators services (part of CPC 7471): No commitment, except that the following persons are permitted to enter and stay in Lao PDR for a period of up to six months, with provision for extension, subject to approval of the competent authority of the Government of Lao PDR: general manager, sales and marketing manager, operation manager, congress manager and tourism consultant.

4. Lao PDR extends its commitments under Article 5 (Schedules of Specific Commitments on the Movement of Natural Persons) of Chapter 9 (Movement of Natural Persons) for the temporary entry and temporary stay of natural persons only for business visitors and intra-corporate transferees engaging in the following subsectors:

1. BUSINESS SERVICES

A. Professional Services

(a) Legal services, excluding:

- Participation in legal proceedings in the capacity of defenders or representatives of their clients before the courts of Lao PDR;

- Legal documentation and certification services of the laws of Lao PDR (part of CPC 861)

(b) Accounting, auditing and bookkeeping services (CPC 862)

(c) Taxation consulting services (part of CPC 863)

(d) Architectural services (CPC 8671)

(e) Engineering services (CPC 8672)

(f) Integrated engineering services (CPC 8673)

(g) Urban planning and landscape architectural services (CPC 8674)

B. Computer and Related Services

Computer and related services (CPC 84)

C. Research and Development Services

(a) R&D services on natural sciences and engineering (CPC 851)

(b) Research and experimental development services (CPC 852)

(c) Interdisciplinary R&D services (CPC 853)

E. Rental or Leasing Services without Operators

(d) Leasing or rental services concerning construction machinery and equipment without operator (CPC 83107)

F. Other Business Services

(a) Advertising services:

- Planning, creating and placement services of advertising (CPC 87120)

(b) Market research and public opinion polling services (CPC 864):

- Market research services (CPC 86401)

(c) Management consulting services (CPC 865)

(d) Services related to management consulting (CPC 866)

(e) Technical testing and analysis services (CPC 8676)

(h) Services incidental to mining (CPC 883+ 5115):

- Services incidental to mining (CPC 5115)

(m) Related scientific and technical consulting services (CPC 86751 and 86752 only)

(n) Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment) (CPC 633+8861 -8866):

- Repair of energy equipment (part of CPC 88620)

(q) Packaging services (CPC 876)

(t) Other (CPC 8790): - Specialty design services (CPC 87907)

2. COMMUNICATION SERVICES

B. Courier services

Courier services (CPC 7512) consisting of express delivery services, except for the following services:

(a) The collection, transport, and delivery of domestic and cross-border addressed mail to Post Office (PO) boxes in the following categories:

(i) addressed letters weighing not more than 200 grams;

(ii) small items or packages weighing up to two kilograms;

(b) The collection, transport, and delivery to PO boxes of domestic and international postal parcels weighing up to 20 kilograms;

(c) The provision of PO boxes; and

(d) Issuing of postage stamps.

C. Telecommunication services

The following services (a-o) can be supplied only on a facilities basis, and for public use services:

Basic telecommunication services

(a) Voice telephone services (CPC 7521)

(b) Packet-switched data transmission services (CPC 7523**)

(c) Circuit-switched data transmission services (CPC 7523**)

(d) Telex services (CPC 7523**)

(e) Telegraph services (CPC 7522)

(f) Facsimile services (CPC 7521**+ 7529**)

(g) Private leased circuit services (CPC 7522**+7523**)

(o) Other:

- Terrestrial-based mobile phone services

Value-added telecommunication services

(h) Electronic-mail (CPC 7523**)

(i) Voice mail (CPC 7523**)

(j) Online information and data base retrieval (CPC 7523**)

(k) Electronic data interchange (EDI) (CPC 7523**)

(l) Enhanced or value-added facsimile services, including store and forward, store, and retrieve (CPC 7523**)

(m) Code and protocol conversion

(n) On-line information or data processing (including transaction processing) (CPC 843**)

(o) Other: - Public pay phone services (CPC 75211)

- Electronic message and information services (CPC 75232)

- Paging services (CPC 75291)

- Data and message transmission services (CPC 7523)

3. CONSTRUCTION AND RELATED ENGINEERING SERVICES

A. Construction work for buildings (CPC 512)

B. Construction work for civil engineering (CPC 513)

C. Assembly and erection of prefabricated construction (CPC 514) + Installation work (CPC 516)

D. Building completion and finishing work (CPC 517)

E. Rental services related to equipment for construction or demolition of buildings works with operator (CPC 518)

F. Other:

- Pre-erection work at construction site (CPC 511)

- Special trade construction (CPC 515)

4. DISTRIBUTION SERVICES

B. Wholesale trade services (part of CPC 61111, 6113, 6121)

C. Retailing services (part of CPC 61112, 6113, 6121)

D. Franchising (part of CPC 8929)

5. PRIVATE EDUCATIONAL SERVICES

A. Primary education services (part of CPC 921)

B. Secondary education services**

- Technical and vocational training (Part of CPC 922)

C. Higher education services (CPC 923)

D. Adult education (CPC 924)

E. Other education services (Including foreign language training) (CPC 929)

6. ENVIRONMENTAL SERVICES

A. Sewage services (CPC 9401)

B. Refuse disposal services (CPC 9402)

C. Sanitation and similar services (CPC 9403)

D. Other:

- Nature and landscape protection services (CPC 9406) (Urban area only)

- Cleaning of exhaust gases (CPC 9404)

- Noise abatement services (CPC 9405)

7. FINANCIAL SERVICES

A. All insurance and insurance-related services

Direct insurance

(a) Life, accident and health insurance services (CPC 8121) Life insurance

(b) Non-life insurance (CPC 8129)

(c) Reinsurance and retrocession (CPC 81299*)

(d) Services auxiliary to insurance (including broking and agency services) (CPC 8140) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services

B. Banking and other financial services (excluding insurance)

(a) Acceptance of deposits and other repayable funds from the public (CPC 81115-81119)

(b) Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions (CPC 8113)

(c) Financial leasing (CPC 8112)

(d) All payment and money transmission services including credit, charge and debit cards, travellers cheques, and bankers drafts (CPC 81339**)

(e) Guarantees and commitments (CPC 81199**)

(f) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

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

- foreign exchange:

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

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

- transferable securities;

- other negotiable instruments and financial assets, including bullion.

8. PRIVATE HEALTH RELATED AND SOCIAL SERVICES

Private hospital services (Modern hospital with more than 100 beds in big cities only) (part of CPC 93110)

9. TOURISM AND TRAVEL RELATED SERVICES

A. Hotel and restaurants (incl. catering) (CPC 641-643)

- Hotel and other lodging services (CPC 64110)

- Beverage serving services without entertainment (CPC 64310)

- Meal serving services with full restaurant services (CPC 64210)

B. Travel agencies and tour operators services (Part of CPC 7471)

D. Other:

- Tourism consultancy services

11. TRANSPORT SERVICES

A. Maritime transport services

(a) Passenger transportation (CPC 7211)

(b) Freight transportation (CPC 7212)

(c) Rental of vessels with crew (CPC 7213)

(d) Pushing and towing services (CPC 7214)

(e) Maintenance and repair of vessels (CPC 8868**)

(f) Vessels salvage and re-floating services (not applicable in harbour) (CPC 7454)

B. Internal water way transport

(d) Maintenance and repair of vessels (CPC 8868**)

C. Air transport services

(d) Maintenance and repair of aircraft (CPC 8868**) (part of CPC

(e) Supporting services for air transport (CPC 746)

- Selling and marketing of air transport services

- Computer reservation system (CRS) services

E. Rail transport services

(a) Passenger transportation (CPC 7111)

(b) Freight transportation (CPC 7112)

(c) Pushing and towing services (CPC 7113)

(d) Maintenance and repair of rail transport equipment (CPC 8868**)

F. Road transport services

(b) Freight transportation (CPC 7123)

ANNEX 4. SCHEDULE OF SPECIFIC COMMITMENTS ON THE MOVEMENT OF NATURAL PERSONS. MYANMAR

	Limitations on Market Access	Limitations on National Treatment	Additional Commitments

HORIZONTAL SECTION

All sectors unbound: For a service supplier of another Party who is a natural person of that Party but is not a permanent resident of that Party in Mode 4.

Sector or Subsector

All Sectors

Limitations on Market Access

(4) All foreign enterprises and foreign workers shall abide by

Type of Visa

Business Visa (Single Entry)

- Duration of Stay: 70 days

Business Visa (Multiple Entry)

- Duration of Stay: 3 months

- Duration of Stay: 6 months

- Duration of Stay: 12 months

e-Visa (Business) (Single Entry)

- Duration of Stay 70 days

Extension of Stay Permit

- Up to 3 months/6 months/1year

- Up to 3 months/6 months/1year (Online Application for extension)

Applying for Re-entry Visa

- Single Re-entry Visa (SRV): Up to 6 months

- Multi Journey Special Re-entry Visa (MJSRV): Up to 1 year

- Single Re-entry Visa (SRV) (Online): Up to 6 months

- Multi Journey Special Re-entry Visa (MJSRV) (Online): Up to 1 year

Penalty for Overstay

- From the first day of expiry of Stay Permit up to 90 days: USD 3 per day

- For overstay more than 90 days: USD 5 per day (Penalty fees are changeable according to the domestic regulations)

Applying for extension of Stay Permit for foreigners holding Business Visas, it is previously allowed to extend up to 3 months, 6 months and 1 year. But these restrictions are releasing now. At current time, the application of stay extension from concerning company is verified by respective Ministry and then submitted to Ministry of Immigration and Population (MoIP). MoIP also checks the requested period of stay extension and caries out Stay Permit and Re-entry Visa valid no more than 12 months in line with the existing laws, rules, regulations and procedures.

(4) Myanmar reserves rights to adopt or maintain any measures to protect its essential security interests to another Party including measures in conformity with this Schedule and Myanmarâs Schedule in Annex 3 (Schedules of Reservations and Non-Conforming Measures for Investment). Foreign Labor Law is currently being drafted. Myanmar reserves the full rights to maintain or adopt any measures on Economic Needs Test requirements (ENT) including terms and conditions, limitation, qualification, and other required testing or examination of temporary entry of natural person.

(4) For the purposes of this Schedule, natural persons of another Party do not include permanent residents of that other Party. Myanmar reserves the full rights to maintain or adopt any measures with respect to permanent residents of another Party. Commercial presence of foreign service suppliers or providers and cross-border supply of services is permitted in accordance with the Electronic Transaction Law 2004, the Law Amending the Electronic Transaction Law 2014, the Law Amending the Electronic Transaction Law 2027, the Telecommunication Law 2013, the Law Amending the

Telecommunication Law 2017, the Law Amending the Evidence Act 2015, the Law Protecting the Privacy and Security of Citizens 2017, the Computer Science Development Law 1996.

(4) The Department of Labour under the Ministry of Labour performs registration for overseas workers who have been given the permission together with the commercial presence registered at the Directorate of Investment and Company Administration of Myanmar according to the laws, rules and regulations of Myanmar. The validation of registration is six months.

Limitations on National Treatment

(4) According to Notification No. 47/2018 Ministry of Planning and Finance, non-resident (foreigner) will be subject to a withholding tax is as follows:

Class of income	**Non-resident foreigners**
Interest	15%
Royalties for use of licenses, trade marks, patent rights etc.	15%
Payments under contracts made by State organizations, ministries, Nay Pyi Taw Council, stateowned enterprises, Municipalities and local authorities, formed under any existing laws for procurements and services render	2.5%
Payment for services and procurements provided in Myanmar	2.5%

Tax

According to the Section 3 (k) of the Income Tax Law, it prescribes the Resident foreigners as follows:

(i) in the case of individual, a foreigner who resides in Myanmar for not less than 183 days during the income year;

(ii) in the case of an association of persons other than a company, an association formed wholly or partly with foreigners shareholders;

(iii) in the case of an association of persons other than a company, an association formed wholly or partly with foreigners and where the control, management and decision making of its affairs is situated and exercised wholly in the Republic of the Union of Myanmar.

In this regard, workers and staff who work at least one year in Myanmar and enterprises formed in Myanmar may be assumed as the resident foreigners. According to the Section 19 (c) of the Union Taxation Law, 2022, standard rate personal income taxes is 0-25 per cent.

According to the Section 23 (a) of the Union Taxation Law 2022, the corporate income tax shall be levied 22 per cent on the total of net profit.

According to the Section 30 of the Union Taxation Law 2022, if the income is earned in the foreign currency for other income heading except the heading of capital gains from assets, the income tax shall, in accordance with the provisions in regulation 8 of the income tax regulations, be calculated, on such income and the income tax shall be charged in kyats on citizens and foreigners are residing in the country and shall be charged in the type of currency earned on a foreigners residing abroad.

- A judicial person may perform service to client in Myanmar but are not allowed to practice in Myanmar courts of law.

(b) The commercial presence of foreign services provider shall be subject to the licensing by the govemment authorities concerned.

(c) According to the Transfer of Immoveable Property Restriction Law 1987, foreign organizations and persons are not allowed to own land in Myanmar. However, land may be acquired on long term lease depending on individual circumstance.

- Standard rate of income tax is 22 per cent of net profit, if the income is earned in the foreign currency for other income headings except the heading of capital gains from assets, the income tax shall, in accordance with the provisions in regulation 8 of the income Tax Regulations, be calculated, on such income and the income tax shall be charged in kyats on citizens and foreigners residing in the country and shall be charged in the type of currency earned on a foreigners residing abroad.

In case of the capital gains from selling, exchanging or transferring by any other means, one or more assets in kyats or foreign currency, before deducting reliefs under sections 6 and 6A of the Income Tax Law.

(i) if the company operates in Myanmar oil and gas sector, the income tax shall be levied in the type of currency earned according to the tax rates shown against the capital gains specified as follows:

Capital gains

Income tax rate to be paid

(aa) equivalent 40 per cent: up to 100,000 million kyats

(bb) equivalent 45 per cent: from 100,000 million kyats to 150,000 million kyats

(cc) equivalent 50 per cent: to 150,000 million kyats and above

(ii) the income tax shall be levied 10 per cent in kyats or foreign currency on the capital gains of an individual or an association of persons except the companies operating in Myanmarâs oil and gas sector. In case of a non-resident foreigner, the tax shall be paid in the type of currency earned.

(4) Any expatriate engaged in joint venture, representative offices or other types of judicial person and/or individual services provider shall receive the approval of the respective authority.

Any expatriate entering into Myanmar shall abide the Myanmar Immigration (Emergency Provisions) Act 1947, the Foreigners Act 1846, the Registration of Foreigners Act 1940, the Registration of Foreigners Rules 1948 and Immigration rules, regulations and procedures of Myanmar.

Individual services providers who work with the approval of respective authorities shall register themselves with the Department of Labour under the Ministry of Labour of Myanmar.

The Department of Labour under the Ministry of Labour performs registration for overseas workers who have been given the permission together with the commercial presence registered at the Directorate of Investment and Company Administration of Myanmar according to the laws, rules and regulations of Myanmar. The validation of registration is six months.

Regarding the recognise the educational certificates and technical standard certificate, Myanmar only determines equivalent factor depend on syllabus, contents, volume, time frame. Myanmar needs syllabus, contents, volume, time frame in English of respective countries.

SECTOR-SPECIFIC COMMITMENTS

Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
1. BUSINESS SERVICES			
A. Professional Services			
	(4) Commercial presence of service supplier for this sector may supply services related to this sector in Myanmar. ASEAN Chartered Professional Accountants (ACPA) can provide non-		

b. Accounting, auditing and bookkeeping services	audit services such as Financial accounting, Bookkeeping, Cost and management accounting, Preparation, compilation or reporting of financial statements, Financial management consultancy, Investment consultancy, Tax consultancy, tax filling, tax calculation, Company registration and secretarial service, Liquidation, insolvency and receivership, Accounting system design, development and implementation, Accounting system review and analysis, Intemal audit, Accounting Education establishment, Share valuation advisory, Business valuation advisory and Other accounting related services which shall be determined by Professional Regularity Authority. They have to register at Myanmar Accountancy Council (MAC). Apart from ASEAN countries for commercial presence, the professional accountants from Non- ASEAN countries may perform non- audit services as mentioned above. However, they have to register with the MAC under the Myanmar Accountancy Council law.	(4) As indicated in Market Access	
d. Architectural services (CPC 8671) e. Engineering service (CPC 8672) f. Integrated engineering services (CPC 8673) g. Urban planning and landscape architectural services: Landscape architectural services (CPC 86742)	(4) (a) Subject to the Myanmar Investment Law, Myanmar Labour Laws, Immigration Laws and existing laws and regulations, management, professional and technical experts unless mentioned otherwise are allowed to stay up to one year and extendable there on. (b) Preference for entry and temporary stay of skilled workers from traditional source of supply. (c) Unskilled labour is not allowed in Myanmar. (d) According to the Myanmar Engineer Council Law 2013 and Law Amending the Myanmar Engineer Council Law 2019, Foreign Engineer and Foreign Professional Engineer, who is in compliance with specifications provided in this law, shall apply registration on Registered Limited Engineer (RLE) and Registered Limited Professional Engineer (RLPE) respectively to the Myanmar Engineer Council.	(4) (a) Any expatriate engaged in joint ventures, representative offices or other types of judicial person and/or individual services provider shall receive the approval of the respective authority. (b) Any expatriate entering into Myanmar shall abide by the immigration rules and procedures of Myanmar. (c) Any expatriate in Myanmar shall abide by the laws, rules and regulations of Myanmar and they shall not interfere in the internal affairs of the country. (d) Individual services providers who work with the approval of respective authorities shall register themselves with the Department of Labour. (e) The Government needs to regulate the flow of foreign workers to ensure social cohesion in Myanmar.	

Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
B. Computer and Related Services			
a. Consultancy services related to the installation of computer hardware (CPC 841) b. Software implementation services (CPC 842) - System and software consulting services (CPC 8421) - System analysis services (CPC 8422) - System design services (CPC 8423) - Programming services (CPC 8424) - System maintenance services (CPC 8425) c. Data processing services (CPC 843) - Input preparation services (CPC 8431) - Data-processing and tabulation services (CPC 8432) - Time-sharing services (CPC 8433) - Other data processing services (CPC 8439) d. Data base services (CPC 844) e. Other (CPC 845 + 849) - Maintenance and repair services of office machinery (CPC 845) - Data preparation services (CPC 8491) - Other computer services (CPC 8499) - System integration services - Software development services	(4) Subject to the Myanmar Investment Law, Myanmar Labour Laws, Immigration Laws and existing laws and regulations, only core staff including management staffs, technical experts, and such will be allowed to enter to carry out the activities.	(4) Presence of natural persons (a) Natural persons require approval from the related departments and will be subject to the existing laws, rules, and regulations. (b) Any expatriate engaged in joint ventures, representative offices or other types of judicial person and/or individual services provider shall receive the approval of the respective authority. (c) Any expatriate entering into Myanmar shall abide by the immigration rules and procedures of Myanmar.(d) Any expatriate in Myanmar shall abide by the laws, rules and regulations of Myanmar and they shall not interfere in the intemal affairs of the country. (e) Individual services providers who work with the approval of respective authorities shall register themselves with the Department of Labour. (f) Subject to domestic rules and regulations for the categories of natural persons referred to under market access. (g) The Government needs to regulate the flow of foreign workers to ensure social cohesion in Myanmar.	
F. Other Business Services			
a. Advertising Services (CPC 871)	(4) Unbound	(4) Unbound	
c. Management Consulting and Regulated Services (CPC 865)	(4) Management consulting and regulated services for market access shall be permitted in accordance with the laws, regulated by	(4) Management consulting and regulated services for national treatment shall be permitted in accordance with the laws, regulated by the relevant	Due to existing regulations of Education, all kinds of education services are to

	the relevant ministries in general and by the Ministry of Education in particular. Commitment with Limitation	ministries in general and by the Ministry of Education in particular. Unbound	be regulated by Ministry of Education
r. Printing and Publishing (CPC 89).	(4) Unbound	(4) Unbound	
t. Other Translation and Interpretation Services (CPC 87905)	(4) Unbound	(4) Unbound	
2. COMMUNICATION SERVICES			
D. Audio Visual Services			
Motion Picture and Video Tape Production Services (CPC 96121)	(4) Subject to the Myanmar Invesiment Law, Myanmar Labour Laws, Immigration Laws and existing laws and regulations only managers, executives, experts and skilled technicians of foreign nationality will be granted stay penmnit of one year (under domestic law). If the foreigner wishes to stay beyond the initial valid period, he may apply, in accordance with rules and regulations, for an extension of a period not exceeding one year.	(4) (a) Any expatriate engaged in joint ventures, representative offices or other types of judicial person and/or individual services provider shall receive the approval of the respective authority. (b) Any expatriate entering into Myanmar shall abide by the immigration rules and procedures of Myanmar. (c) Any expatriate in Myanmar shall abide by the laws, rules and regulations of Myanmar and they shall not interfere in the internal affairs of the country. (d) Individual services providers who work with the approval of respective authorities shall register themselves with the Department of Labour. (e) Subject to domestic rules and regulations for the categories of natural persons referred to under market access. (f) Standard rate of income taxes are 30 per cent of net profit for kyat-income and 2 per cent of net profit for foreign currency- income.	

Cinema Theatre Services and Motion Picture Projection Services (CPC 9615)	(4) Unbound	(4) Unbound	
Rental and Leasing of Studio Recording equipment (CPC 38109)	(4) Unbound	(4) Unbound	
3. CONSTRUCTION SERVICES			
Pre-erection work at construction site (CPC 511) Construction work for buildings (CPC 512) Construction work for civil engineering (CPC 513) Assembling and erection of prefabricated construction (CPC 514) Special trade Construction (CPC 515) Installation work (CPC 516) Building completion and finishing work (CPC 517) Renting services related to equipment for construction or demolition of building or civil engineering works with operator.	(4) Subject to the Myanmar Investment Law, Myanmar Labour Laws, Immigration Laws and existing laws and regulations, management, professional and technical experts are allowed to stay up to one year and may be extendable there on.	(4) (a) Any expatriate engaged in joint ventures, representative offices or other types of judicial person and/or individual services provider shall receive the approval of the respective authority. (b) Any expatriate entering into Myanmar shall abide by the immigration rules and procedures of Myanmar. (c) Any expatriate in Myanmar shall abide by the laws, rules, and regulations of Myanmar, and they shall not interfere in the internal affairs of the country. (d) Individual services providers who work with the approval of respective authorities shall register themselves with the Department of Labour. (e) Subject to domestic rules and regulations for the categories of natural persons referred to under market access. (f) Standard rate of income taxes are 30 per cent of net profit for kyat- income and 2 per cent of net profit for foreign currency- income. (g) Unskilled labour is not allowed in Myanmar. (h) The Govemment needs to regulate the flow of foreign workers to ensure social cohesion in Myanmar.	
5. EDUCATION SERVICES			
Education Services (CPC 922, 923 and 929)	(4) Market Access shall be permitted in accordance with the laws pursued by the Ministry of Education.	(4) National Treatment shall be followed in accordance with the rules, regulations and laws of the relevant ministries in general and Ministry of Education in particular.	Due to existing regulations of Education, all kinds of education services are to be regulated by Ministry of Education

Higher Education Services (CPC 923) Post-secondary education services (CPC 9231,92310) Other higher education services (CPC 9239, 92390)	(4) Market Access shall be accounted in accordance with the domestic laws, rules and regulations of the related ministries including Ministry of Education.	(4) National Treatment shall be maintained in accordance with the domestic laws, rules and regulations of the related ministries including Ministry of Education.	

Sector or Subsector	**Limitations on Market Access**	**Limitations on National Treatment**	**Additional Commitments**
11. TRANSPORT SERVICES			
A. Maritime Transport Services			
Intemational Passenger Transport Services (Excluding Cabotage) (CPC 7211)	(4) (a) Management level is allowed to stay up to one year and may extendable there on subject to the approval of concerned agencies. (b) Any expatriate engaged in joint venture, representative offices or other types of judicial person and/ or individual services provider shall receive the approval of the respective authority according to the domestic laws, rules and regulations of Myanmar. (c) The immigration rules and procedures shall abide by any expatriate when entering in to Myanmar. (d) Any expatriate in Myanmar shall abide by the laws, rules and regulations of Myanmar and that they shall not interfere in the internal affairs of the country. (e) Individual services provider who works with the approval of respective authorities shall register themselves with the Ministry of Labour of Myanmar	(4) Unbound	
	(4) (a) Management level is allowed to stay up to one year and may extendable there on subject to the approval of concerned agencies. (b) Any expatriate engaged in joint		

Intemational Freight Transport Services (Excluding Cabotage) (CPC 7212)	venture, representative offices or other types of judicial person and/ or individual services provider shall receive the approval of the respective authority according to the domestic laws, rules and regulations of Myanmar. (c) The immigration rules and procedures shall abide by any expatriate when entering into Myanmar. (d) Any expatriate in Myanmar shall abide by the laws, rules and regulations of Myanmar and that they shall not interfere in the internal affairs of the country. (e) Individual services provider who works with the approval of respective authorities shall register themselves with the Ministry of Labour of Myanmar	(4) Unbound	
Maritime Cargo Handling Services (CPC 741)	(4) (a) Management level is allowed to stay up to one year and may extendable there on subject to the approval of concerned agencies. (b) Any expatriate engaged in joint venture, representative offices or other types of judicial person and/ or individual services provider shall receive the approval of the respective authority according to the domestic laws, rules and regulations of Myanmar. (c) The immigration rules and procedures shall abide by any expatriate when entering into Myanmar. (d) Any expatriate in Myanmar shall abide by the laws, rules and regulations of Myanmar and that they shall not interfere in the internal affairs of the country. (e) Individual services provider who works with the approval of respective authorities shall register themselves with the Ministry of Labour of Myanmar.	(4) (a) Any expatriate engaged in Joint Venture, representative offices or other type of juridical person and individual services providers shall receive the approval of the respective authority. (b) The immigration rules and procedures shall abide by any expatriate when entering into Myanmar. (c) Any expatriate in Myanmar shall abide by the laws, rules and regulations of the Union of Myanmar and that they shall not interfere in the intemal affairs of the country. (d) Individual services provider who work with approval of respective authority shall register themselves with the Department of Labour.	
Storage and Warehouse Services	(4) (a) Management level is allowed to stay up to one year and may extendable there on subject to the approval of concerned agencies. (b) Any expatriate engaged in joint venture, representative offices or other types of judicial person and/ or individual services provider shall receive the approval of the respective authority according to the domestic laws, rules and regulations of Myanmar. (c) The immigration rules and procedures shall abide by	(4) (a) Any expatriate engaged in Joint Venture, representative offices or other type of juridical person and individual services providers shall receive the approval of the respective authority. (b) The immigration rules and procedures shall abide by any expatriate when entering into Myanmar. (c) Any expatriate in Myanmar	

(CPC 742)	any expatriate when entering into Myanmar. (d) Any expatriate in Myanmar shall abide by the laws, rules and regulations of Myanmar and that they shall not interfere in the internal affairs of the country. (e) Individual services provider who works with the approval of respective authorities shall register themselves with the Ministry of Labour of Myanmar	shall abide by the laws, rules and regulations of the Union of Myanmar and that they shall not interfere in the intemal affairs of the country. (d) Individual services provider who work with approval of respective authority shall register themselves with the Department of Labour.	
Maritime Freight Forwarding Services (CPC 7480)	(4) (a) Management level is allowed to stay up to one year and may extendable there on subject to the approval of concerned agencies. (b) Any expatriate engaged in joint venture, representative offices or other types of judicial person and/ or individual services provider shall receive the approval of the respective authority according to the domestic laws, rules and regulations of Myanmar. (c) The immigration rules and procedures shall abide by any expatriate when entering into Myanmar. (d) Any expatriate in Myanmar shall abide by the laws, rules and regulations of Myanmar and that they shall not interfere in the internal affairs of the country. (e) Individual services provider who works with the approval of respective authorities shall register themselves with the Ministry of Labour of Myanmar.	(4) Unbound	
C. Air Transport Services			
Aircraft Repair and Maintenance Services	(4) As indicated in the Horizontal Section	(4) As indicated in the Horizontal Section	
Selling and Marketing of Air Transport Services	(4) As indicated in the Horizontal Section	(4) As indicated in the Horizontal Section	
Aircraft leasing with crew	(4) As indicated in the Horizontal Section	(4) As indicated in the Horizontal Section	

Supporting services for air transport - Computer reservation system services	(4) As indicated in the Horizontal Section	(4) As indicated in the Horizontal Section	
Aircraft catering services	(4) As indicated in the Horizontal Section	(4) As indicated in the Horizontal Section	
Air Freight Forwarding services	(4) Unbound	(4) Unbound	
Aircraft Leasing without Crew	(4) As indicated in the Horizontal Section	(4) As indicated in the Horizontal Section	

ANNEX 4. SCHEDULE OF SPECIFIC COMMITMENTS ON THE MOVEMENT OF NATURAL PERSONS. MALAYSIA

1. Malaysia's commitments under Chapter 9 (Movement of Natural Persons) with respect to the temporary entry and temporary stay of natural persons of a Party into the territory of Malaysia apply only in relation to the categories of persons set out below.

2. A natural person of a Party seeking temporary entry into the territory of Malaysia under Chapter 9 (Movement of Natural Persons) and this Schedule shall be required to obtain the necessary visa and documentation prior to entry, and provide the requisite information and documentation in support of such application. Entry shall be granted subject to the terms, conditions or limitations prescribed under Malaysia's immigration laws and regulations.

3. Malaysia remains unbound in respect of the supply of a service by a service supplier of a Party through the presence of natural persons of a Party in the territory of Malaysia, except as set out in this Schedule.

4. For greater certainty, Malaysia remains unbound in respect of the supply of financial services by a service supplier of a Party through the presence of natural persons of a Party in the territory of Malaysia except as stipulated otherwise in the Appendix to Annex 3 (Specific Commitments for Financial Services â Malaysia) read together with entry 43 in List B of Malaysia's Annex 3 (Schedules of Non-Conforming Measures for Services).

5. In accordance with Article 5 (Schedules of Specific Commitments on the Movement of Natural Persons) of Chapter 9 (Movement of Natural Persons), for the categories of persons set out in this Schedule, Malaysia specifies below any terms, conditions, limitations or qualifications in relation to the temporary entry and temporary stay of those natural persons into the territory of Malaysia.

6. The Schedules of other Parties shall not be used to interpret Malaysia's commitments or obligations under Chapter 9 (Movement of Natural Persons) or other Chapters of this Agreement.

HORIZONTAL COMMITMENTS

Description of Category	**Conditions and Limitations (including length of stay)**
1. Intra-Corporate Transferee (ICT)	

(a) Senior managers being persons within an organization that provides services within Malaysia: - having proprietary information of the organisation; - exercise wide latitude in decision making relating to the establishment, control and operation of the organization; - primarily direct the management of the organisation; and - receive only general supervision or direction from the board of directors or partners of the organization.	Entry and stay of natural persons defined in categories 1 (a) and (b) shall not exceed a total of 10 years.
(b) Three specialists or experts per organization that provides services within Malaysia being persons within the organization who possess knowledge at an advanced level of continued expertise and who possess proprietary knowledge of the organization's new service products and technology, research equipment and techniques or management. Additional specialists or experts may be allowed subject to market test and thetraining of Malaysians through an acceptable training programme in the relevant services sector or subsector: Provided that such persons are employees of the foreign service supplier and have been in the employment of that foreign service supplier for a period of not less than one year immediately preceding the date of their application for a work permit and he is to serve in at least a similar capacity.	
2. Other	
(a) Specialists or experts being persons who possess knowledge at an advanced level of continued expertise and subject to market test and the employment of Malaysians as counterparts and/or training of Malaysians through acceptable training programmes in the relevant services sector or subsector;	Entry and stay of natural persons defined in categories 2 (a) and (b) shall not exceed a total of 10 years. For category 2 (c), the period of stay shall not exceed a total of 90 days. For category 2(d), the period of stay shall not exceed a total of six months.
(b) Professionals being persons who possess necessary academic credentials, professional qualifications, experience and/or expertise which have been duly recognized by the professional bodies in Malaysia and registered with those respective professional bodies; and are carrying out respective professional activities;	
(c) Business visitors being persons not based within Malaysia, receiving no remuneration from a source located within Malaysia, who have been employed for at least one year by a foreign service supplier, whose entry and temporary stay is for the purposes of negotiating for the sale of services or entering into agreements to sell services for that service supplier and who will not engage in direct sales to the general public; and	
(d) Installers or maintainers being persons who are installers or maintainers of machinery and/or equipment who is employed or appointed by a supplying company, where such installation and/or maintaining by the supplying company is a condition of purchase of the said machinery and/or equipment; and are not performing activities which are not related to the Installing or maintaining activities which is the subject of the contract.	

APPENDIX. SECTORAL SPECIFIC COMMITMENTS EXCEPT FINANCIAL SERVICES

Sector or Subsector	Conditions and Limitations (Including Length of Stay)
A. Professional Services Legal Services (CPC 8619) Covering advisory and consultancy services relatingonly to home country laws, international law and offshore corporation laws of Malaysia.	Unbound. Foreign lawyers providing legal services in Malaysia on a "fly in and fly out" basis shall be subject to the provisions under Section 37(2B) (b) of the Legal Profession Act 1976 [Act 166].
Accounting, auditing and bookkeeping services (CPC 862)	5 specialists/experts for each institution, subject to registration with MIA and fulfilment of residency requirements. Entry shall be limited to maximum period of two years, subject to domestic regulations. The qualifying examination todetermine the competence and ability to supply the service for the purposes of registration with the MIA will be conducted in the English language.
Taxation Services (CPC 863 / 8630)	Two specialists/experts for each institution, subject to registration asa tax agent under Section 153 of the Income Tax Act 1967 and fulfilment of residency requirements. Entry shall be limited to maximum period of two years, subject to domestic regulations.
Architectural services (CPC 8671)	Two specialists/experts per country and registration is subject to qualification of registration and domestic regulations. Temporary registration on annual basis and renewal subject to domestic regulation. The qualifying examination to determine the competence and ability to supply the service for the purposes of registration with the professional bodies will be conducted in the English language.
Engineering services (CPC 8672*) covering: (CPC 86721-86729)	Unbound, except as indicated in the horizontal commitments and in respect of 2b), subject to temporary registration for a period of one year per temporary registration. Engineering services must be authenticated by a registered professional engineer in Malaysia. The qualifying examination to determine the competence and ability to supply the service for the purpose of registration with the professional bodies will be conducted in English language. Other requirements as per in ASEAN Chartered Professional Engineer (ACPE) Registry.
Integrated engineering services (CPC 8673*) covering: (CPC 86731, 86732, 86733, 86739).	Unbound, except as indicated in the horizontal commitments and in respect of 2 b), for a period of up to one year or the duration necessary to complete the services contract. The qualifying examination to determine the competence and ability to supply the service for the purpose of registration with the professional bodies will be conducted in English language.
Urban Planning Services covering development services programmes regarding land use, site selection, control and utilisation, road systems and servicing of land with a view to creating and maintaining systematic, coordinated urban planning. (CPC 86741)	Unbound except for: i) independent professionals (1) with an employment contract with a registered Malaysian town planning company. Independent professionals must possess recognised qualifications and obtained temporary registration with the relevant regulatory authorities; ii) consultants (with recognised qualifications and subject to registration) for wholly public funded projects and in collaboration with a Malaysian urban planning company. Any other requirements or provisions as spelt out under the relevant legislation.

Landscaping services, covering the provision of advisory, planning and designing services for the aesthetic landscaping of golf courses and theme parks (CPC 86742*)	Unbound, except as indicated in 1 a) and b) and 2 a) and c) in the horizontal commitments.

(1) Independent professionals is as defined in para 2(b) in the horizontal commitments.

* An asterisk against a CPC code number indicates that the corresponding service subsector in this schedule covers only a part or parts of the service subsector classified under the CPC concordance

B. Computer and Related Services - Consultancy services related to the installation of computer hardware (CPC 841) - Software implementation service (CPC 842) - Data Processing Services (CPC 843) - Data base services (CPC 844 / 84400) Computer software development services covering development of new software for general application, including, ready-made software packaged for general application (CPC 842*)	Unbound, except as indicated in 1 a) and b) and 2 a) and oc) in the horizontal commitments.
C. Research and Development Services Research and experimental development services on social sciences and humanities (CPC 8520 except 85203 and 85204)	Unbound, except as indicated in 1 a) and b) and 2 a) and c) in the horizontal commitments.
E. Rental/Leasing Services without Operator Relating to ships exclude cabotage and offshore trades(CPC 83103) Relating to aircraft(CPC 83104)	Unbound, except as indicated in the horizontal commitments,
Leasing or rental services relating to construction and mining	

equipment and industrial plant and equipment (CPC 83107*)	Unbound, except as indicated in the horizontal commitments.
F. Other Business Services Advertising services (CPC 8711, 8712, 8719)	Unbound, except as indicated in 1 a) and b) and 2 a) and oc) in the horizontal commitments.
Management Consulting Services covering a) covering advisory, guidance and operational assistance services concerning management of the transmission of non-conventional energy (CPC 8650*) b) covering advisory, guidance and operational assistance on environmental management services including risk assessment services (CPC 8650*) c) covering advisory and guidance in the field of pharmacy as follows: - Basic material manufacturing consultancy in the manufacture of drugs in raw material form; - Newsystems of drug delivery; - Biotechnology-new techniques for influencing the process and products of living cells; - New techniques in drug development and methods of producing drugs and vaccine; - Vaccine production (CPC8650*) d) covering advisory and guidance on International Value-Added Network Services, rural telecom development and human resource development in telecommunications (CPC 8650*)	Unbound, except as indicated in 1 a) and b) and 2 a) and c) in the horizontal commitments.
Services incidental to	

agriculture and fishing covering only specialised consultancy, advisory and operational assistance on crop and_ fisheries management, including, value-added services such as_ preservation techniques, etc. (CPC 881*, 882*)	Unbound except as indicated in 1 (a)and (b) and 2 (a) and (c) in the horizontal commitments.
Services incidental to manufacturing (CPC 884, 885 except 88442)	Unbound except as indicated in 1 (a)and (b) and 2 (a) and (c) in the horizontal commitments.
Technical Testing and AnalysisServices (CPC 8676 except 86764)	Unbound, except as indicated in 1 a)and b) and 2 a) and oc) in the horizontal commitments.
Convention Centre (CPC 87909) Convention and exhibition management services covering the provision of planning, organisational, management and marketing services for conventions and other similar events.	Unbound, except as indicated in 1 a)and b) and 2 a) and oc) in the horizontal commitments.
Translation and interpretation services (CPC 87905)	No limitation subject to domestic regulation.
Student Placement Services, covering promoting, recruiting and facilitating students for studies outside Malaysia (CPC 87909)	Unbound, except as indicated in the horizontal commitments.
Market research and public opinion polling services (CPC 864)	Unbound except as indicated in 1 (a) and (b) and 2 (a) and (c) in the horizontal commitments.
Operational Headquarters (OHQ) Services covering general management and administration, business planning, procurement of raw materials, technical support, marketing	

control and sales promotion planning, training and personnel management, provision of treasury and fund management services and research and development carried out by a company in Malaysia for its offices and related companies outside Malaysia. Services rendered by OHQ companies are limited to establishments engaged in business related to the following sectors or sub-sectors: Sea and air services, Communication services, Tourism services, Professional and Consulting services (CPC 87909)	Unbound, except as indicated in the horizontal commitments.
Basic Telecommunications 1. Voice service (wired wireless) (CPC 7521) or 2. Packet-switched data transmission services, including frame-relay services (CPC 7523) 3. Circuit switched data transmission services (CPC 7523) 4. Facsimile Service PCPC 7529**) (CPG 7521** 5. Private leased circuit service(CPC 7522** & CPC 7523**) 6. Paging services (CPC 75291)	Unbound
Other telecommunication services 7. Domestic/International satellite services and satellite links/capacities (inclusive of mobile satellite) 8. Satellite earth station 9. International switching and other international gateway 10. Mobile cellular services analogue/digital 11.	Unbound

Trunked radio services 12. Video transport services	
Data and message transmission services. Covering electronic mail, voicemail, on- line information and database retrieval, enhanced facsimile, code and protocol conversion (CPC 7523)	Two specialists/experts for each institution, for a maximum period of two years, subject to domestic regulations.
Voice telephone services (CPC 7521) Mobile telephone service (CPC 75213) Telegraph services (CPC 7522) Telex services (CPC 7523**)	Unbound
Mobile data services (CPC 7523**)	Unbound except for two specialists/experts for each institution, for a maximum period of two years, subject to domestic regulations.
Audiovisual Services. Motion picture, video tape and audio recording distribution services (CPC 96113)	Unbound, except as indicated in 1 a) and b) and 2 a) and c) in the horizontal commitments.
Pre-erection Work at Construction Site (CPC 511) Construction Work for Buildings (CPC 512) Construction Work for Civil Engineering (CPC 5 13) Assembly and Erection of Prefabricated Constructions (CPC 514) Special Trade Construction (CPC 515) Installation Work (CPC 516) Building Completion and Finishing Work (CPC 517)	Unbound, except as indicated in the horizontal commitments.
Primary education services (CPC 921)	Unbound, except as indicated in the horizontal commitments.
General secondary education services (CPC 9221)	

Other education services (CPC 929 / 9290 / 92900) Technical and vocational secondary education services(CPC 9223) Technical and vocational secondary school-type education services for handicapped students (CPC 9224).	Unbound, except as indicated in the horizontal commitments.
Other Higher [Education Services provided by privately funded higher education institutions excluding private higher education institutions with Malaysian Government equity or that receive Malaysian government assistance (CPC 92390)	Entry and stay of natural persons defined in categories 1(a), 1(b), 2(a), 2(b) and 2(c) shall not exceed a total of 10 years. Unbound except for measures affecting the entry and temporary stay of natural persons defined below: 1. Intra-corporate Transferees. a) senior managers being persons with an organization having propriety information of the organization and who exercise wide latitude in decision making relating to the establishment, and receive only general supervision or direction from the board of directors or partners of the organisation. b) Lecturers and experts.10 lecturers and/or experts but not more than 20% of lecturers employed in an educational institution who possess the necessary qualifications, knowledge, credentials or experience 2. Others (a) Professionals. Two professionals being persons who possess necessary professional qualifications, industry and/or who are employed on the basis of their expertise in an educational institution. (b) Business visitors. Business visitors being persons not based within Malaysia, receiving no remuneration from a source located within Malaysia who is an investor or who have been employed for at least one year by a foreign educational institution, whose entry and temporary stay is for the purposes of evaluating business opportunities. (c) Contractual Service Suppliers (i) Independent Professionals - the natural person has obtained a service contract in the territory of the Party where the service is to be provided; - possess appropriate educational and professional qualification relevant to the service to be provided and/or recognized by and registered with professional bodies; - commitment relates only to the service activity which is subject of the contract; it does not confer entitlement to exercise the professional title; - commitment applies only to the list of categories specified in the schedule. (ii) Employees of Juridical Persons a) Engaged in the supply of a service on a temporary basis as employees of a juridical person supplying the service, with no commercial presence in the territory of the Party where the service is to be provided; b) The juridical person has obtained a service contract to be provided in the territory of another Party; c) The employees receive remuneration from their employer while abroad; d) The employees may not engage in other employment in the territory of the Party where the service is to be provided; e) The employees have appropriate educational and professional qualifications relevant to the service to be provided; f) Commitment relates only to the service activity which is the subject of the contract; it does not confer entitlement to exercise the professional g) Commitment applies only to the List of Categories specified and the employee provides the service as a professional/specialist in the specified sector.
Medical speciality services covering forensic medicine, nuclear medicine, geriatrics, micro vascular surgery, neurosurgery,	Unbound, except indicated in 2 a) in the horizontal commitments. None other than: - practice only in private hospitals of at least 50 beds; - practice to be

cardiothoracic surgery, plastic surgery, clinical immunology and oncology, traumatology, anaesthesiology, intensive care specialist, child psychiatry and physical medicine (CPC 93122)	only at a specified location and a change of location requires approval; and - the setting up of individual or joint group practices is not permitted. The qualifying examination to determine the competence and ability to supply the service will be conducted in English language.
Veterinary services(CPC 932) Services delivered to equine animals in equestrians or turfclubs	Unbound, except indicated in 2 a) inthe horizontal commitments.
Private hospital services(CPC 93110*).	Unbound, except as indicated in the horizontal commitments.
Hotel, tourist resort and restaurant services covering the management and operation of hotels or resorts, including outlets which may not necessarily include ownership of such properties (CPC 641, 642, 643)	Unbound except as indicated in 1(a) and (b) and 2 (a) and (c) in the horizontal commitments.
Travel Agencies and Tour Operators Services (CPC 7471)	Unbound except as indicated in 1(a) in the horizontal commitments.
Other entertainment services (CPC 96191, 96192)	Unbound except as indicated in 2 a) in the horizontal commitments. Participation of Malaysian entertainers/ artistes may be required based on the guidelines of the relevant Ministry.
Theme Park (part of CPC 96194) (A family based recreational area/ amusement centre, which may consist of rides, mechanical and/or high-tech simulation equipment withvarious kinds of amusement facilities built around a themeor several themes. Activities to be offered will contain elements of entertainment and adventure. The concept of the park can either be outdoor or indoor or a	Unbound except as indicated in 1(a) and (b) and 2(a) and (c) in the horizontal commitments.

combination of both)	
Sports events management services (CPC 96411, 96412)	Unbound, except as indicated in 2 a) in the horizontal commitments.
A. Maritime Transport Services International maritime transportation services, excludes cabotage (CPC 7211, 7212)	Unbound, except as indicated in the horizontal commitments. Ship crew is permitted to disembark only for duration of berth.
Maritime agency services covering marketing and sales of maritime transport and related services and acting on behalf of the companies organizing the call of the ship or taking over cargoes when required (CPC 7454*) Vessel salvage and refloating services except on inland waters (CPC 74540)	Unbound except as indicated in 1 (a) and (b) and 2 (a) and (c) in the horizontal commitments.
Skills training services covering the provision of training for technical, supervisory and production related functional levels in newand emerging technologies as follows: 1) automated manufacturing technology; 2) advanced materials technology; 3) biotechnology; 4) electronics; 5) information technology; and 6) avionics/aviation technology (CPC 97090)	Unbound, except as indicated in the horizontal commitments.

FINANCIAL SERVICES COMMITMENTS

1. The terms, conditions, limitations, or qualifications stipulated under the Horizontal Commitments shall not apply to financial services, including insurance, unless otherwise indicated in the commitments below.

2. In respect of offshore banks, offshore investment banks, commercial banks, investment banks, offshore direct insurance companies, offshore reinsurance companies, offshore insurance brokers, offshore insurance underwriting managers, offshore insurance managers, direct insurance companies, reinsurance companies and representative offices of commercial banks and investment banks, the terms, conditions, limitations or qualifications stipulated in the Financial Services Horizontal Commitments shall apply in addition to the specific terms, conditions, limitations, or qualifications, as specified for each financial services activity.

3. For greater certainty, Malaysia's commitments below shall not be interpreted as applying to the supply of Shariah-compliant financial services, unless specific entries are made in the banking, insurance or capital markets subsectors accordingly. This approach is consistent with Malaysia's commitments under the WTO and other existing Free Trade Agreements.

4. For greater certainty, temporary entry of natural persons in respect of supply of service shall be through the mode of commercial presence of offshore banks, offshore investment banks, commercial banks, investment banks, offshore direct insurance companies, offshore reinsurance companies, offshore insurance brokers, offshore insurance underwriting managers, offshore insurance managers, direct insurance companies, reinsurance companies and representative offices of commercial banks and investment banks, as provided in the Appendix to Annex 3 (Specific Commitments for Financial Services - Malaysia) read together with entry 43 in List B of Malaysia's Annex 3 (Schedules of Non-Conforming Measures for Services).

Sector or Sub-sector	**Conditions and Limitations (Including Length of Stay)**
A. Offshore banks, offshore investment banks, offshore direct insurance companies, offshore reinsurance companies, offshore insurance brokers, offshore insurance underwriting managers and offshore insurance managers	Unbound except as stipulated for specific activities set out in the Financial Services Activities below
B. Commercial banks and investment banks	Unbound except the following: (a) Five senior managers and 10 specialists or experts for each commercial bank or investment bank. A senior manager is an individual possessing proprietary knowledge and authority essential to the establishment, control, and operation of the services of the financial service supplier. Specialists or experts for each commercial bank or investment bank for areas relating to: (i) Trade financing; (ii) corporate finance; (iii) treasury management; (iv) information technology; (v) risk management; (vi) capital market products; (vii) derivatives instruments; (viii) credit risk management; and (x) internal control; (b) For each representative office of a commercial bank or investment bank, two foreign nationals. Only one foreign national for the two top posts; and (c) Temporary entry shall be limited to a maximum period of five years.
C. Direct insurance and reinsurance companies	Unbound except the following: (a) Five senior managers and 10 specialists or experts for each locally incorporated insurance company. A senior manager is an individual possessing proprietary knowledge and authority essential to the establishment, control, and operation of the services of the financial service supplier. Specialists or experts for each insurance institution for areas relating to: (i) Underwriting of specialised classes of general business; (ii) information technology; (iii) actuarial functions; (iv) risk management; (v) investment management; (vi) product development; (vii) customer service; and (viii) servicing of foreign and regional business; and (b) Temporary entry shall be limited to a maximum period of five years.
Acceptance of deposits, and other repayable funds from the public, wholesale and retail	Unbound except as indicated in the Financial Services Horizontal Commitments.
	For banks, unbound except as indicated in the Financial Services

Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transactions	Horizontal Commitments. For non-banks (2), unbound except one foreign national for a management post which is not the Chief Executive Officer post for each establishment. For each representative office of a non- bank, two foreign nationals subject to only one foreign national for the two top posts. Temporary entry shall be limited to a maximum period of five years.
Financial leasing	Unbound except two foreign nationals, one for a management post which is not the Chief Executive Officer post, and one technical post, for each establishment. For each representative office, two foreign nationals subject to one foreign national for the two top posts. Temporary entry shall be limited to a maximum period of five years. For offshore leasing companies, unbound except as set out in respect of supply of service through the mode of commercial presence for this activity as provided in the Appendix to Annex 3 (Specific Commitments for Financial Services - Malaysia) read together with entry 43 in List B of Malaysia's Annex 3 (Schedules of Non-Conforming Measures for Services).
All payment and money transmission services, namely credit and debit cards, travellers cheques and bankers drafts	For banks, unbound except as indicated in the Financial Services Horizontal Commitments. For non-banks, unbound except one foreign national for a management post which is not the Chief Executive Officer post for each establishment. Temporary entry shall be limited to a maximum period of five years.
Charge cards	Unbound except two senior managers for each establishment. Temporary entry shall be limited to a maximum period of five years.
Guarantees and commitments	Unbound except as indicated in the Financial Services Horizontal Commitments and the Horizontal Commitments.
Money and foreign exchange broking services	Unbound except offshore money and foreign exchange brokers. For offshore money and foreign exchange brokers, unbound except as set out in respect of supply of service through the mode of commercial presence for this activity as provided in the Appendix to Annex 3 (Specific Commitments for Financial Services - Malaysia) read together with entry 43 in List B of Malaysia's Annex 3 (Schedules of Non-Conforming Measures - for Services).
Trading for own account or account of customers in the following: (a) money market instruments; (b) foreign exchange; (c) transferable securities; (d) exchange rate and interest rate instruments; (e) derivative products, including futures and options; and (f) other negotiable instruments, including bullion.	For banks, unbound except as indicated in the Financial Services Horizontal Commitments. For non-banks, unbound except as indicated in the Horizontal Commitments.
Services related to the issues of all kinds of securities and placement as agents (whether publicly or	For banks, unbound except as indicated in the Financial Services Horizontal Commitments. For non-banks, unbound except as

privately) (excluding issuing and rating houses)	indicated in the Horizontal Commitments.
Underwriting	For commercial banks, investment banks, unbound except as indicated in the Financial Services Horizontal Commitments. For non-banks, unbound except as indicated in the Horizontal Commitments.
Asset management as follows: (a) cash or portfolio management; (b) all forms of collective investment management; and (c) custodial and depository services	For banks, unbound except as indicated in the Financial Services Horizontal Commitments. For non-banks, unbound except as indicated in the Horizontal commitments.
Advisory, intermediation and other auxiliary financial services, including credit reference and analysis, investment advice on acquisitions and corporate restructuring and strategy	For banks, one specialist or expert per organisation. For non-banks, unbound except as indicated in the Horizontal commitments. For each representative office, three foreign nationals subject to only one foreign national for the two top posts and the other two for managerial level posts. Temporary entry shall be limited to a maximum period of five years.
Operational headquarters (OHQ) for financial sector (provides services to commercial and investment banking institutions in activities relating to work carried out in Malaysia for its offices and related companies outside Malaysia, pertaining to general management and administration, business planning, technical support, marketing control and sales promotion planning, training and personnel management, the provision of treasury and fund management services, and research and development)	Unbound except one specialist or expert per organisation subject to the following conditions: (a) Such persons must possess knowledge at an advanced level of continued expertise and must possess proprietary knowledge of the organisation's new service products and technology, research equipment and techniques or management; and (b) Temporary entry shall be limited to a period of five years which may be renewed.
Securities broking services	For a stockbroking company unbound except as indicated in the Horizontal Commitments. For each representative office, two foreign nationals subject to only one foreign national for the two top posts. Temporary entry shall be limited to a maximum period of five years.
Commodity futures broking services	Unbound except one foreign national for a management post per establishment, subject to market test.
Direct insurance (non-life)	Unbound except as indicated in the Financial Services Horizontal Commitments.
Direct insurance (life)	Unbound except as indicated in the Financial Services Horizontal Commitments.
Reinsurance and retrocession (non-life)	Unbound except as indicated in the Financial Services Horizontal Commitments.

Reinsurance and retrocession (life)	Unbound except as indicated in the Financial Services Horizontal Commitments.
Insurance intermediation - insurance broking (excluding agency)	Unbound except as indicated in the Financial Services Horizontal Commitments.
Insurance intermediation - insurance underwriting and insurance management	Unbound except as indicated in the Financial Services Horizontal Commitments.
Services auxiliary to insurance as follows: (a) consultancy (excludes insurance agency services to insurance industry); (b) actuarial risk assessment; (c) risk management; and (d) maritime loss adjusting.	Unbound except as set out in respect of supply of service through the mode of commercial presence for this activity as provided in the Appendix to Annex 3 (Specific Commitments for Financial Services - Malaysia) read together with entry 43 in List B of Malaysia's Annex 3 (Schedules of Non-Conforming Measures for Services).

(2) For purposes of this Schedule, "non-banks" means any non-bank for scheduled businesses as referred to in Malaysia's Schedule of Specific Commitments under GATS.

ANNEX 4. SCHEDULE OF SPECIFIC COMMITMENTS ON THE MOVEMENT OF NATURAL PERSONS. NEW ZEALAND

1. This Schedule sets out New Zealand's specific commitments in accordance with Chapter 9 (Movement of Natural Persons) for the temporary entry of natural persons of another Party covered under Article 2 (Scope) of Chapter 9 (Movement of Natural Persons).

2. This Schedule and Chapter 9 (Movement of Natural Persons) comprise the entirety of New Zealand's commitments in respect of the temporary entry or temporary stay of a natural person of another Party.

3. For greater certainty, Most-Favoured-Nation Treatment in accordance with Article 9 (Most-Favoured-Nation Treatment) of Chapter 8 (Trade in Services) does not apply to this Schedule.

4. Notwithstanding the commitments set out below, New Zealand remains unbound in cases of labour or management disputes, and also with respect to ships' crews.

5. With respect to audio-visual services, New Zealand immigration instructions stipulate a special procedure for the granting of visas to entertainers, performing artists and associated support personnel for work purposes. To be eligible for a work visa or work permit, those applicants must come within the policy guidelines agreed to between the Minister of Immigration, independent promoters, agents or producers, and the relevant performing artists' unions.

Entry in the following categories only	**Conditions and Limitations (including length of stay)**
A. Business Visitor	
Definition: **Business Visitors** comprise a business person: (a) who is seeking temporary entry to New Zealand for business purposes, such as: (i) for the purpose of negotiating and concluding the sale of	

goods or services, but is not engaged in making direct sales to the general public or in supplying goods or services themselves; or (ii) as an investor, or duly authorised representative of an investor, for the purpose of establishing, expanding, monitoring or disposing of an investment, but not with the intention of establishing or operating any business on the business visitors own account; (b) who is not seeking to enter the labour market of New Zealand; and (c) whose principal place of business, actual place of remuneration and predominant place of accrual of profits remain outside New Zealand.	Entry for a period not exceeding in aggregate three months in any calendar year.
B. Intra-Corporate Transferee	
Definition: An executive, manager or specialist: (a) who is an employee of a goods supplier, service supplier, or investor of another Party with a commercial presence in New Zealand; and (b) whose salary and any related payments are paid entirely by the service supplier or enterprise that employs the intra-corporate transferee.	**Executive**: Definition: A natural person of another Party who primarily directs the management of an_ enterprise, exercises wide latitude in decision making, and receives only general supervision or direction from higher level executives, the board of directors or stockholders of the enterprise. An executive would not directly perform tasks related to the actual provision of the service or the operation of the enterprise. Entry for a period of initial stay up to a maximum of three years for an executive who has been employed by their employer for at least 12 months prior to their proposed transfer to New Zealand. **Manager**: Definition: A natural person of another Party who will be responsible for or directs the entire or a substantial part of the operations of the enterprise in New Zealand, receiving general supervision or direction principally from higher level executives, the board of directors or stockholders of ithe enterprise; supervising and controlling the work of other supervisory, professional or managerial employees; and having the authority to establish goals and policies of the entire or a substantial part of the operations of the enterprise. Entry for a period of initial stay up to a maximum of three years for a manager who has been employed by their employer for at least 12 months prior to their proposed transfer to New Zealand. **Specialist:** Definition: A natural person of another Party with advanced trade, technical or professional skills within an organisation who possesses knowledge at an advanced level of technical expertise, and who possesses proprietary knowledge of the organisation's service, research equipment, techniques or management. Such specialists are responsible for or employed in a particular aspect of an organisation's operations in New Zealand. Skills are assessed in terms of the applicant's employment experience, qualifications and suitability for the position. Entry for a period of initial stay up to a maximum of three years.
C. Installer or Servicer.	

Definition: A natural person of another Party who is an installer or servicer of machinery or equipment, where such installation or servicing by the supplying company is a condition of purchase of the said machinery or equipment. An installer or servicer cannot perform services which are not related to the service activity which is the subject of the contract.	Entry for periods not exceeding three months in any 12-month period.
D. Independent Service Supplier	
Definition: A self-employed services supplier working on a contractual basis, without a requirement for commercial presence. In the following category only: **Independent Professional:** Definition: A. self-employed natural person of another Party with advanced technical or professional skills, without the requirement for a commercial presence, working under a valid contract in New Zealand. An independent professional must also have: (a) a qualification resulting from three or more years of formal post-secondary school education leading to a recognised degree or diploma; and (b) six or more years of experience. Both (a) and (b) must be in the field in which the independent professional wishes to supply his or her professional services. (1)	In respect of the services sectors set out in Appendix A of New Zealand's Schedule of Reservations and Non- Conforming Measures for Investment and Services, only and subject to economic needs tests, entry for a period of stay up to a maximum of 12 months.

(1) These qualifications must be recognised by the appropriate New Zealand authority where under New Zealand law such recognition is a condition of the provision of that service in New Zealand.

ANNEX 4. SCHEDULE OF SPECIFIC COMMITMENTS ON THE MOVEMENT OF NATURAL PERSONS. THE PHILIPPINES

1. This Schedule applies to all sectors covered under the specific commitments of the Philippines in the Trade in Services Chapter of the AANZFTA. For greater certainty, this Schedule is not subject to obligations under Article 9 (Most-Favoured-Nation Treatment) of Chapter 8 (Trade in Services), and Article 11.3 and 11.4 (Schedules of Specific Commitments) of Chapter 8 (Trade in Services).

2. For the categories of persons set out in this Schedule, the Philippines specifies the following terms, conditions, limitations or qualifications in relation to the supply of a service by a service supplier of another Party through the presence of natural persons of a Party in the territory of the Philippines:

a. The Philippines shall require a covered natural person of another Party seeking temporary entry and temporary stay under the terms and conditions set out in each category below to obtain an appropriate visa prior to entry pursuant to the Commonwealth Act No. 613 (Philippine Immigration Act of 1940), as amended.

b. Pursuant to Article 40 of the Presidential Decree No. 442 (Labor Code of the Philippines), as amended and its Implementing Rules and Regulations, non-resident aliens may be admitted to the Philippines for the supply of a service after a determination of the non-availability of a person in the Philippines who is competent, able and willing at the time of application, to perform the services for which the alien is desired.

c. Pursuant to Section 14, Article XII of the 1987 Philippine Constitution, the practice of all professions in the Philippines shall be limited to Filipino citizens, save in cases prescribed by law. If the activity or undertaking of the natural person constitutes the practice of a regulated profession under the Philippines' laws and regulations, the natural person must secure a special permit to practice the regulated profession from the Professional Regulation Commission pursuant to Section 7(j) of the Republic Act No. 8981 (PRC Modernization Act of 2000), and obtain an alien employment permit (AEP) from the Department of Labor and Employment (DOLE) pursuant to Article 40 of the Labor Code of the Philippines, as amended. The natural person shall likewise comply with the requirements relative to the practice of profession by a foreign national as provided for in the appropriate professional regulatory law.

d. In activities expressly reserved by law to citizens of the Philippines, (i.e. foreign equity participation is limited to a minority share) all executive and managing officers must be citizens of the Philippines. The number of non- Filipino citizens in the Board of Directors of an entity shall be proportionate to the aggregate share of foreign capital to that entity.

e. For the telecommunications sector, individual service suppliers must be Filipino citizens. The number of non-Filipino citizens in the Board of Directors of an entity shall be proportionate to the aggregate share of foreign capital to that entity. All executives and managers must be citizens of the Philippines.

f. For banking services, unbound except as indicated in the Philippines' Schedule in Annex 2 (Schedules of Specific Commitments for Services). A non-Filipino citizen employed as officer or assigned to do technical functions shall have two Filipino citizens as understudies.

g. For all insurance and insurance related services, only aliens qualified to hold technical positions may be employed within the first five years of operation of the enterprise, and their temporary stay not to exceed five years upon entry. Each employed alien shall have at least two Filipino citizens as understudies.

h. For transport services, only aliens qualified to hold technical positions may be employed within the first five years of operation of the enterprise, their temporary stay not to exceed five years upon entry. Each employed alien shall have two Filipino citizens as understudies. For specialised vessels, aliens may be employed as supemumeraries only for a period of six months.

i. All measures relating to permanent residents are unbound. The Philippines reserves the right to enact laws on the treatment of permanent residents of foreign countries. Until such time as the Philippines enacts the said laws, the obligations of the Philippines with respect to permanent residents of the other Parties shall be limited to the Philippines' obligations under GATS.

j. In this Schedule, reference is made to the 1987 Philippine Constitution, hence, commitments are to be construed in accordance with the 1987 Philippine Constitution.

Description of Category	**Conditions and Limitations (including length of stay)**
	Entry and temporary

1. Business Visitors Natural persons who enter the Philippines for the purpose of participating in business contracts including negotiations for the sale of goods or services, or other similar activities including those to prepare for establishing commercial presence in the Philippines, without acquiring remuneration from the Philippines and without engaging in the supply of services.	stay shall be granted to a natural person of each Party, who stays in the Philippines for an initial period of 59 days, which may be extended every two months thereafter for a total period of stay of one year.
2. Intra-corporate Transferees A natural person of each Party who is a manager, executive or person with specialized technology or knowledge, who has been employed by a juridical person that supplies services and/or has established commercial presence in each Party's territory and who is being transferred to its branch, subsidiary, affiliate, representative office or joint venture partner in the Philippines.	Entry and temporary stay for one year, which may be extended.
3. Investors engage in the following: (a) activities to invest in business in the Philippines and manage = such business; (b) activities to manage business in the Philippines on behalf of a person other than that of the Philippines who has invested in such business; (c) or conduct of business in the Philippines in which a person other than that of the Philippines has invested.	Entry and temporary stay for a period of one year, which may be extended, shall be granted to a natural person of each Party who engage in any of these activities.
4. Natural Persons of each Party who Engage in Supplying Services, which Require Technology or Knowledge at an Advanced Level or which Require Specialized Skills belonging to Particular Fields of Industry, on the Basis of a Contract with Public or Private Organizations in the Philippines. Technical, Advisory or Supervisory position does not include skilled labor, and does not involve the practice of regulated profession as defined under the laws and regulations of the Philippines except for professionals covered in the schedule of commitments under the professional services in the Trade in Services Chapter, subject to the issuance of Special Permit by the Professional Regulation Commission and Alien Employment Permit by the Department of Labor and Employment pursuant to Section 7(j) of the PRC Modemization Act of 2000 and the applicable regulatory laws for each profession.	Entry and temporary stay for a period of one year, which may be extended, shall be granted to a natural person of a Party who occupy a technical, advisory or supervisory position on the basis of a personal contract with a public or private organization in the Philippines.
5. Natural Persons of Each Party who Engage in Professional Service under a Twinning or Bridging Program Done Through an Accredited Higher Education Institution in the Philippines by a Foreign Higher Education Provider. A natural person of each Party who is a Specialist with knowledge at an advanced level in the fields of agriculture, industrial, environment and natural resources management, engineering, architecture, science and technology, nursing and midwifery, curriculum development and enhancement, library and laboratory enrichment and _ cultural exchange in the fields of agriculture, industrial, environment and natural resources management, engineering, architecture, science and technology and health-related programs on the basis of a contract with public or private Higher Education Institution in the Philippines.	Entry and temporary stay for a period of one year, which may be extended.

ANNEX 4. SCHEDULE OF SPECIFIC COMMITMENTS ON THE MOVEMENT OF NATURAL

PERSONS. SINGAPORE

1. The following sets out Singapore's commitments in accordance with Article 5 (Schedules of Specific Commitments on the Movement of Natural Persons) of Chapter 9 (Movement of Natural Persons). This Schedule and Chapter 9 (Movement of Natural Persons) comprise the entirety of Singapore's commitments in respect of the temporary entry of natural persons of a Party into the territory of Singapore, only in the categories of natural persons set out below.

2. For the categories of natural persons set out in this Schedule, Singapore specifies below any terms, conditions, limitations or qualifications in relation to the temporary entry of natural persons of a Party into the territory of Singapore.

3. Singapore remains unbound in respect of the supply of a service by a service supplier of a Party through the presence of natural persons of a Party in the territory of Singapore, except as set out in these commitments.

4. The Schedules of other Parties shall not be used to interpret Singapore's commitments or obligations under Chapter 9 (Movement of Natural Persons).

5. Notwithstanding the commitments set out below, Singapore remains unbound with respect to National Treatment and ships' crews.

Description of Category	**Conditions and Limitations (including length of stay)**
Intra-corporate transferees	Entry for these intra-corporate transferees is limited to a two-year period that may be extended for up to three additional years each time for a total term not exceeding eight years
Intra-corporate transferees refer to managers, executives and specialists, as defined below, who are employees of firms that provide services within Singapore through a branch, subsidiary or affiliate established in Singapore and who have been in the prior employ of their firms outside Singapore for a period of not less than one year immediately preceding the date of their application for admission and who are one of the following: (a) Managers Natural persons within an organisation who primarily direct the organisation, or a department or sub-division of the organisation, supervise and control the work of other supervisory, professional or managerial employees, have the authority to hire and fire or recommend hiring, firing, or other personnel actions (such as promotion or leave authorisation), and exercise discretionary authority over day-to-day operations. Does not include first-line supervisors, unless the employees supervised are professionals, nor does it include employees who primarily perform tasks necessary for the provision of the service. (b) Executives: Natural persons within the organisation who primarily direct the management of the organisation, exercise wide latitude in decision-making, and receive	

only general supervision or direction from higher-level executives, the board of directors, or stockholders of the business. Executives would not directly perform tasks related to the actual provision of the service or services of the organisation. (c) Specialists: Natural persons within an organisation who possess knowledge at an advanced level of expertise and who possess proprietary knowledge of the organisationâs service, research equipment, techniques, or management. Specialists may include, but are not limited to, members of licensed professions. This commitment applies to the following subsectors only: Accounting/Auditing Services (CPC 862**); Taxation services except for other tax-related services (CPC 863**); Architectural Services (CPC 8671); Landscaping services (CPC 86742**); Medical Services, specifically General Medical Services (CPC 93121) and Specialised Medical Services (CPC 93122), Dental Services (CPC 93123); Veterinary Services (CPC 932); Engineering Services (CPC 8672**) The sectors covered by Engineering services are: a) Civil engineering services b) Production engineering services c) Mechanical engineering services d) Electrical engineering services e) Electronic engineering services f) Aeronautical engineering services g) Marine engineering services h) Naval architectural engineering services i) Industrial engineering services j) Chemical engineering services; Biotechnology services (CPC 851**); Economic and behavioural research (CPC 852**); Interdisciplinary Research and Development (R&D) Services for projects undertaken by education institutions (CPC 853**); Residential and Non-Residential Property Management Services on a Fee or Contract Basis (CPC 82201, CPC 82202); Leasing or Rental Services without Operators relating to ships (CPC 83103); Advertising services (CPC 8711, 8712, 8719); Commercial market research (CPC 86401); Management Consultancy Services, including Office Management and Administrative Services (CPC 865**); Public Relations Consultancy Services (CPC 865**); Advertising Consultancy Services (CPC 865**); Information Technology Consultancy Services (CPC 865**); Buildings and Facilities Management Services, including Cleaning of Building Services (CPC 865**); Services related to Management Consulting (CPC 866); Technical Testing and Analysis Services of motor vehicles (CPC 8676**); Professional, Advisory and Consulting Services relating to Agriculture, Forestry, Fishery and Mining, including Oilfield Services (CPC 881**, CPC 882**, CPC 883**, CPC 5115**); Convention Services and Exhibition Management Services (CPC 87909**); Translation/Interpretation Services (CPC 87905); Alarm Monitoring Services (CPC 87303); Maintenance and Repair of Equipment (not including maritime vessels, aircraft or other transport equipment) (CPC 633, CPC 8861-8866 **); Building Cleaning Services (CPC 874); Photographic Services (CPC 875); Packaging Services (CPC 876); Industrial Research; Commercial Market Research; Interior Design Services, excluding Architecture (CPC 87907**); Courier Services in respect of documents and parcels, excluding letters and postcards; Hotel Lodging Services (CPC 64110); Restaurant and Catering Services (CPC 64210, CPC 64230); Travel Agent and Tour Operator Services (CPC 7471); Tourist Guide Services (CPC 7472) Library Services (CPC 96311); Construction Services a) General Construction for Buildings (CPC 512) b) General Construction work for civil engineering (CPC 513) c) Installation and assembly work (CPC 514, CPC 516) d) Building Completion and Finishing Work (CPC 517) e) Others (CPC 511, CPC 515, CPC 518); Commission Agents' Services, except for pharmaceutical and medical goods and cosmetics (CPC 621, except CPC 62117); Wholesale Trade Services, except for pharmaceutical goods and medical goods and surgical and orthopaedic instruments (CPC 622**); Franchising (CPC 8929**); Adult Education Services (CPC 924 n.e.c); Short Term Training, including language courses (CPC 92900**); Sanitation and Similar Services (CPC 9403); Cleaning Services of Exhaust Gases (CPC 9404); Noise Abatement Services (CPC 9405); Entertainment Services, including theatre, live bands and circus services (CPC 9619); Sports and Recreational Services, except for gambling and betting services (CPC 964**); Washing, Cleaning and Dyeing services (CPC 9701); Hairdressing and Other Beauty Services (CPC 9702); Funeral, Cremation and Undertaking Services, except for maintenance services of cemeteries, care of graves and graveyards (CPC 97030**); Basic Telecommunication Services (facilities-based): a) Public Switched Services (local and intemational), including voice, data and facsimile, telex and telegraph services b) Leased Circuit Services (local and intemational); Mobile Services: a) Public Mobile Data Service (PMDS) b) Public Trunked Radio Service (PTRS) c) Public Radio Paging Service (PRPS) d) Public Cellular Mobile Telephone Service (PCMTS) Resale basis: a) Public Switched Services (local and intemational) (not including the use of leased circuits connected to the public switched

network) b) Leased Circuit Services (local and intemational) (without connection to the public switched network) c) Public Cellular Mobile Telephone Services d) Public Radio Paging Services; Value-Added Network (VAN) services. The services covered are: - electronic-mail - voice-mail - online information and data base retrieval â electronic data interchange - online information or data processing; Audio-Visual (AV) Services a) the services covered are production, distribution and public display of: - motion pictures - video recordings - sound recordings, except where excluded under b) (CPC 9611, CPC 9612) b) All broadcasting and AV services and materials that are broadcasting-related are excluded, examples being: - Free-to-air broadcasting - Cable and pay television - Direct broadcasting by satellite - Teletext; Radio and Television Services (CPC 9613); Radio and television transmission services (CPC 7524); Computer Services: The services covered are: - Software development - Systems integration services - Data processing - Data base services Telecommunication-related services are excluded; Consultancy Services related to the Installation of Computer Hardware (CPC 84100); Maintenance and Repair Services of Computers (CPC 8450**); Acute care hospitals, nursing homes and convalescent hospitals as defined by the Private Hospitals and Medical Clinics Act, Cap. 248, 1999 Revised Edition, run on a commercial basis (CPC 93193); Guidance and Counselling Services not Elsewhere Classified Related to Children (CPC 93322); Maritime Transport Services: Freight Transportation (CPC 7212), excluding cabotage, only; Maritime Auxiliary Services: - Shipping Agency Services - Maritime Auxiliary Services - Shipping Brokerage Services; Classification societies, except for statutory services for Singapore flag ships; Parking Services (CPC 74430); Maintenance and Repair Services of Motor Vehicles (CPC 88**); Financial Services, including Insurance: A. Insurance and Insurance-related Services a) Life insurance services including annuity, disability income, accident and health insurance services b) Non-life insurance services including disability income, accident and health insurance and contracts of fidelity bonds, performance bonds or similar contracts of guarantee c) Insurance intermediation comprising broking and agency services d) Services auxiliary to insurance comprising actuarial, loss adjustors, average adjustors and consultancy services B. Banking and Other Financial Services a) Acceptance of deposits and other repayable funds from the public b) Lending of all types including consumer credit, mortgage credit, factoring and financing of commercial transaction c) Financial leasing d) Payment and money transmission services, including, credit, charge and debit cards, travellers cheques and bankers drafts e) Guarantees and commitments f) Trading for own account or for account of customers, whether on an exchange, in an over- the-counter market or otherwise, the following: - money market instruments (including cheques, bills, certificates of deposit) - foreign exchange - derivative products, including financial futures and options exchange rate and interest rate instruments, including swaps and forward rate agreements - transferable securities - other negotiable instruments and_ financial assets, including bullion g) Participation in issues of all kinds of securities, including underwriting and placement as agent and provision of service related to such issues h) Money broking i) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services j) Settlement and clearing services for financial assets, including securities, derivative products and other negotiable instruments k) Advisory and other auxiliary financial services, including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy l) Provision and transfer of financial information, and financial data processing and related software by providers of other financial services.	

ANNEX 4. SCHEDULE OF SPECIFIC COMMITMENTS ON THE MOVEMENT OF NATURAL PERSONS. THAILAND

1. The following sets out Thailand's commitments in accordance with Chapter 9 (Movement of Natural Persons) with respect to its commitments for the temporary entry and temporary stay of natural persons of another Party covered under Article 9.2 (Scope) of Chapter 9 (Movement of Natural Persons).

2. Any measure in obtaining a licence or permission in any committed sector or subsector shall be set out in Thailand's Schedule in Annex 2 (Schedules of Specific Commitments for Services).

3. The obligations of Thailand under this Agreement with respect to permanent residents of other Parties are unbound.

Thailand reaffirms its rights and obligations regarding permanent residents as set out in its schedule of specific commitments in GATS. Nevertheless, where Parties exercise such rights, they shall not exercise them through this Agreement.

4. Thailand remains unbound in respect of the temporary entry of natural persons of another Party into, or their temporary stay in, the territory of Thailand under Chapter 9 (Movement of Natural Persons), except for sectors and subsectors set out in Appendix A (Sectoral Specific Commitments) and the categories of persons set out below.

Description of Category	**Conditions and Limitations (including length of stay)**
A. Short-Term Business Visitor (BV)	
Definition: A natural person seeking to enter or stay in Thailand temporarily, whose remuneration and financial support for the duration of the visit is derived from outside Thailand: (i) as a representative of a goods seller or service supplier, for the purpose of negotiating the sale of goods or supply of services, or entering into agreements to sell goods or supply services for that goods seller or service supplier, where such negotiations do not involve direct sale of goods or supply of services to the general public; (ii) as an employee of a juridical person (1) only for the purpose of establishing an investment or setting up a commercial presence in Thailand for the juridical person; (iii) for the purpose of participating in business negotiations or meetings; or (iv) for the purpose of establishing an investment or setting up a commercial presence in Thailand.	Temporary entry and temporary stay for a period not exceeding 90 days and may be extended for a further period of not more than one year from the arrival date, provided that the criteria stipulated by the Immigration Bureau and the Department of Employment have been satisfied.
In relation to the financial services sectors and subsectors set out in Appendix A (Sectoral Specific Commitments), Business Visitor is defined as a natural person who stays in Thailand for the purpose of participating in business meetings or contacts, entering into contract to sell or purchase services, visiting of business establishments or other similar activities and entering with a purpose to establish a commercial presence in Thailand.	Such temporary entry will be permitted for an initial period of not more than 90 days from the arrival date and may be extended for a further period of not more than one year, provided that the criteria stipulated by the Immigration Bureau and the Department of Employment have been satisfied.
B. Intra-Corporate Transferee (ICT)	
Definition: A natural person who is an employee of a juridical person established in the territory of another Party, who is transferred temporarily for the supply of a service through commercial presence (either through a representative office, branch, subsidiary or affiliate) in Thailand, and who has been an employee of the juridical person for a period specified in the Conditions and Limitations column of this entry, and who is: (i) an **Executive**: a natural person within the organisation who primarily directs the management of the organisation and exercises wide latitude in decision making and receives only general supervision or direction from higher level executives, the board of directors or stockholders of the business; an executive would not directly perform tasks related to the actual provision of the service or services of the organisation; (ii) a **Manager**: a natural person within the organisation who primarily directs the	Temporary entry and temporary stay for an initial period not exceeding one year from the arrival date shall be granted, when applied for, to an intra-corporate transferee who has been employed by the juridical person concerned outside Thailand for a period of not less than one year immediately preceding the date of the application for admission; and have satisfied the criteria stipulated by the Immigration Bureau and hold a Non-Immigration visa; and have

organisation, department or subdivision and exercises supervisory and control functions over other supervisory, managerial or professional staff; does not include first line supervisors unless employees supervised are professionals; does not include employees who primarily perform tasks necessary for the provision of the service of the organisation; or (iii) a **Specialist**: a natural person within the organisation who possesses knowledge at an advanced level of expertise essential to the establishment or provision of the service, or who possesses proprietary knowledge of the organisation's service, research equipment, techniques or management; may include members of a licensed profession.	satisfied the Criteria stipulated by the Department of Employment. Such criteria may include: size of fully paid-up capital, employment creation, extent of foreign investment, export promotion, transfer of technology and special needs of the management. Such temporary stay may be extended for a further three terms of not more than one year each.
In relation to the financial services sector and subsectors set out in Appendix A (Sectoral Specific Commitments), Intra- corporate Transferee is defined as a corporate transferee of the managerial or executive level or a specialist, provided that such person has been employed by the juridical person concemed outside Thailand for a period of not less than one year immediately preceding the date of the application for admission and has satisfied the criteria stipulated by the Immigration Bureau and the criteria for management needs (2) stipulated by the Department of Employment.	The temporary stay is limited to a one- year period from the arrival date and may be extended for a further three terms of not more than one year each.

(1) All references to "juridical person" in this Schedule shall be as defined in subparagraph (d) of Article 8.1 (Definitions).

(2) In considering managerial needs, the following facts shall be taken into consideration by the relevant authority, namely: (1) size of fully paid-up capital; (2) employment creation; (3) extent of foreign investment; (4) export promotion; (5) transfer of technology; (6) special needs of the management.

APPENDIX A. SECTORAL SPECIFIC COMMITMENTS (3) (4)

Thailand extends its commitments under Article 4 (Grant of Temporary Entry) of Chapter 9 (Movement of Natural Persons) for the temporary entry and temporary stay of natural persons only for Short Term Business Visitor (BV) and Intra-Corporate Transferee (ICT) engaging in the following subsectors only, and subject to conditions and limitations specified for each particular sector and subsector:

Sector or Subsector	**Conditions and Limitations**
1. BUSINESS SERVICES	
A. Professional Services - Engineering services (CPC 8672)	Unbound for civil engineer
B. Computer and Related Services - Consultancy services related to the installation of computer hardware (CPC 841) -Software implementation services (CPC 842) - Data processing services (excluding those provided over public telecommunications network) (CPC 843) - Database services (excluding those provided over public telecommunications network) (CPC 844) - Other computer services: Software training services for staff of clients (part of CPC 849) **C. Research and Development (R&D) Services -** R&D services on natural sciences: Basic research services in engineering and technology (CPC Version 2.1: 8114) - R&D services on social sciences and humanities:	

Research and experimental development services in linguistics and languages (CPC Version 1.1: 81240) **E. Rental or Leasing Services without Operators** Relating to other machinery and equipment: Rental and leasing services conceming agricultural machinery, construction machinery, office machinery, other machinery and equipment without operator (CPC 83106 - 83109) **F. Other Business Services** Advertising services (CPC 87110 + 87120 + 87190) Advertising services: Sales of internet advertising space (except on commission) (CPC Version 1.1: 83633) Market research and public opinion polling services (CPC 86401 - 86402)	
Management consulting services: General Management consulting services (CPC 86501)	Unbound for legal and auditing consultants
Technical testing and analysis services (CPC 86761 + 86769) Services incidental to agriculture, hunting and forestry: - Consultancy services on agricultural extension: soil preparation, seed production, plant protection, harvesting, grading, packing, storaging - Soil analysis laboratory - Soil survey and land use planning - Cover crop seed multiplication Forestry consultant services. Services incidental to fishing (CPC 882): Intemational trading, exporting products services (broker) - Quality analysis services - Canning process analysis services - Technical services - Consulting - Research on marketing - Quality control.	
Services incidental to mining at oil and gas fields	Unbound for civil engineer
Related scientific and technical consulting services: Scientific consulting services from mathematicians and statisticians	
Related scientific and technical consulting services: Oil And gas exploration	Unbound for civil engineer
Maintenance and repair services of office machinery and equipment including computers (CPC 84500) Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment): Machinery and equipment, on a fee or contract basis (part of CPC 88620) Other: Translation and interpretation services (CPC Version 1.1: 83910) 2. **COMMUNICATION SERVICES** C. Telecommunications Services. Fixed-line voice telephone services, Private leased circuit services: Dedicated network services (CPC 75222), Electronic mail (CPC 7523**) Voice mail (CPC 7523) On-line information and database retrieval (CPC 7523**) Data base access services (part of CPC 7523) On-line information or data processing services provided over public telecommunications network (part of CPC 843, excluding transaction processing)	
Other: Telecommunications terminal equipment leasing services (CPC 75410) Telecommunications equipment sales services (part of CPC 75420) Telecommunication consulting services (CPC 75440) Domestic lease circuits (part of CPC 75299) Videotext, Teleconference **D. Audiovisual Services** Motion picture and video tape production and distribution services: Film or video production and distribution services, excluding promotion or advertising services (CPC 96112** + 96113**) Radio and television services (CPC 9613): Radio or television services only for production of radio or television programmes (CPC 96131** + 96132**)	Unbound for civil engineer
3. CONSTRUCTION AND RELATED ENGINEERING SERVICES. A. Construction Work for Buildings (CPC 512) B. Construction Work for Civil Engineering (CPC 513) C. Installation and Assembly Work (CPC 514 + 516) E. Other.Pre-erection work at construction sites (CPC 511) Special trade construction work (CPC 515) Renting services related to	

equipment for construction or demolition of building or civil engineering work, with operator (CPC 518) **5. Education Services (Excluded Public Education Services)** A. Primary Education Services (CPC 921*) Intemational and national school education services (CPC 9219) B. Secondary Education Services (CPC 922**) General secondary education services (CPC 9221) Higher secondary education services (CPC 9222) Technical and vocational education services (CPC 9223) Technical and vocational education services for handicapped students (CPC 9224) C. Higher Education Services (CPC 923) Science technology and innovation faculty (conducted in English language) (part of CPC 9239) Engineering and industrial faculty: Robotics and Biotechnology (conducted in English language) (part of CPC 9239) Other higher education services (conducted in English language) (CPC 9239) D. Adult Education Services. Professional or short courses education services (CPC 92400) E. Other Education Services (CPC 92900) Foreign language tuition services (CPC 92900**) **6. ENVIRONMENTAL SERVICES** A. Sewage Services. Environmental consultancy on sewage system, refuse disposal, hazardous waste management, air pollution and noise management, sanitation and other environmental management services (CPC 9401**) Environmental protection and environmental abatement services (CPC 9401**) Sewage services (including industrial waste water treatment system) (CPC 9401**) B. Refuse Disposal Services (including hazardous waste management and_ incinerator) (CPC 9402) C. Sanitation and Similar Services (CPC 9403) D. Other.Cleaning services of exhaust gases (including industrial emission abatement) (CPC 9404) Noise abatement services (CPC 9405) Nature and landscape protection services (CPC 9406) Other environmental protection services (CPC 9409)	Unbound for civil engineer
7. FINANCIAL SERVICES. A. Insurance and Insurance- related Services. - Life insurance services (CPC 81211) - Non-life insurance services (CPC 8129)	Only senior managerial personnel, specialists and technical assistants with the approval of the Insurance Commissioner
- Services auxiliary to insurance (excluding pension funding services): Insurance broking and agency services (CPC 81401)	Only senior managerial personnel, specialists and technical assistants with the approval of the Insurance Commissioner. Unbound for individual broker and agent. Brokers shall not induce, advise or do any acts so as to cause any person to enter into insurance contracts with insurers

	abroad, except for reinsurance contracts
- Services auxiliary to insurance (excluding pension funding services): Insurance consultancy services (CPC 81402) - Average and loss adjustment services (CPC 81403) - Actuarial services (CPC 81404)	Only senior managerial personnel, specialists and technical assistants with the approval of the Insurance Commissioner
B. Banking and Other Financial Services - Acceptance of deposits and other repayable funds from the public - Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction - Financial leasing - Payment and money transmission services including credit, charge and debit cards, travellers cheques and bankers drafts - Guarantees and commitments - Trading for own account, or for account of customers in the following: - Money market instruments - Foreign exchange - Exchange rate and interest rate instruments - Transferable securities e Participation in issues of all kinds of securities, including under-writing and placement as agent (whether publicly or privately) and provision of services related to such issues (5) - Asset management as follows: - Cash or portfolio management - Collective investment management - Custodian and depository services - Advisory, intermediation and other auxiliary financial service (6) - Provision and transfer of financial information, and financial data processing and related software	Limitations on the number of foreign personnel per foreign bank office: (a) two persons for banks operating as representative office; (b) six persons for each foreign bank branch
- For securities companies (7): - Securities brokerage and dealing - Trading for own account or for account of customers in transferable securities - Securities underwriting: Participation in issues of all kinds of securities, including underwriting and placement as agents (whether publicly or privately) and provision of services related to such issues - Investment advisory	The number of foreign personnel is limited to two persons for a representative office
- For asset management companies - Collective investment schemes	Only for a representative office, the number of foreign personnel is limited to two persons
- Credit card services (CPC 81133)	Mobilising funds from the public is prohibited, unless licensed under a financial law

- Financial consultancy services (CPC 81332)	
9. TOURISM AND TRAVEL RELATED SERVICES. A. Hotels and Restaurants. - Hotel lodging services (CPC 64110) Camping and caravan site services (CPC 64195) Restaurant services (CPC 64210) Catering services (CPC 64230) B. Travel Agency and Tour Operator Services.- Travel agency and tour operator services (CPC 74710). D. Other - Hotel management services (CPC Version 1.1: part of 63110)	
10. RECREATIONAL, CULTURAL AND SPORTING SERVICES. A. Entertainment Services. Amusement parks (CPC Version 1.1: 96910**) C. Libraries, Archives, Museums and Other Cultural Services - Private library services (CPC 96311**) D. Sporting Services (excluding other sporting services specified in CPC 96419) (CPC 96411 + 96412 + 96413) E. Other Recreational Services (CPC 9649) - Recreation park and beach services **11. TRANSPORT SERVICES.** A. Maritime Transport Services	
Passenger transportation (CPC 7211 less cabotage transport) Freight transportation (CPC 7212 less cabotage transport) International towing (CPC 7214)	Unbound for ships' crew
Supporting Services for maritime transport (CPC 745**): - Shore reception facilities (collection of waste or oily water from ships) - Port captain's services attached to specific foreign vessels.	
C. Air Transport Services. Aircraft repair and maintenance services (CPC 8868) - Aircraft (includes all machines that drive support in the atmosphere from the reaction of the except for objects which are exempted under the Ministerial Regulations) - Major aircraft appliance (an engine, a propeller and other appliances of an aircraft designated by the Technical Commission) - Technical Standard Order Article (TSO Article) (an instrument, a mechanism, a part, an equipment and a component used or intended to be used in operating or controlling an aircraft in flight, whether it is installed on or attached to the aircraft, inside or outside) - Aircraft Part (an airframe, part of an airframe or part of a major aircraft appliance) - Supporting services for air transport (CPC 746**) - Selling and marketing of air transport services.	
E. Rail Transport Services. - Maintenance and repair of rail transport equipment on a fee or contract basis (CPC 8868)	Unbound for civil engineer
- Supporting Services for rail transport services (CPC 743**) - Passenger and freight car cleaning services - Security services at railway station	
F. Road Transport Services (Other non-scheduled passenger transportation) - Freight transportation only for frozen or refrigerated goods, bulk liquids or gases and containerised freight (CPC 71231 - 71233) - Rental of commercial vehicles with operator: Rental services of passenger cars with operator (CPC 71222) - Rental services of buses and coaches with operator (CPC 71223) **H. Services Auxiliary to All Modes of Transport -** Maritime cargo handling services in private-owned port - Storage and warehousing services (CPC 742)	

(3) The classification of service sectors in this Schedule is based on the 1991 provisional Central Product Classification (CPC) CPC Version 1.1 and Version 2.1 of the United Nations Statistical Office unless otherwise indicated by the absence of a CPC number. The ordering reflects the services sectoral classification list as used in the GATT document MTN.GNS/W/120 dated 10 July 1991. The scheduling of specific commitments follows the guidelines stated in GATT documents MTN.GNS/W/164 dated 3 September 1993 and MTN.GNS/W/164/Add. 1 dated 30 November 1993.

(4) The use of "**" against individual CPC codes indicates that the specific commitment for that code shall not extend to the total range of services covered under that code.

(5) The commitments for securities companies under this subsector are separately listed below.

(6) The commitments on investment advisory for securities companies under this subsector are separately listed below.

(7) "Securities companies" means securities companies which are not commercial banks and insurance companies.

Reference Paper

NOTE TO THE APPENDIX

For the purposes of this Appendix:

1. cabotage means the transportation or towage of passengers or goods, between a port or place located in Thai waters and another port or place located in Thai waters; and

2. maritime cargo handling services means activities exercised by stevedore companies, including terminal operators, but not including the direct activities of dockers when this workforce is organised independently of the stevedoring or terminal operator companies. The activities include the organisation and supervision of:

- the loading or discharging of cargo to or from a ship;

- the lashing or unlashing of cargo;

- the reception or delivery and safekeeping of cargoes before shipment or after discharge.

ANNEX 4. SCHEDULE OF SPECIFIC COMMITMENTS ON THE MOVEMENT OF NATURAL PERSONS. VIET NAM

1. The following sets out Viet Nam's commitments under Chapter 9 (Movement of Natural Persons) in respect of the temporary movement of natural persons of a Party in the territory of Viet Nam.

2. Viet Nam may adopt or maintain any limitations including economic needs testing and labour market testing on temporary movement of natural persons specific commitments in this Schedule, subject to its laws and regulations.

3. References to "CPC" in this Annex refers to the provisional CPC codes as used in the Provisional Central Product Classification (Statistical Papers Series M No.77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991).

Description of Category	**Conditions and Limitations (including length of stay)**
A. Intra-Corporate Transferees	
Managers, executives and specialists, as defined hereunder, of a foreign enterprise which has established a commercial presence in the territory of Viet Nam, temporarily moving as intra- corporate transferees to that commercial presence and who have been previously employed by the foreign enterprise for at least one year. **Managers and executives** are those who primarily direct the management of the foreign enterprises which have established commercial presence in Viet Nam,	

receiving only general supervision or direction from the board of directors or stockholders of the business or their equivalent, including directing the establishment or a department or subdivision of the establishment, supervising and controlling the work of other supervisory, professional or managerial employees, having the authority personally to hire and fire or recommend hiring, firing or other personnel actions, and who do not directly perform tasks concerning the actual supply of the services of the establishment. **Specialists** are natural persons working within an organization who possess knowledge at an advanced level of expertise and with knowledge of the organization's services, research equipment, techniques or management. In assessing such knowledge, account will be taken not only of knowledge specific to the commercial presence, but also of whether the person has a high level of skills or qualification referring to a type of work or trade requiring specific technical knowledge. Specialists may include, but are not limited to, members of licensed professions.	Intra-Corporate Transferees shall be granted entry and a stay penmit for an initial period of three years which may be extended subject to the term of operation of those entities in Viet Nam. At least 20 per cent of the total number of managers, executives and specialists shall be Vietnamese nationals. However, a minimum of three non-Vietnamese managers, executives and specialists shall be permitted per enterprise.
B. Other Personnel	
Managers, executives and specialists, as defined in (A) above, who cannot be substituted by Vietnamese and who are employed outside Viet Nam's territory by a foreign enterprise which has established a commercial presence in the territory of Viet Nam with a view to participating in the foreign enterprise's activities in Viet Nam.	Other personnel shall be granted entry and a stay permit in conformity with the term of the concemed employment contract or for an initial period of three years whichever is shorter, which may be extended subject to the employment contract between them and the commercial presence.
C. Service Sales Persons	
Natural persons not based in the territory of Viet Nam and receiving no remuneration from a source located within Viet Nam, and who are engaged in activities related to representing a service provider for the purpose of negotiating for the sale of the services of that provider where: (i) such sales are not directly made to the general public; and (ii) the salesperson is not directly engaged in supplying the service.	The stay of Service sales persons is limited to a 90-day period.
D. Persons Responsible for Setting Up a Commercial Presence	
Managers and executives (as defined in (a) above) within a juridical person, who are responsible for the setting up, in Viet Nam, of a commercial presence of a service provider of a Party when (i) these people are not engaged in making direct sales or supplying services; and (ii) the service provider has its principal place of business in the territory of a Party other than Viet Nam and has no other commercial presence in Viet Nam.	The stay of persons responsible for setting up a commercial presence is limited to a 90-day period.

E. Contractual Service Suppliers (CSS)	
Natural persons who are employees of a foreign enterprise having no commercial presence in Viet Nam.	Contractual service suppliers (CSS) may enter and stay in Viet Nam for a period of 90 days or for the duration of the contract, whichever is less provided that the following conditions and requirements shall be applied: The foreign enterprise has obtained a service contract from a Vietnamese enterprise engaged in business operation in Viet Nam. The competent authority of Viet Nam must be able to establish the necessary procedures to guarantee the bona fide character of the contract. These persons must possess: (a) a university degree or a_ technical qualification document demonstrating knowledge of an equivalent level; (b) professional qualifications where this is required to exercise an activity in the sector concerned pursuant to the laws and regulations of Viet Nam; and (c) at least five years of professional experience in the sector. The number of these persons covered by the service contract shall not be larger than necessary to fulfil the contract, as it may be decided by the laws and regulations and requirement of Viet Nam. These persons have been employed by the foreign enterprise having no commercial presence in Viet Nam for a period of no less than two years and have met the requirements prescribed for "specialist" above. The entry of these persons is allowed for computer and related services (CP 841 845, 849) and engineering services (CPC 8672).