

ANNEX ON FINANCIAL SERVICES

Article 1 Scope

1. This Annex applies to measures affecting the supply of financial services. Reference to the supply of a financial service in this Annex shall mean the supply of a service:

- (a) from the territory of one Member State into the territory of any other Member States (Mode 1: cross-border supply);
- (b) in the territory of one Member State to the service consumer of any other Member States (Mode 2: consumption abroad);
- (c) by a service supplier of one Member State, through commercial presence in the territory of any other Member States (Mode 3: commercial presence);
- (d) by a service supplier of one Member State, through presence of natural persons of a Member State in the territory of any other Member States (Mode 4: presence of natural persons).

2. This Annex does not apply to services supplied in the exercise of governmental authority, as follows:

- (a) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;
- (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.

3. For the purposes of this Annex, if a Member State allows any of the activities referred to in subparagraphs 2(b) or 2(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.

4. For greater certainty, this Annex shall prevail to the extent of any inconsistency with any other provision in this Agreement.

Article 2

Definitions

For the purposes of this Annex:

- (a) **cross-border supply of financial services** refers to the supply of financial services in subparagraphs 1 (a) and (b) of Article 1 (Scope) of this Annex;
- (b) **financial institution** means any financial intermediary or other enterprise that is authorised to do business and regulated or supervised by the central bank, monetary authority or financial services authority under the law of the Member States in whose territory it is located;
- (c) **financial services** means any service of a financial nature offered by a financial service supplier of a Member State. 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;
 - 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, but not limited to, futures and options;
 - d) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
 - e) transferable securities;
 - 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) through (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;
- (d) **financial service supplier** means any natural or juridical person of a Member State wishing to supply or supplying financial services but the term "financial service supplier" does not include a public entity;
- (e) **new financial service** means a financial service that is not supplied by any financial service supplier in the territory of a Member State but which is supplied and regulated in the territory of any other Member State. This may include services related to existing and new products, or the manner in which the product is delivered;
- (f) **public entity** means:
- (i) a government, a central bank or a monetary authority, of a Member State, or an entity owned or controlled by a Member State, 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
- (g) **self-regulatory organisation** means any non-governmental body, including any securities or futures exchange or market, clearing or payment



settlement agency, other organisation or association that:

- (i) is recognised as a self-regulatory organisation; and/or
- (ii) exercises regulatory or supervisory authority over financial service suppliers or financial institutions in its territory,

by legislation or delegation from central, regional or local governments or authorities.

Article 3

New Financial Services

Each Member State ("Host Member State") shall give due consideration to applications by financial institutions of another Member State established in the territory of the Host Member State to offer in the territory of the Host Member State a new financial service that the Host Member State would permit its own financial institutions, in like circumstances, to supply without adopting a law or modifying an existing law¹.

Where an application is approved, the provision of the new financial service is subject to relevant licensing, institutional or juridical form, or other requirements of the Host Member State.

Article 4

Safeguard Measures

1. Notwithstanding any other provisions of this Agreement, a Member State shall not be prevented from taking

¹ For greater certainty, a Member State may issue a new regulation or other subordinate measure in permitting the supply of the new financial service.



measures for prudential reasons, 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 or to ensure the stability of the exchange rate subject to the following:

- (a) where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the Member State's commitments or obligations under this Agreement; and
- (b) for measures to ensure the stability of the exchange rate such measures shall be no more than necessary and phased out when conditions no longer justify their institution or maintenance and such measures shall be applied on a most-favoured-nation basis.

2. Nothing in this Agreement shall be construed to require a Member State to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

Article 5 Recognition

1. A Member State may recognise prudential measures of any other country or international standard setting bodies in determining how the Member State's measures relating to financial services shall be applied². Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the

² For greater certainty, nothing in Article 11 (Most-Favoured-Nation Treatment) of this Annex shall be construed to require the Member State to accord such recognition to prudential measures of any other Member State.



country concerned or international standard setting body or may be accorded autonomously.

2. A Member State that is a party to such an agreement or arrangement referred to in paragraph 1, whether future or existing, shall afford adequate opportunity for other interested Member States to negotiate their accession to such agreement 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. Where a Member State accords recognition autonomously, it shall afford adequate opportunity for any other Member State to demonstrate that such circumstances exist.

Article 6

Transparency

1. The Member States recognise that transparent regulations and policies governing the activities of financial service suppliers are important in facilitating access of foreign financial service suppliers to, and their operations in each other's markets. Each Member State commits to promote regulatory transparency in financial services.

2. Each Member State shall ensure that measures of general application adopted or maintained by it are promptly published or otherwise made publicly available. Such information may be published in each Member State's chosen language. Each Member State shall endeavour to publish in English the translation, or summary, or explanation note of such measures of general application. Such publication shall not be used as official translation unless otherwise stated.

3. Each Member State shall, to the extent practicable:



- (a) publish or make available to interested persons in advance any law and regulation of general application relating to the supply of financial services that it proposes to adopt and the purpose of such law and regulation; and
- (b) provide interested persons³ and other Member States a reasonable opportunity to comment on such proposed laws and regulations.

4. Each Member State's regulatory authorities shall make available to interested persons their requirements, including any documentation required, for completing applications relating to the supply of financial services.

5. On the request of an applicant in writing, the regulatory authority shall inform the applicant of the status of the application. If such authority requires additional information from the applicant, it shall notify the applicant within reasonable time.

6. A regulatory authority shall make an administrative decision on a completed application of an applicant relating to the supply of a financial service within 180 days and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and the regulatory authority considers all necessary information is received. Where it is not practicable for a decision to be made within 180 days, the regulatory authority shall notify the applicant within a reasonable time and shall endeavour to make the decision within a reasonable time thereafter.

7. On the request of an unsuccessful applicant in writing, a regulatory authority that has denied an application shall

³ The Member States confirm their shared understanding that interested persons in this Article are persons whose direct financial interest could be potentially affected by the adoption of the laws and regulations of general application.



endeavour to inform the applicant of the reasons for denial of the application.

8. Each Member State shall maintain or establish appropriate mechanisms that will respond to inquiries from interested persons regarding measures of general application covered by this Annex.

9. Each Member State shall take reasonable measures as may be available to it to ensure that the rules of general application adopted or maintained by self-regulatory organisations⁴ of the Member State are promptly published or otherwise made publicly available⁵.

10. To the extent practicable, each Member State should allow reasonable time between the publication of final regulations and their effective dates.

Article 7

Payment and Clearing Systems

Under terms and conditions that accord national treatment, in accordance with domestic laws and regulations, each Member State shall grant to financial institutions of any other Member State established in the territory of the Host Member State 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 paragraph is not intended to confer access to the Member State's lender of last resort facilities.

⁴ This paragraph only applies to a Member State when that Member State has established self-regulatory organisations.

⁵ For greater certainty, Member States agree that such information may be published in each Member State's chosen language.



Article 8

Self-Regulatory Organisations

If a Member State requires a financial institution of another Member State to be a member of, participate in, or have access to, a self-regulatory organisation to provide a financial service in its territory, the Member State will endeavour to ensure that the self-regulatory organisation observes the obligations of Article 6 (National Treatment) of this Agreement and Article 11 (Most-Favoured-Nation Treatment) of this Annex.

Article 9

Transfer of Information and Processing of Information

1. A Member State shall not take measures that:
 - (a) prevent transfers of information, including transfers of data by electronic means, necessary for the conduct of the ordinary business of a financial service supplier;
 - (b) prevent the processing of information necessary for the conduct of the ordinary business of a financial service supplier; or
 - (c) prevent 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 Member State to protect personal data, personal privacy and the confidentiality of individual records and accounts including in accordance with its domestic laws and regulations as long as such right shall not be used



as a means of avoiding the Member State's commitments or obligations under this Agreement;

- (b) prevents a regulator of a Member State, for regulatory or prudential reasons, from requiring a financial service supplier in its territory to comply with domestic regulation in relation to data management⁶ and storage and system maintenance, as well as to retain within its territory copies of records; or
- (c) shall be construed to require a Member State to allow the cross-border supply or the consumption abroad of services in relation to which it has not made specific 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 as referred to in paragraph (a)(xv) of Article 2 (Definitions) of this Annex.⁷

Article 10

Dispute Settlement

Members of panels established pursuant to Article 34 (Dispute Settlement) of this Agreement for disputes on prudential issues and other financial matters shall have the

⁶ For greater certainty, data management includes the local processing obligation of domestic payment transactions.

⁷ For greater certainty, where a Member State has not made specific commitments in relation to the cross-border supply or consumption abroad of a service, the Member State shall have the right to take measures that prevent the transfer of information, processing of information or transfer of equipment referred to in paragraph 1 relating to the cross-border supply or consumption abroad of that service by the financial service supplier referred to under paragraph 1. Nevertheless, a Member State shall not avoid its obligations to allow the transfers and processing not relating to any cross-border supply or consumption abroad of a service, which is for the purpose of group oversight and compliance with reporting requirement of another Member State.



necessary expertise relevant to the specific financial service under dispute.

Article 11

Most-Favoured-Nation Treatment

1. Each Member State shall accord to services and service suppliers of another Member State treatment no less favourable than that it accords, in like circumstances, to services and service suppliers of any other Member State.⁸
2. Notwithstanding paragraph 1, after the entry into force of this Agreement, if a Member State concludes or amends an agreement with any Member State or non-Member State, any other Member State may request negotiations with a view to incorporating, under this Agreement, treatment no less favourable than that provided under that agreement. The requested Member State shall enter into negotiations with the requesting Member State. Any extension of such preferential treatment to the remaining Member States on a Most-Favoured-Nation basis shall be voluntary on the part of that requested Member State.
3. Any Member State may maintain a measure inconsistent with paragraph 1 provided that such a measure is listed in, and meets the conditions of, its List of Most-Favoured-Nation Exemptions.
4. The provisions of this Agreement shall not be construed as to prevent any Member State 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.

⁸ For greater certainty, the obligations in paragraphs 1 and 3 apply only to the financial services commitments under the Final AFAS Packages, excluding the commitments under the ASEAN Banking Integration Framework (ABIF).



Article 12
Arrangements to Expedite Financial Integration

1. Two or more Member States may conduct negotiations and agree to liberalise trade in services for specific sectors or sub-sectors ("the participating Member States"). Any extension of such preferential treatment to the remaining Member States on a Most-Favoured-Nation basis shall be voluntary on the part of the participating Member States.
2. The participating Member States shall keep the remaining Member States informed through the ASEAN Secretariat of the progress or result of the negotiations, including the scheduling of commitments for the specific sectors or sub-sectors concerned. Member States wishing to join any on-going negotiations among the participating Member States may do so in consultation with the participating Member States.
3. Any Member State which is not a party to any agreement made pursuant to paragraph 1 may accede to such an agreement subject to consent of the participating Member States.
4. The participating Member States can further refine the parameters for specific sectors or sub-sectors to be committed as may be mutually agreed by all participating Member States for the purpose of further liberalisation of trade in services.
5. All agreements made pursuant to paragraph 1 shall be deposited with the Secretary-General of ASEAN who shall promptly furnish a certified copy thereof to each participating Member State and notifying the same to the other Member States.



Article 13

Market Access for Financial Institutions⁹

With respect to market access of a financial institution of another Member State through Mode 3: commercial presence as identified in Article 1 (Scope) of this Annex, unless otherwise specified in its Schedules of Non-Conforming Measures, a Member State shall not maintain or adopt, either on the basis of a regional subdivision or on the basis of its entire territory, measures that:

1. impose limitations on:
 - (a) the number of financial institutions whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
 - (b) the total value of financial service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
 - (c) the total number of financial service operations or the total quantity of financial service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test¹⁰;
 - (d) the total number of natural persons that may be employed in a particular financial service sector or that a financial institution may employ and who are necessary for, and directly related to, the supply of a specific financial service in the form of numerical quotas or the requirement of an economic needs

⁹ A member state commits to allow transfers of capital into its territory if such transfers of capital are related to its market-access commitments with respect to financial institutions under this Article

¹⁰ Subparagraph (a)(iii) does not cover measures of a Member State which limit inputs for the supply of financial services.



test;

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

2. restrict or require specific types of legal entity or joint venture through which a financial institution may supply a service

Article 14 **Cross-Border Supply of Financial Services¹¹**

1. Each Member State shall permit, under terms and conditions that accord national treatment, cross-border financial service suppliers of another Member State to supply the financial services specified in Annex on (Cross-Border Supply of Financial Services).¹²

2. Each Member State shall permit persons located in its territory, and its nationals wherever located, to purchase financial services from cross-border financial service suppliers of another Member State located in the territory of a Member State other than the permitting Member State. This obligation does not require a Member State to permit those suppliers to do business or solicit in its territory. A Member State may define "doing business" and "solicitation" for the purposes of this obligation provided that those definitions are not inconsistent with paragraph 1.

¹¹ For greater certainty, this would apply upon transition to negative list. Schedules for Non-Conforming Measures for Financial Services only refer to Article 6 (National Treatment) and Article 10 (Senior Management and Board of Directors) of this Agreement and Article 13 (Market Access) and Article 14 (Cross-Border Supply of Financial Services) of this Annex.

¹² In relation to a cross-border financial service supplier supplying a financial service specified in a Member State's Annex [XX] (Cross-Border Supply in Financial Services) and if the cross-border movement of capital is an essential part of the service itself, that Member State commits to allow such movement of capital.



3. Without prejudice to other means of prudential regulation of cross-border supply of financial services, a Member State may require the registration or authorisation of cross-border financial service suppliers of another Member State and of financial instruments.

Article 15

Local Presence

Article 9 (Local Presence) in this Agreement shall not be applied to the supply of financial services.



ANNEX ON TELECOMMUNICATION SERVICES

Article 1 Scope

1. This Annex shall apply to measures by a Member State affecting trade in public telecommunications transport networks and services.
2. This Annex shall not apply to measures affecting broadcasting services as defined in the domestic laws and regulations of each Member State.
3. Nothing in this Annex shall be construed to:
 - (a) require a Member State to authorise a service supplier of another Member State to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services, unless otherwise in accordance with its Schedule of Non-Conforming Measures under this Agreement; or
 - (b) require a Member State (or require a Member State to oblige service suppliers under its jurisdiction) to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services not offered to the public generally.

Article 2 Definitions

For the purposes of this Annex, the term:

- (a) **"cost-oriented"** means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities or services;



- (b) **“end user”** means a subscriber to or a final consumer of public telecommunications transport networks or services, including a service supplier other than a supplier of public telecommunications transport networks or services;
- (c) **“essential facilities”** means facilities of a public telecommunications transport network or service that:
 - (i) are exclusively or predominantly provided by a single or limited number of suppliers; and
 - (ii) cannot feasibly be economically or technically substituted in order to provide a service;
- (d) **“international mobile roaming service”** means a commercial mobile service provided pursuant to a commercial agreement between suppliers of public telecommunications transport networks or services that enables end users to use their home mobile handset or other device for voice, data or messaging services while outside the territory in which the end user's home public telecommunications transport network is located;
- (e) **“international submarine cable landing station”** means the premises¹ where connection takes place with an international submarine cable system, as determined by the telecommunications regulatory body or other relevant competent authority or by a supplier of public telecommunications transport networks or services who owns or controls the premises, if required;

¹ For Thailand, this may include other designated points of access.



- (f) **"leased circuits"** means telecommunications facilities between two or more designated points that are set aside for the dedicated use of, or availability to, particular users;
- (g) **"major supplier"** means a supplier which has the ability to materially affect the terms of participation, having regard to price and supply, in the relevant market for public telecommunications transport networks or services as a result of:
- (i) control over essential facilities; or
 - (ii) use of its position in the market;
- (h) **"non-discriminatory"** means treatment no less favourable than that accorded to any other user of like public telecommunications transport networks or services in like circumstances;
- (i) **"personal data"** means any information about an identified or identifiable natural person;
- (j) **"public telecommunications transport network"** means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points;
- (k) **"public telecommunications transport service"** means any telecommunications transport service required, explicitly or in effect, by a Member State to be offered to the public generally. Such services may include, *inter alia*, telegraph, telephone, telex and data transmission typically involving transmission of customer-supplied information between two or more defined points without any end-to-end change in the form or content of the customer's information;



- (l) **"telecommunications"** means the transmission and reception of signals by any electromagnetic means;
- (m) **"telecommunications regulatory body"** means any body or bodies in the territory of a Member State which is or are responsible, under the domestic laws and regulations of that Member State, for the regulation of telecommunications; and
- (n) **"users"** means end users or suppliers of public telecommunications transport networks or services.

Article 3 **Access and Use**

1. Each Member State shall ensure that any service supplier of another Member State is accorded access to and use of public telecommunications transport networks and services in a timely fashion and on transparent, reasonable and non-discriminatory terms and conditions unless otherwise in accordance with its Schedule of Non-Conforming Measures under this Agreement. This obligation shall be applied, *inter alia*, through paragraphs 2 through 6.

2. Each Member State shall ensure that service suppliers of another Member State have access to and use of any public telecommunications transport network or service offered within or across the border of that Member State, including private leased circuits, and to this end shall ensure, subject to the provisions of paragraphs 5 and 6, that such suppliers are permitted to:

- (a) purchase or lease and attach terminal or other equipment which interfaces with the network and which is necessary to supply their services;
- (b) interconnect private leased or owned circuits with public telecommunications transport networks and



services or with circuits leased or owned by other service suppliers; and

- (c) use operating protocols of their choice in the supply of any service, other than as necessary to ensure the availability of telecommunications transport networks and services to the public generally.

3. Each Member State shall ensure that service suppliers of another Member State may use public telecommunications transport networks and services for the movement of information within and across borders, including for intra-corporate communications of such service suppliers, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of any Member State.

4. Notwithstanding paragraph 3, a Member State may take measures as are necessary to:

- (a) ensure the security and confidentiality of messages;
or
- (b) protect the personal data of end users of public telecommunications transport networks or services

provided that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

5. Each Member State shall ensure that no condition is imposed on access to and use of public telecommunications transport networks and services other than as necessary to:

- (a) safeguard the public service responsibilities of suppliers of public telecommunications transport networks and services, in particular their ability to



make their networks or services available to the public generally; or

- (b) protect the technical integrity of public telecommunications transport networks or services.

6. Provided that they satisfy the criteria set out in paragraph 5, conditions for access to and use of public telecommunications transport networks and services may include:

- (a) a requirement to use specified technical interfaces, including interface protocols, for interconnection with public telecommunications transport networks and services;
- (b) requirements, where necessary, for the interoperability of public telecommunications transport services and to encourage the achievement of the goals set out in Article 17 (Relation to International Organisations);
- (c) type approval of terminal or other equipment which interfaces with public telecommunications transport networks and technical requirements relating to the attachment of such equipment to such networks;
- (d) restrictions on interconnection of private leased or owned circuits with public telecommunications transport networks or services or with circuits leased or owned by other service suppliers; or
- (e) notification, permit, registration and licensing.



Article 4 Number Portability

Each Member State shall endeavour to ensure that suppliers of public telecommunications transport networks or services in its territory provide number portability for mobile services in accordance with its domestic laws and regulations, to the extent technically and economically feasible, on a timely basis and on reasonable terms and conditions.

Article 5 Competitive Safeguard²

1. Each Member State shall adopt or maintain appropriate measures for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.
2. The anti-competitive practices referred to in paragraph 1 shall include, in particular:
 - (a) engaging in anti-competitive cross-subsidisation;
 - (b) using information obtained from competitors with anti-competitive results; and
 - (c) not making available to other suppliers of public telecommunications transport networks or services, on a timely basis, technical information about essential facilities and commercially relevant information which are necessary for them to supply services.

² Cambodia and Thailand commit to apply this Article by the end of 2019.



Article 6

Treatment by Major Suppliers

Each Member State shall ensure that a major supplier in its territory accords to suppliers of public telecommunications transport networks and services of another Member State treatment no less favourable than that such major supplier accords in like circumstances to its subsidiaries and affiliates, or any non-affiliated service suppliers regarding:

- (a) the availability, provisioning, rates or quality of like telecommunications services;³ and
- (b) the availability of technical interfaces necessary for interconnection.

Article 7

Resale⁴

Each Member State shall ensure that any major supplier in its territory does not impose unreasonable or discriminatory conditions or limitations on the resale of the public telecommunications transport services by suppliers of public telecommunications transport networks or services of another Member State.

³ Indonesia commits to apply this subparagraph by the end of 2020.

⁴ Brunei Darussalam may require that licensees who purchase public telecommunication services on a wholesale basis only resell their services to an end user.

Cambodia commits to apply this Article by the end of 2019.

Indonesia commits to apply this Article once reflected in its domestic laws and regulations.

Viet Nam commits to apply this Article by the end of 2020.



Article 8

Interconnection⁵

1. Each Member State shall ensure that suppliers of public telecommunications transport networks in its territory provide interconnection with the suppliers of public telecommunications transport networks or services of another Member State to the extent provided for in its domestic laws and regulations.

2. Each Member State shall ensure that a major supplier which has control over essential facilities in its territory provides interconnection for the facilities and equipment of suppliers of public telecommunications transport networks and services of another Member State at any technically feasible point in the network. Such interconnection shall be provided:

- (a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates and of a quality no less favourable than that provided for its own like services, or for like services of non-affiliated service suppliers or for its subsidiaries or other affiliates;
- (b) in a timely fashion and on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier of public telecommunications transport networks or services of another Member State need not pay for network components or facilities that it does not require for the services to be provided; and

⁵ Cambodia commits to apply this Article by the end of 2019.



- c) upon request, at points in addition to the network termination points offered to the majority of suppliers of public telecommunications transport networks and services, subject to charges that reflect the cost of construction of necessary additional facilities.

3. Each Member State shall ensure that suppliers of public telecommunications transport networks or services of another Member State may interconnect their facilities and equipment with those of major suppliers which have control over essential facilities in its territory pursuant to at least one of the following options:

- (a) a reference interconnection offer, approved by the Member State's telecommunications regulatory body, containing the rates, terms and conditions that the major supplier which has control over essential facilities offers generally to suppliers of public telecommunications transport services;
- (b) the terms and conditions of an existing interconnection agreement; or
- (c) a new interconnection agreement through commercial negotiation.

4. Each Member State shall ensure that the procedures applicable for interconnection to a major supplier are made publicly available.

5. Each Member State shall ensure that a major supplier in its territory makes publicly available either its interconnection agreements or reference interconnection offer.

6. Each Member State shall ensure that a major supplier which has control over essential facilities does not use or provide commercially sensitive or confidential information on suppliers of public telecommunications transport networks or services or end users thereof, which was acquired through its



interconnection business with telecommunications facilities of the suppliers of the public telecommunications transport networks or services, for purposes other than such interconnection business.

Article 9

Provisioning and Pricing of Leased Circuit Services ⁶

Each Member State shall ensure that a major supplier which has control over essential facilities in its territory provides suppliers of public telecommunications transport networks and services of another Member State with leased circuit services that are public telecommunications transport networks or services on terms and conditions, and at rates, that are reasonable, non-discriminatory and transparent.

Article 10

Co-location⁷

Each Member State shall ensure, in accordance with its domestic laws and regulations, that a major supplier which has control over essential facilities in its territory allows suppliers of public telecommunications transport networks or services of another Member State to locate their equipment within the major supplier's buildings on terms and conditions, including technical feasibility and space availability where applicable, and at rates, that are reasonable, non-discriminatory (including with respect to timeliness) and transparent.

⁶ Cambodia commits to apply this Article by the end of 2019.

Indonesia commits to apply this Article once reflected in its domestic laws and regulations.

Viet Nam commits to apply this Article by the end of 2020.

⁷ Cambodia commits to apply this Article by the end of 2019.

Indonesia commits to apply this Article once reflected in its domestic laws and regulations.

Thailand commits to apply this Article by the end of 2019.

Viet Nam commits to apply this Article by the end of 2020.



Article 11

Independent Telecommunications Regulatory Body

1. Each Member State shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of public telecommunications services.
2. Each Member State shall ensure that the decisions of, and the procedures used by, its telecommunications regulatory body are impartial with respect to all market participants.

Article 12

Universal Service

Each Member State has the right to define the kind of universal service obligations it wishes to maintain. Such obligations shall not be regarded as anti-competitive *per se*, provided that they are administered in a transparent, non-discriminatory and competitively neutral manner, and are not more burdensome than necessary for the kind of universal service defined by the Member State.

Article 13

Licensing⁸

1. Where a licence, concession, permit, registration or other type of authorisation is required for the supply of public telecommunications transport networks or services, each Member State shall make publicly available:

⁸ Cambodia commits to apply this Article by the end of 2019.



- (a) all the licensing or other authorisation criteria and procedures, and the period of time normally required to reach a decision concerning an application for a licence, concession, permit, registration or other type of authorisation; and
- (b) the terms and conditions of individual licences, concessions, permits, registrations or other type of authorisations it has issued.⁹

2. The competent authority of a Member State shall notify an applicant of the outcome of its application, without undue delay, after a decision has been taken. In case a decision is taken to deny an application for a licence, concession, permit, registration or other type of authorisation, the competent authority of the Member State shall make known to the applicant, upon request, the reason for the denial.

Article 14 **Allocation and Use of Scarce Resources¹⁰**

1. Each Member State shall carry out its procedures for the allocation and use of scarce resources related to telecommunications, including frequencies and numbers, in an objective, timely, transparent and non-discriminatory manner.
2. Each Member State shall make publicly available the current state of allocated frequency bands, but shall not be required to provide detailed identification of frequencies allocated for specific government uses.
3. A Member State's measures allocating and assigning spectrum and managing frequency are not measures that are

⁹ For greater certainty, the terms and conditions may not include licensee specific terms and conditions that contain confidential information.

¹⁰ Cambodia commits to apply this Article by the end of 2019.



per se inconsistent with Article 8 (Market Access) of this Agreement. Accordingly, each Member State retains the right to establish and apply spectrum and frequency management policies that have the effect of limiting the number of suppliers of public telecommunications transport networks or services, provided that it does so in a manner consistent with other provisions of this Agreement. Such right includes the ability to allocate frequency bands, taking into account current and future needs and spectrum availability.

Article 15

Transparency

Each Member State shall ensure that relevant information on conditions affecting access to and use of public telecommunications transport networks and services is publicly available, including: tariffs and other terms and conditions of service; specifications of technical interfaces with such networks and services; information on bodies responsible for the preparation and adoption of standards affecting such access and use; conditions applying to attachment of terminal or other equipment; and notifications, permit, registration or licensing requirements, if any.

Article 16

Settlement of Telecommunication Disputes

1. Each Member State shall ensure that suppliers of public telecommunications transport networks or services of another Member State may have timely recourse to its telecommunications regulatory body or dispute settlement body to settle disputes arising under this Annex in accordance with its domestic laws and regulations.
2. Each Member State shall ensure, in accordance with its domestic laws and regulations, that any supplier of public telecommunications transport networks or services aggrieved



by a determination or decision of its relevant telecommunications regulatory body may petition that body for reconsideration of that determination or decision. No Member State shall permit such a petition to constitute grounds for non-compliance with such determination or decision of the said body, unless an appropriate authority suspends or withdraws such determination or decision.

3. Each Member State shall ensure that any supplier of public telecommunications transport networks or services aggrieved by a final determination or decision of its relevant telecommunications regulatory body may obtain review of such determination or decision in accordance with its domestic laws and regulations.

Article 17

Relation to International Organisations

Member States recognise the importance of international standards for global compatibility and inter-operability of telecommunications networks and services and undertake to promote such standards through the work of relevant international bodies, including the International Telecommunication Union and the International Organization for Standardization.

Article 18

International Mobile Roaming

1. Member States shall endeavour to cooperate on promoting transparent and reasonable rates for international mobile roaming services that can help promote the growth of trade among the Member States and enhance consumer welfare.

2. A Member State may choose to take steps to enhance transparency and competition with respect to international



mobile roaming rates and technological alternatives to roaming services, such as:

- (a) ensuring that information regarding retail rates is easily accessible to consumers; and
- (b) minimising impediments to the use of technological alternatives to roaming, whereby consumers when visiting the territory of a Member State from the territory of another Member State can access telecommunications services using the device of their choice.

3. Member States recognise that a Member State may choose to promote competition with respect to international mobile roaming rates including through commercial arrangements, or to adopt or maintain measures affecting rates for wholesale and/or retail international roaming services with a view to ensuring the rates are reasonable. If a Member State considers it appropriate, it may cooperate on and implement mechanisms with other Member States to facilitate the implementation of those measures, including but not limited to, by entering into arrangements with those Member States.

4. If a Member State ("the first Member State") chooses to regulate rates or conditions for wholesale and/or retail international mobile roaming services, it shall ensure that a supplier of public telecommunications services of another Member State ("the second Member State") has access to the regulated rates or conditions for wholesale and/or retail international mobile roaming services for its customers roaming in the territory of the first Member State if the second Member State has entered into an arrangement with the first Member State to reciprocally regulate rates or conditions for wholesale and/or retail international mobile roaming services



for suppliers of the two Member States.¹¹ Notwithstanding, the first Member State may require suppliers of the second Member State to fully utilise commercial negotiations to reach agreement on the terms for accessing such rates or conditions.

5. A Member State that ensures access to regulated rates or conditions for wholesale and/or retail international mobile roaming services in accordance with paragraph 4, shall be deemed to be in compliance with Article 7 (Most-Favoured Nation Treatment) of this Agreement, and Article 3 (Access and Use) and Article 6 (Treatment by Major Supplier) of this Annex.

6. Nothing in this Article shall require a Member State to regulate rates or conditions for international mobile roaming services.

¹¹ For greater certainty:

(a) no Member State shall, solely on the basis of any obligations owed to it by the first Member State under a most-favoured-nation provision, or under a telecommunications-specific non-discrimination provision, in any international trade agreement, seek or obtain for its suppliers the access to regulated rates or conditions for wholesale and/or retail international mobile roaming services that is provided under this Article.

(b) access to the rates or conditions regulated by the first Member State shall be available to a supplier of the second Member State only if the regulated rates or conditions are reasonably comparable to those reciprocally regulated under the arrangement. The telecommunications regulatory body of first Member State shall, in the case of a disagreement, determine whether the rates or conditions are reasonably comparable. For the purposes of this footnote, rates or conditions that are reasonably comparable means rates or conditions agreed to be such by the relevant suppliers or, in the case of disagreement, determined to be such by the telecommunications regulatory body of first Member State.



Article 19
International Submarine Cable Landing Station^{12 13}

1. Where under its domestic laws and regulations, a Member State has authorised a supplier of public telecommunications transport network in its territory to operate an international submarine cable landing station as a public telecommunications transport network, that Member State shall ensure that such supplier accords the suppliers of public telecommunications transport networks or services of the other Member State reasonable and non-discriminatory treatment in like circumstances.

2. Where submarine cable landing facilities and services cannot be economically or technically substituted, each Member State shall ensure that any major supplier who owns or controls an international submarine cable landing station in its territory allows suppliers of the public telecommunications transport networks or services of the other Member States to:

- (i) access international submarine cable landing stations; and
- (ii) co-locate their transmission and routing equipment at the international submarine cable landing station;

based on terms and conditions, and at rates, that are reasonable, non-discriminatory and transparent.

¹² Indonesia will apply this Article to the extent provided for under its domestic laws and regulations.

¹³ For Viet Nam:

- (i) This Article shall only apply to major suppliers who own or control international submarine cable landing stations in the territory of Viet Nam;
- (ii) Under Paragraph 2(i), access to international submarine cable landing stations shall comply with relevant domestic laws and regulations of Viet Nam; and
- (iii) Under Paragraph 2(ii), co-location for international submarine cable landing stations owned or controlled by the major supplier in the territory of Viet Nam shall exclude physical co-location. It may include virtual co-location.



ANNEX ON AIR TRANSPORT ANCILLARY SERVICES

1. **Aircraft Repair and Maintenance Services** means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance.
2. **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.
3. **Computer Reservation System (CRS) 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.
4. **Aircraft Leasing without Crew** means the lease of an aircraft without crew is normally referred to as a "dry lease". Under most lease agreements the lessee who provides the crew is the responsible party who must exercise operational control over the aircraft with all the attendant responsibilities.
5. **Aircraft Leasing with Crew** means the lease of an aircraft with crew provided is normally referred to as a "wet lease". In wet lease the lessor normally exercises operational control of the aircraft. Usually the wet lease situation means the aircraft should be operated under an Air Operator Certificate (AOC) issued by the competent authority of the State of Registry of the aircraft.



6. **Airfreight Forwarding Services** means the activity and arrangement of air transport and related services provided to or performed on behalf of the shipper/consignee for the transportation of goods by air from port of origin to final destination.

Scope of services includes the following services:

- (i) securing cargo space with airline;
- (ii) preparing necessary export/import document;
- (iii) processing customs formalities;
- (iv) pick-up and delivery;
- (v) packing/warehousing;
- (vi) freight consolidation & break-bulk;
- (vii) door to door and logistics services; and
- (viii) inland freight services.

7. **Cargo Handling** means services provided or arranged for warehouse, facilities, and services for storage and handling of any type of shipment that are transported by air. Cargo handling services cover physical handling of outbound/inbound, transit shipments, document handling of outbound inbound, transit shipments, irregularities handling, control of Unit Load Device (ULD), and services relate to customs control.

8. **Aircraft Catering Services** means the preparation/production of food and beverages for airlines, including loading/unloading of catering equipment and supplies, arrangement of bar cart, magazines, flowers, souvenirs and miscellaneous items



to/from aircraft, washing, cleaning, storing of catering equipment and laundering of cabin linen ware.

9. **Refuelling Services** means the management and operation of fuel tankers for aircraft and airport motor vehicles and distribution of fuelling products. (United Nations CPC 74220, 74610, 61300, 62113, 62271)
10. **Aircraft Line Maintenance** means routine and non-routine inspection and malfunction ratification performed *en route* and at base station with turnaround time up to 24 hours.
11. **Ramp Handling** means services provided by ground support equipment to an aircraft upon arrival, during parking until departure.

The services include the following facilities:

- (i) Ground Support Equipment (GSE) i.e. aircraft towing tractor, air condition unit, air start unit, ground power unit, loading equipment, ULDs;
- (ii) ramp bus services to transfer passengers and crews to and from the aircraft to the passenger terminal;
- (iii) security services to the aircraft as well as passengers in the ramp area;
- (iii) toilet and aircraft interior cleaning servicing;
- (iv) portable water servicing;
- (v) post and mail servicing; and
- (vi) GSE and ULDs maintenance.



12. **Baggage Handling** means a process on departure and arrival system at terminals. On departure, baggage handling consists of three activities: (1) in-town check-in passenger checks outside the airport boundary; (2) check-in at the airport terminal; and (3) check-in passenger carries baggage at the aircraft gate and check-in at that point. On arrival, baggage handling consists of three activities: (1) off-loading of baggage from the aircraft; (2) transport of baggage between aircraft and reclaim area; and (3) loading of baggage onto the reclaim unit.
13. **Passenger Handling** means responsibility in providing services to passengers from check-in point to aircraft side as per the carrier's procedures and instructions.



ATISA Signatories

AMS	MINISTERS' NAMES	DESIGNATION
B	DATO DR. AMIN LIEW ABDULLAH	Minister at the Prime Minister's Office and Minister of Finance and Economy II
C	PAN SORASAK	Minister of Commerce
I	ENGGARTIASTO LUKITA	Minister of Trade
L	KHEMMANI PHOLSENA	Minister of Industry and Commerce
My	DARELL LEIKING	Minister of International Trade and Industry
Mm	THAUNG TUN	Union Minister for Investment and Foreign Economic Relations
P	RAMON M. LOPEZ	Secretary of Trade and Industry
S	CHAN CHUN SING	Minister for Trade and Industry
T	CHUTIMA BUNYAPRAPHASARA	Deputy Minister of Commerce
V	TRAN TUAN ANH	Minister of Industry and Trade