

FRAMEWORK AGREEMENT ON THE ASEAN INVESTMENT AREA

The Governments of Brunei Darussalam, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Vietnam, Member States of the Association of South-East Asian Nations (ASEAN);

REAFFIRMING the importance of sustaining economic growth and development in all Member States through joint efforts in liberalising trade and promoting intra-ASEAN trade and investment flows enshrined in the Framework Agreement on Enhancing ASEAN Economic Co-operation signed in Singapore on 28 January 1992;

RECALLING the decision of the Fifth ASEAN Summit held on 15 December 1995 to establish an ASEAN Investment Area (hereinafter referred to as "AIA"), in order to enhance ASEAN's attractiveness and competitiveness for promoting direct investments;

AFFIRMING their commitment to the 1987 ASEAN Agreement for the Promotion and Protection of Investments and its 1996 Protocol to enhance investor confidence for investing in ASEAN;

MINDFUL of the decision to establish an ASEAN Free Trade Area (AFTA) and the implementation of the ASEAN Industrial Co-operation (AICO) Scheme, to encourage greater investment flows into the region;

RECOGNISING that direct investment is an important source of finance for sustaining the pace of economic, industrial, infrastructure and technology development; hence, the need to attract higher and sustainable level of direct investment flows in ASEAN;

DETERMINED to realise the vision of ASEAN to establish a competitive ASEAN Investment Area through a more liberal and transparent investment environment by 1st January 2010; and

BEARING IN MIND that the measures agreed upon to establish a competitive ASEAN Investment Area by 2010 shall contribute towards ASEAN Vision 2020.

HAVE AGREED AS FOLLOWS:

ARTICLE 1 DEFINITION

For the purpose of this Agreement:

"ASEAN investor " means -

- (i) a national of a Member State; or
- (ii) any juridical person of a Member State,

making an investment in another Member State, the effective ASEAN equity of which taken cumulatively with all other ASEAN equities fulfills at least the minimum percentage required to meet the national equity requirement and other equity requirements of domestic laws and published national policies, if any, of the host country in respect of that investment.

For the purpose of this definition, equity of nationals or juridical persons of any Member State shall be deemed to be the equity of nationals or juridical persons of the host country.

"effective ASEAN equity" in respect of an investment in an ASEAN Member State means ultimate holdings by nationals or juridical persons of ASEAN Member States in that investment. Where the shareholding/equity structure of an ASEAN investor makes it difficult to establish the ultimate holding structure, the rules and procedures for determining effective equity used by the Member State in which the ASEAN investor is investing may be applied. If necessary, the Co-ordinating Committee on Investment shall prepare guidelines for this purpose.

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

"measures" means laws, regulations, rules, procedures, decisions, administrative actions, or any other actions affecting investments taken by Member States.

"national" means a natural person having the citizenship of a Member State in accordance with its applicable laws. .

ARTICLE 2 COVERAGE

This Agreement shall cover all direct investments other than -

- (a) portfolio investments; and
- (b) matters relating to investments covered by other ASEAN Agreements, such as the ASEAN Framework Agreement on Services.

ARTICLE 3 OBJECTIVES

The objectives of this Agreement are:

- (a) to establish a competitive ASEAN Investment Area with a more liberal and transparent investment environment amongst Member States in order to -
 - (i) substantially increase the flow of investments into ASEAN from both ASEAN and non-ASEAN sources;
 - (ii) jointly promote ASEAN as the most attractive investment area;
 - (iii) strengthen and increase the competitiveness of ASEAN's economic sectors;

(iv) progressively reduce or eliminate investment regulations and conditions which may impede investment flows and the operation of investment projects in ASEAN; and

(b) to ensure that the realisation of the above objectives would contribute towards free flow of investments by 2020.

ARTICLE 4 FEATURES

The AIA shall be an area where:

(a) there is a co-ordinated ASEAN investment co-operation programme that will generate increased investments from ASEAN and non-ASEAN sources;

(b) national treatment is extended to ASEAN investors by 2010, and to all investors by 2020, subject to the exceptions provided for under this Agreement;

(c) all industries are opened for investment to ASEAN investors by 2010 and to all investors by 2020, subject to the exceptions provided for under this Agreement;

(d) the business sector has a larger role in the co-operation efforts in relation to investments and related activities in ASEAN; and

(e) there is freer flow of capital, skilled labour and professionals, and technology amongst Member States.

ARTICLE 5 GENERAL OBLIGATIONS

To realise the objectives referred to in Article 3, the Member States shall:

(a) ensure that measures and programmes are undertaken on a fair and mutually beneficial basis;

(b) undertake appropriate measures to ensure transparency and consistency in the application and interpretation of their investment laws, regulations and administrative procedures in order to create and maintain a predictable investment regime in ASEAN;

(c) begin the process of facilitation, promotion and liberalisation which would contribute continuously and significantly to achieving the objective of a more liberal and transparent investment environment;

(d) take appropriate measures to enhance the attractiveness of the investment environment of Member States for direct investment flows; and

(e) take such reasonable actions as may be available to them to ensure observance of the provisions of this Agreement by the regional and local governments and authorities within their territories.

ARTICLE 6 PROGRAMMES AND ACTION PLANS

1. Member States shall, for the implementation of the obligations under this Agreement, undertake the joint development and implementation of the following programmes:

- (a) co-operation and facilitation programme as specified in Schedule I;
- (b) promotion and awareness programme as specified in Schedule II;
and
- (c) liberalisation programme as specified in Schedule III.

2. Member States shall submit Action Plans for the implementation of the programmes in paragraph 1 to the AIA Council established under Article 16 of this Agreement.

3. The Action Plans shall be reviewed every 2 years to ensure that the objectives of this Agreement are achieved.

ARTICLE 7 OPENING UP OF INDUSTRIES AND NATIONAL TREATMENT

1. Subject to the provisions of this Article, each Member State shall:

- (a) open immediately all its industries for investments by ASEAN investors;
- (b) accord immediately to ASEAN investors and their investments, in respect of all industries and measures affecting investment including but not limited to the admission, establishment, acquisition, expansion, management, operation and disposition of investments, treatment no less favourable than that it accords to its own like investors and investments ("national treatment").

2. Each Member State shall submit a Temporary Exclusion List and a Sensitive List, if any, within 6 months after the date of signing of this Agreement, of any industries or measures affecting investments (referred to in paragraph 1 above) with regard to which it is unable to open up or to accord national treatment to ASEAN investors. These lists shall form an annex to this Agreement. In the event that a Member State, for justifiable reasons, is unable to provide any list within the stipulated period, it may seek an extension from the AIA Council.

3. The Temporary Exclusion List shall be reviewed every 2 years and shall be progressively phased out by 2010 by all Member States except the Socialist Republic of Vietnam, the Lao People's Democratic Republic and the Union of Myanmar. The Socialist Republic of Vietnam shall progressively phase out the Temporary Exclusion List by 2013 and the Lao People's Democratic Republic and the Union of Myanmar shall progressively phase out their Temporary Exclusion Lists by 2015.

4. The Sensitive List shall be reviewed by 1 January 2003 and at such subsequent periodic intervals as may be decided by the AIA Council.

ARTICLE 8 MOST FAVOURED NATION TREATMENT

1. Subject to Articles 7 and 9 of this Agreement, each Member State shall accord immediately and unconditionally to investors and investments of another Member State, treatment no less favourable than that it accords to investors and investments of any other Member State with respect to all measures affecting

investment including but not limited to the admission, establishment, acquisition, expansion, management, operation and disposition of investments.

2. In relation to investments falling within the scope of this Agreement, any preferential treatment granted under any existing or future agreements or arrangements to which a Member State is a party shall be extended on the most favoured nation basis to all other Member States.

3. The requirement in paragraph 2 shall not apply to existing agreements or arrangements notified by Member States to the AIA Council within 6 months after the date of signing of this Agreement.

4. Nothing in paragraph 1 shall prevent any Member State from conferring special treatment or advantages to adjacent countries under growth triangles and other sub- regional arrangements between Member States.

ARTICLE 9 WAIVER OF MOST FAVOURED NATION TREATMENT

1. Where a Member State is temporarily not ready to make concessions under Articles 7 of this Agreement, and another Member State has made concessions under the said Article, then the first mentioned Member State shall waive its rights to such concessions. However, if a Member State which grants such concessions is willing to forego the waiver, then the first mentioned Member State can still enjoy these concessions.

2. Having regard to the late entry into ASEAN of the Socialist Republic of Vietnam, the Lao People's Democratic Republic and the Union of Myanmar, the provisions of paragraph 1 of this Article shall only apply to the Socialist Republic of Vietnam for a period of 3 years, and the Lao People's Democratic Republic and the Union of Myanmar for a period of 5 years from the date this Agreement comes into force.

ARTICLE 10 MODIFICATION OF SCHEDULES, ANNEXES AND ACTION PLANS

1. Any modification to Schedules I and II, and Action Plans thereof shall be subject to the approval of the Co-ordinating Committee on Investments (CCI) established under Article 16(4) of this Agreement.

2. Any modification to or withdrawal of any commitments in Schedule III and Action Plans thereof and the Annexes shall be subject to the consideration of the AIA Council in accordance with the provisions of the ASEAN Protocol on Notification Procedures.

ARTICLE 11 TRANSPARENCY

1. Each Member State shall make available to the AIA Council through publication or any other means, all relevant measures, laws, regulations and administrative guidelines which pertain to, or affect, the operation of this Agreement. This shall also apply to international agreements pertaining to or affecting investment to which a Member State is also a signatory.

2. Each Member State shall promptly and at least annually inform the AIA Council of the introduction of any new or any changes to existing laws, regulations or