

2009 ASEAN COMPREHENSIVE INVESTMENT AGREEMENT

Signed by the Economic Ministers at the 14th ASEAN Summit in Cha-am,
Thailand on 26 February 2009

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The Governments of Brunei Darussalam, the Kingdom of Cambodia, 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 Viet Nam, Member States of the Association of Southeast Asian Nations ("ASEAN"), hereinafter collectively referred to as "Member States" or singularly as "Member State";

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

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

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

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

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

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

HAVE AGREED as follows:

SECTION A

ARTICLE 1 OBJECTIVE

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

- (a) progressive liberalisation of the investment regimes of Member States;
- (b) provision of enhanced protection to investors of all Member States and their investments;

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

ARTICLE 2

GUIDING PRINCIPLES

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

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

ARTICLE 3

SCOPE OF APPLICATION

1. This Agreement shall apply to measures adopted or maintained by a Member State relating to:
 - (a) investors of any other Member State; and
 - (b) investments, in its territory, of investors of any other Member State.
2. This Agreement shall apply to existing investments as at the date of entry into force of this Agreement as well as to investments made after the entry into force of this Agreement.
3. For the purpose of liberalisation and subject to Article 9 (Reservations), this Agreement shall apply to the following sectors:
 - (a) manufacturing;
 - (b) agriculture;
 - (c) fishery;

- (d) forestry;
 - (e) mining and quarrying;
 - (f) services incidental to manufacturing, agriculture, fishery, forestry, mining and quarrying; and
 - (g) any other sectors, as may be agreed upon by all Member States.
4. This Agreement shall not apply to:
- (a) any taxation measures, except for Articles 13 (Transfers) and 14 (Expropriation and Compensation);
 - (b) subsidies or grants provided by a Member State;
 - (c) government procurement;
 - (d) services supplied in the exercise of governmental authority by the relevant body or authority of a Member State. For the purposes of this Agreement, a service supplied in the exercise of governmental authority means any service, which is supplied neither on a commercial basis nor in competition with one or more service suppliers; and
 - (e) measures adopted or maintained by a Member State affecting trade in services under the ASEAN Framework Agreement on Services signed in Bangkok, Thailand on 15 December 1995 (“AFAS”).
5. Notwithstanding sub-paragraph 4 (e), for the purpose of protection of investment with respect to the commercial presence mode of service supply, Articles 11 (Treatment of Investment), 12 (Compensation in Cases of Strife), 13 (Transfers), 14 (Expropriation and Compensation) and 15 (Subrogation) and Section B (Investment Disputes Between an Investor and a Member State), shall apply, mutatis mutandis, to any measure affecting the supply of a service by a service supplier of a Member State through commercial presence in the territory of any other Member State but only to the extent that they relate to an investment and obligation under this Agreement regardless of whether or not such service sector is scheduled in the Member States’ schedule of commitments made under AFAS.
6. Nothing in this Agreement shall affect the rights and obligations of any Member State under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.

ARTICLE 4 DEFINITIONS

For the purpose of this Agreement:

- (a) “**covered investment**” means, with respect to a Member State, an investment in its territory of an investor of any other Member State in existence as of the date of entry into force of this Agreement or established, acquired or expanded thereafter, and has been

admitted according to its laws, regulations, and national policies, and where applicable, specifically approved in writing¹ by the competent authority of a Member State;

- (b) **“freely usable currency”** means a freely usable currency as determined by the International Monetary Fund (“IMF”) under its Articles of Agreement and any amendments thereto;
- (c) **“investment”**² means every kind of asset, owned or controlled, by an investor, including but not limited to the following:
- i) movable and immovable property and other property rights such as mortgages, liens or pledges;
 - ii) shares, stocks, bonds and debentures and any other forms of participation in a juridical person and rights or interest derived therefrom;
 - iii) intellectual property rights which are conferred pursuant to the laws and regulations of each Member State;
 - iv) claims to money or to any contractual performance related to a business and having financial value³;
 - v) rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts; and
 - vi) business concessions required to conduct economic activities and having financial value conferred by law or under a contract, including any concessions to search, cultivate, extract or exploit natural resources.

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

- (d) **“investor”** means a natural person of a Member State or a juridical person of a Member State that is making, or has made an investment in the territory of any other Member State;
- (e) **“juridical person”** means any legal entity duly constituted or otherwise organised under the applicable law of a Member State, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any enterprise, corporation, trust, partnership, joint venture, sole proprietorship, association, or organisation;

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

² Where an asset lacks the characteristics of an investment, that asset is not an investment regardless of the form it may take. The characteristics of an investment include the commitment of capital, the expectation of gain or profit, or the assumption of risk.

³ For greater certainty, investment does not mean claims to money that arise solely from:

- (a) commercial contracts for sale of goods or services; or
- (b) the extension of credit in connection with such commercial contracts.

- (f) **“measures”** means any measure of a Member State, whether in the form of laws, regulations, rules, procedures, decisions, and administrative actions or practice, adopted or maintained by:
 - i) central, regional or local government or authorities; or
 - ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;
- (g) **“natural person”** means any natural person possessing the nationality or citizenship of, or right of permanent residence in the Member State in accordance with its laws, regulations and national policies;
- (h) **“newer ASEAN Member States”** means the Kingdom of Cambodia, the Lao People’s Democratic Republic, the Union of Myanmar and the Socialist Republic of Viet Nam;
- (i) **“WTO”** means the World Trade Organization; and
- (j) **“WTO Agreement”** means the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh, Morocco on 15 April 1994, as may be amended.

ARTICLE 5 NATIONAL TREATMENT

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

ARTICLE 6 MOST-FAVOURED-NATION TREATMENT⁴

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

⁴ For greater certainty:

(a) this Article shall not apply to investor-State dispute settlement procedures that are available in other agreements to which Member States are party; and

(b) in relation to investments falling within the scope of this Agreement, any preferential treatment granted by a Member State to investors of any other Member State or a non-Member State and to their investments, under any existing or future agreements or arrangements to which a Member State is a party shall be extended on a most-favoured-nation basis to all Member States.

2. Each Member State shall accord to investments of investors of another Member State treatment no less favourable than that it accords, in like circumstances, to investments in its territory of investors of any other Member State or a non-Member State with respect to the admission, establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments.
3. Paragraphs 1 and 2 shall not be construed so as to oblige a Member State to extend to investors or investments of other Member States the benefit of any treatment, preference or privilege resulting from:
 - (a) any sub-regional arrangements between and among Member States⁵; or
 - (b) any existing agreement notified by Member States to the AIA Council pursuant to Article 8(3) of the AIA Agreement.⁶

ARTICLE 7

PROHIBITION OF PERFORMANCE REQUIREMENTS

1. The provisions of the Agreement on Trade-Related Investment Measures in Annex 1A to the WTO Agreement (TRIMs), which are not specifically mentioned in or modified by this Agreement, shall apply, mutatis mutandis, to this Agreement.
2. Member States shall undertake joint assessment on performance requirements no later than 2 years from the date of entry into force of this Agreement. The aim of such assessment shall include reviewing existing performance requirements and considering the need for additional commitments under this Article.
3. Non-WTO Members of ASEAN shall abide by the WTO provisions in accordance with their accession commitments to the WTO.

ARTICLE 8

SENIOR MANAGEMENT AND BOARD OF DIRECTORS

1. A Member State shall not require that a juridical person of that Member State appoint to senior management positions, natural persons of any particular nationality.
2. A Member State may require that a majority of the board of directors of a juridical person of

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