

CHAPTER 8

TRADE IN SERVICES

Article 1

Scope and Coverage

1. This Chapter applies 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; and
 - (b) non-governmental bodies in the exercise of powers delegated by central, regional, or local governments or authorities.
3. 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.
4. This Chapter shall not apply to measures affecting:
 - (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 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 within the territory of each respective Party, as defined in Article 2(q) (Definitions), or
- (d) in respect of 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:
 - (i) aircraft repair and maintenance services;
 - (ii) the selling and marketing of air transport services; and
 - (iii) computer reservation system services.

5. The Parties note the multilateral negotiations pursuant to the review of the *GATS Annex on Air Transport Services*. 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.

6. Nothing in this Chapter shall 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.

Article 2

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repair and maintenance services** means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from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 do 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 or a 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) In the case of 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 residence¹ 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;

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.

- (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 schedules of specific commitments in Annex 3 (Schedules of Specific Services Commitments); 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 of another Party** means a service which is supplied:
 - (i) from or in the territory of that other Party; 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;

- (p) **service supplier** means a person that supplies a service²;
- (q) **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;
- (r) **supply of a service** includes the production, distribution, marketing, sale and delivery of a service;
- (s) **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
- (t) **traffic rights** means the right for scheduled and non-scheduled services to operate and/or carry passengers, cargo and mail for remuneration or

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. 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.

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.

Article 3

National Treatment

1. In sectors inscribed in its schedules of specific commitments in Annex 3 (Schedules of Specific Services Commitments) or Annex 4 (Schedules of Movement of Natural Persons Commitments), and subject to any conditions and qualifications set out therein, each Party 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 to its own like services and service suppliers.³
2. A Party may meet the requirement of Paragraph 1 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.
3. 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.

³ 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.

Article 4

Market Access

1. With respect to market access through the modes of supply identified in Article 2(s) (Definitions), each Party 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 schedules of specific commitments in Annex 3 (Schedules of Specific Services Commitments) or Annex 4 (Schedules of Movement of Natural Persons Commitments).⁴

2. In sectors where market access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its schedules of specific commitments in Annex 3 (Schedules of Specific Services Commitments) or Annex 4 (Schedules of Movement of Natural Persons Commitments), 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;

⁴ 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 2(s)(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 through the mode of supply referred to in Article 2(s)(iii) (Definitions), it is hereby committed to allow related transfers of capital into its territory.

- (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 test⁵;
- (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.

Article 5

Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to Article 3 (National Treatment) or Article 4 (Market Access), including those regarding qualifications, standards or licensing matters. Such commitments shall be set out in a Party's schedules of specific commitments in Annex 3 (Schedules of Specific Services Commitments) and Annex 4 (Schedules of Movement of Natural Persons Commitments).

⁵ Subparagraph (c) does not cover measures of a Party which limit inputs for the supply of services.

Article 6

Review of Commitments

The Parties shall enter into successive rounds of negotiations, beginning not later than three years from the date of entry into force of this Agreement, and periodically thereafter as determined by the FTA Joint Committee, with a view to further improving specific commitments under this Chapter so as to progressively liberalise trade in services among the Parties.

Article 7

Consultations on Most-Favoured-Nation Treatment

1. Subject to Paragraph 2, if, after this Agreement enters into force, a Party enters into any agreement on trade in services with a non-Party in which it provides treatment to services or service suppliers of that non-Party more favourable than it accords to like services or service suppliers of other Parties under this Agreement, any other Party may request consultations to discuss the possibility of extending, under this Agreement, treatment no less favourable than that provided under the agreement with the non-Party. The requested Party shall enter into consultations with the requesting Party bearing in mind the overall balance of benefits. The requesting Party shall notify all the other Parties of their request for consultations under this Paragraph.
2. No Party shall be obliged to apply Paragraph 1 with respect to treatment provided under any bilateral or plurilateral agreement between an individual ASEAN Member State, or individual ASEAN Member States, and non-Parties or Australia or New Zealand.
3. 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 Services Committee

established pursuant to Article 24 (Committee on Trade in Services) following the conclusion of consultations.

4. Notwithstanding Paragraph 1, a Party shall not be obliged to enter into consultations in relation to treatment provided under any international agreement that entered into force or was signed prior to the date of entry into force of this Agreement including, 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.

Article 8

Schedules of Specific Commitments

1. Each Party shall set out in a schedule the specific commitments it undertakes under Article 3 (National Treatment), Article 4 (Market Access) and Article 5 (Additional Commitments). With respect to sectors where such commitments are undertaken, each schedule shall specify:

- (a) terms, limitations and conditions on market access;
- (b) conditions and qualifications on national treatment;
- (c) undertakings relating to additional commitments;
- (d) where appropriate, the time-frame for implementation of such commitments; and
- (e) the date of entry into force of such commitments.

2. Measures inconsistent with both Market Access and National Treatment shall be inscribed in the column relating to Market Access. In this case, the inscription will be

considered to provide a condition or qualification to National Treatment as well.

3. Schedules of specific services commitments shall be set out in Annex 3 (Schedules of Specific Services Commitments) of this Agreement. The specific commitments in respect of the supply of a service by a service supplier of one Party through presence of natural persons of a Party in the territory of another Party shall be set out in Annex 4 (Schedules of Movement of Natural Persons Commitments) of this Agreement.

Article 9

Modification of Schedules

1. A Party may modify or withdraw any commitment in its schedule of specific commitments in Annex 3 (Schedules of Specific Services Commitments) or Annex 4 (Schedules of Movement of Natural Persons Commitments), 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.

Article 10

Domestic Regulation

1. In sectors where specific commitments are undertaken, each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

2. 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, the Parties shall jointly review the results of the WTO negotiations on disciplines on such measures, pursuant to Article VI.4 of GATS, and shall amend this Article, as appropriate, after consultations among the Parties, to bring the results of those negotiations into effect under this Agreement. The Parties note that the disciplines arising from such negotiations shall aim to ensure that qualification requirements and procedures, technical standards and licensing requirements and procedures are, *inter alia*:

- (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.

3. In sectors in which a Party has undertaken specific commitments under Article 3 (National Treatment), Article 4 (Market Access) and Article 5 (Additional Commitments), pending the incorporation of the disciplines referred to in Paragraph 2, that Party shall not apply licensing and qualification requirements and technical standards that nullify or impair such specific commitments under this Agreement in a manner which:

- (a) does not comply with the criteria outlined in Paragraph 2(a), (b) or (c); and

- (b) could not reasonably have been expected of that Party at the time the specific commitments in those sectors were made.

4. In determining whether a Party is in conformity with its obligations under Paragraph 3(a), account shall be taken of international standards of relevant international organisations applied by that Party.⁶

5. Where authorisation is required for the supply of a service on which a specific commitment has been made, the competent authorities of that Party shall:

- (a) in the case of an incomplete application, at the request of the applicant, identify all the additional information that is required to complete the application and provide the opportunity to remedy deficiencies within a reasonable timeframe;
- (b) within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application;
- (c) at the request of the applicant, provide, without undue delay, information concerning the status of the application under consideration; and
- (d) if an application is terminated or denied, to the maximum extent possible, inform the applicant in writing, and without delay, the reasons for such action. The applicant will have the possibility of resubmitting, at its discretion, a new application.

6. In sectors where specific commitments regarding professional services are undertaken, each Party shall

⁶ The term “relevant international organisations” refers to international bodies whose membership is open to the relevant bodies of all the Parties.

provide for adequate procedures to verify the competency of professionals of the other Parties.

7. Subject to its domestic laws and regulations, each Party shall permit service suppliers of the other Parties to use the business names under which they ordinarily trade in the territories of the other Parties and otherwise ensure that the use of business names is not unduly restricted.

Article 11

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 others' 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 information⁷ shall be made otherwise publicly available.

5. To the extent provided for under its domestic 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.

Contact Points

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 specific commitments under this

⁷ For greater certainty, the Parties agree that such information may be published in each Party's chosen language.

Chapter, whether or not the other Party has been previously notified of the new or changed law, regulation or administrative guideline.

Article 12

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 domestic 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 domestic 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 review⁸, 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) a decision in accordance with the Party's laws.

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

Article 13 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.

⁸ For avoidance of doubt, "review" includes merits review only where provided for under the Party's law.

Article 14

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 3 (National Treatment) and Article 4 (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.

Article 15

Business Practices

1. Parties recognise that certain business practices of service suppliers, other than those falling under Article 14

(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 Party addressed 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 domestic law and to the conclusion of satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Party.

Article 16

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 3, a Party may recognise the education or experience obtained, requirements met, 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 other interested Parties 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. 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.

4. 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.

5. Each Party shall encourage competent bodies in its territory to enter into negotiations for agreements or arrangements on recognition of professional qualification requirements, qualification procedures, licensing or registration requirements, and licensing or registration procedures with a view to the achievement of early outcomes.

Article 17

Payments and Transfers

1. Except under the circumstances envisaged in Article 4 (Measures to Safeguard the Balance of Payments) of Chapter 15 (General Provisions and Exceptions), a Party shall not apply restrictions on international transfers or payments for current transactions relating to its specific commitments.

2. Nothing in this Chapter shall affect the rights and obligations of any of the Parties as members of the International Monetary Fund under the IMF Articles of Agreement, including the use of exchange actions which are in conformity with the IMF Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistent with its specific commitments

regarding such transactions, except under Article 4 (Measures to Safeguard the Balance of Payments) of Chapter 15 (General Provisions and Exceptions) or at the request of the International Monetary Fund.

Article 18 Subsidies

1. Notwithstanding Article 1.4(b) (Scope and Coverage), 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.

2. Parties recognise that, in certain circumstances, subsidies may have distortive effects on trade in services. Any Party which considers that it is adversely affected by a subsidy of another Party may request consultations with that Party on such matters. Such request shall be accorded sympathetic consideration.

Article 19 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 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 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 their 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 Services Committee established pursuant to Article 24 (Committee on Trade in Services) following the conclusion of consultations.

Article 20

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.

Article 21

Denial of Benefits

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) 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 of a non-Party, and
 - (ii) by a person of a non-Party which operates and/or uses the vessel in whole or in part;
- (c) to a service supplier, that is a juridical person, if it establishes that it is not a service supplier of another Party.

Article 22

Treatment and Protection of Commercial Presence

1. Chapter 11 (Investment) does not apply to measures adopted or maintained by a Party to the extent that they are covered by this Chapter.
2. Notwithstanding Paragraph 1, the following Articles and Section of Chapter 11 (Investment) apply, *mutatis mutandis*, to measures affecting the supply of services by a service

supplier of a Party through commercial presence in the territory of another Party:

- (a) Article 6 (Treatment of Investment);
- (b) Article 7 (Compensation for Losses);
- (c) Article 8 (Transfers);
- (d) Article 9 (Expropriation and Compensation);
- (e) Article 10 (Subrogation); and
- (f) Section B (Investment Disputes between a Party and an Investor).

Article 23 **Miscellaneous Provisions**

1. The GATS *Annex on Telecommunications* shall be incorporated into and shall form part of this Agreement, *mutatis mutandis*.
2. Additional provisions on financial services and telecommunications are set out in this Chapter's Annexes.

Article 24 **Committee on Trade in Services**

1. The Parties hereby establish a Committee on Trade in Services (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 6 (Review of Commitments);

- (b) if the multilateral negotiations referred to in Article 19.1 (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 6 (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 6 (Review of Commitments). Meetings may be conducted in person, or by any other means as mutually determined by the Parties.

ANNEX ON FINANCIAL SERVICES

Article 1 Scope and Definitions

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 as defined in Article 2(s) (Definitions) of Chapter 8 (Trade in Services).
2. For the purposes of Article 2(n) (Definitions) of Chapter 8 (Trade in Services), “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;
 - (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 Article 2(n) (Definitions) of Chapter 8 (Trade in Services), if a Party allows any of the activities referred to in Paragraph (2)(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.
4. Article 2(q) (Definitions) of Chapter 8 (Trade in Services) shall not apply to services covered by this Annex.

Article 2

Definitions

For the purposes of this Annex:

- (a) a **financial service** is 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, 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; 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;
- (b) a **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;
- (c) **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

(d) **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.

Article 3

Domestic Regulation

1. Notwithstanding any other provision of this Agreement, a Party shall not be prevented from taking 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 rate¹ 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 Party's commitments or obligations under this Agreement;
- (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
- (c) for measures to ensure the stability of the exchange rate such measures shall be applied on a most-favoured-nation basis.

2. 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.

Article 4

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. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the

¹ The measures to ensure the stability of the exchange rate shall not be adopted or maintained for the purpose of protecting a particular sector.

international standard setting body, another Party, or a non-Party concerned or may be accorded autonomously.

2. A Party 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 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 such circumstances as referred to in Paragraph 2 exist.

Article 5

Regulatory Transparency

1. The Parties recognise that transparent measures governing the activities of financial institutions and cross-border financial service suppliers are important in facilitating their ability to gain access to and operate in each other's market.

2. Each Party shall ensure that measures of general application adopted or maintained by a Party are promptly published or otherwise made publicly available.²

3. 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 self-regulatory

² For greater certainty, the Parties agree that such information may be published in each Party's chosen language.

organisations³ of the Party are promptly published or otherwise made publicly available.⁴

4. Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons of another Party regarding measures of general application to which this Annex applies.⁵

5. Each Party's regulatory authorities shall use its best endeavours to make available to interested persons of another Party their requirements, including any documentation required, for completing applications relating to the supply of financial services.

6. On the request of an applicant in writing, regulatory authorities of a Party shall inform the applicant of the status of its application in writing. If an authority requires additional information from the applicant, it shall notify the applicant without undue delay.

7. Each Party's regulatory authorities shall make administrative decisions on a completed application of a financial service supplier of another Party seeking to supply a financial service in that Party's territory within 180 days and shall notify the applicant of the decision in writing without undue delay:

- (a) an application shall not be considered complete until all relevant proceedings are conducted and the regulatory authorities consider all necessary information is received;

³ This Paragraph only applies to a Party when that Party has established self-regulatory organisations.

⁴ For greater certainty, the Parties agree that such information may be published in each Party's chosen language.

⁵ The Parties confirm their shared understanding that interested persons in this Article should only be persons whose direct financial interest could be potentially affected by the adoption of the regulations of general application.

- (b) where it is not practicable for a decision to be made within 180 days, the regulatory authority shall notify the applicant without delay and shall endeavour to make the decision within a reasonable time thereafter.

8. On the request of an unsuccessful applicant in writing, a regulatory authority that has denied an application shall endeavour to inform the applicant of the reasons for denial of the application in writing.

Article 6

Financial Services Exceptions

Nothing in this Chapter shall be construed to prevent the adoption or enforcement by a Party of measures necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter, 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 always to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment in financial institutions or trade in financial services.

Article 7

Transfers of Information and Processing of Information

1. A Party 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 Party to protect personal data, personal privacy and the confidentiality of individual records and accounts including in accordance with its domestic 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 regulator 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 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 Article 2(a)(xv) (Definitions).

Article 8

Dispute Settlement

Members of arbitral tribunals established pursuant to Chapter 17 (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.

ANNEX ON TELECOMMUNICATIONS

Article 1 Scope and Coverage

1. This Annex applies to measures by a Party affecting trade in public telecommunications transport networks and services.
2. Notwithstanding Paragraph 1, this Annex shall not apply to measures by a Party affecting the distribution of broadcasting and audio-visual services, as defined in each Party's domestic legal framework.
3. Nothing in this Annex shall be construed to require a Party to allow the supply of public telecommunications transport networks or services in relation to which it has not made specific commitments under this Chapter.

Article 2 Definitions

For the purposes of this Annex:

- (a) **co-location (physical)** means access to space in order to install, maintain or repair equipment at premises owned or controlled and used by a major supplier to supply public telecommunications transport services;
- (b) **cost-oriented** means based on cost, and may include a reasonable profit, and may involve different cost methodologies for different facilities 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) **facilities-based suppliers** means suppliers of public telecommunications transport networks or services that:
 - (i) are licensed carriers in Australia;
 - (ii) are classified as Access Seekers in accordance with the Telecommunications Act 2001 as amended from time to time in New Zealand;
 - (iii) are the Infrastructure Provider for the Telecommunication Industry (InTi) licensees in Brunei Darussalam;
 - (iv) are licensed as network facility provider and licensed network services provider under domestic law in Cambodia;
 - (v) are licensed as telecommunication network provider in Indonesia;
 - (vi) are authorised to establish an enterprise to provide telecommunications service under the Telecommunications Act of 2001 in Lao PDR;
 - (vii) are licensed as Network Facilities Provider and Network Services Provider in Malaysia;

- (viii) are telecommunications operators licensed as network facility provider and/or network service provider; and operators authorised by the Ministry of Communications, Posts and Telegraphs to provide facility based services in Myanmar;
 - (ix) are licensed public telecommunications entities as defined in the Public Telecommunications Policy Act of the Philippines;
 - (x) are facilities-based operators in Singapore;
 - (xi) are duly licensed under domestic law as facilities-based supplier in Thailand; and
 - (xii) are facilities-based operators duly licensed in Viet Nam;
- (e) **interconnection** means linking with suppliers providing public telecommunications transport networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier;
- (f) **leased circuits** ¹ means telecommunications facilities between two or more designated points that are set aside for the dedicated use of, or availability to, a particular user;
- (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 the supply of public

¹ In the case of Thailand, "leased circuits" means telecommunications facilities between two designated points that are set aside for the dedicated use of, or availability to, a particular user.

telecommunications transport networks or services, or parts thereof, 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) **public telecommunications transport network** means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points;
- (j) **public telecommunications transport service** means any telecommunications transport service required, explicitly or in effect, by a Party to be offered to the public generally. Such services may include, *inter alia*, telegraph, telephone and data transmission typically involving the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information;
- (k) **telecommunications** means the transmission and reception of signals by any electromagnetic means;
- (l) **telecommunications regulatory body** means any body or bodies in the territory of a Party which is or are responsible, under the Party's domestic legal framework, for the regulation of telecommunications; and

- (m) **user** means service consumers and service suppliers.

Article 3

Transitional Arrangements

Noting each Party's different stage of development, and noting each Party's commitments under GATS, a Party may delay the application of Article 4 (Competitive Safeguards), Article 6 (Interconnection), Article 7 (Co-location), Article 8 (Leased Circuits Services) and Article 9.2 (Resolution of Disputes) in accordance with the timetable set out in this Annex's Appendix on Transitional Arrangements.

Article 4

Competitive Safeguards

1. Subject to Article 3 (Transitional Arrangements), each Party shall prevent suppliers of public telecommunications transport networks or services who, alone or together, are major suppliers in its territory, from engaging in or continuing anti-competitive practices.
2. The anti-competitive practices referred to in this Article shall include:
 - (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 telecommunications transport networks or services, in a timely fashion, technical information about essential facilities or commercially relevant information, which is necessary for such suppliers to provide public telecommunications transport networks or services.

Article 5 Licensing

1. Each Party shall ensure that, where a licence is required, all measures relating to the licensing of suppliers of public telecommunications transport networks or services in its territory are published or, where publication is not practicable, otherwise made publicly available, including:

- (a) circumstances in which a licence is required;
- (b) licence application procedures;
- (c) criteria used to assess licence applications;
- (d) standard terms and conditions applicable to licences;
- (e) the period of time normally required to reach a decision concerning a licence application;
- (f) the cost of and/or fees for applying for and/or obtaining a licence; and
- (g) the period of validity of a licence.

2. Each Party shall ensure that the reasons for the denial of a licence are made known to an applicant upon request.

Article 6 Interconnection²

1. Subject to Article 3 (Transitional Arrangements), each Party shall ensure that major suppliers in its territory provide

² For the sake of clarity, nothing in this Article shall be construed to require Thailand or Viet Nam to allow cross-border supply of public telecommunications transport networks or services in relation to which it has not made specific commitments under this Chapter.

interconnection to suppliers of public telecommunications transport networks or services of other Parties at any technically feasible point in the major supplier's network. Such interconnection shall be:

- (a) provided in a timely fashion, on terms and conditions (including technical standards and specifications), and at cost-oriented rates, that are reasonable (having regard to economic feasibility), non-discriminatory and transparent;
- (b) sufficiently unbundled, such that the supplier of public telecommunications transport networks or services seeking interconnection need not pay for network components or facilities that it does not require for the service to be provided;
- (c) of a quality no less favourable than that provided for the major supplier's own like services, or for like services of non-affiliated service suppliers, or for its subsidiaries or other affiliates; and
- (d) provided upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

2. Each Party shall ensure that the terms, conditions and rates (including technical standards and specifications) for interconnection between major suppliers in its territory and suppliers of public telecommunications transport networks or services of other Parties are able to be established (at least):

- (a) through commercial negotiation; or
- (b) by reference to a set of standard terms, conditions and rates that the major supplier offers generally to other suppliers of public telecommunications transport networks or

services, and that are approved or set out by a telecommunications regulatory body.

3. Each Party shall ensure that the procedures for interconnection with major suppliers in its territory are published or otherwise made publicly available.

Article 7

Co-location

1. Subject to Article 3 (Transitional Arrangements), each Party shall ensure that major suppliers in its territory:

- (a) provide to suppliers of public telecommunications transport networks or services of other Parties that are facilities-based suppliers in the territory of that Party, physical co-location of equipment necessary for interconnection; and
- (b) in situations where physical co-location referred to in Subparagraph (a) is not practical for technical reasons or because of space limitations, co-operate with suppliers of public telecommunications transport networks or services of other Parties that are facilities-based suppliers in the territory of that Party, to find and implement a practical and commercially viable alternative solution.³

2. Each Party shall ensure that major suppliers in its territory provide the physical co-location or practical and commercially viable alternative solution referred to in Paragraph 1 in a timely fashion and on terms and conditions (including technical standards and specifications), and at

³ Such solutions may include:

- (a) permitting facilities-based suppliers to locate equipment in a nearby building and to connect such equipment to the major supplier's network;
- (b) conditioning additional equipment space or virtual co-location;
- (c) optimising the use of existing space; and
- (d) finding adjacent space.

rates, that are reasonable (having regard to economic feasibility), non-discriminatory and transparent.

3. Each Party may determine, in accordance with its domestic laws and regulations, the locations at which it requires major suppliers in its territory to provide the physical co-location or the practical and commercially viable alternative solutions referred to in Paragraph 1.

Article 8 Leased Circuits Services

Subject to Article 3 (Transitional Arrangements), each Party shall, unless it is not technically feasible, ensure that major suppliers in its territory make leased circuits services (that are public telecommunications transport services) available to suppliers of public telecommunications transport networks or services of other Parties in a timely fashion and on terms and conditions (including technical standards and specifications), and at rates, that are reasonable (having regard to economic feasibility), non-discriminatory and transparent.

Article 9 Resolution of Disputes

1. Each Party shall ensure that a supplier of public telecommunications transport networks or services of another Party who requests interconnection with a major supplier that is authorised to supply public telecommunications transport networks or services in the Party's territory has recourse to a telecommunications regulatory body to resolve disputes in relation to such interconnection, including in relation to terms, conditions or rates:

- (a) within a reasonable period of time, according to a procedure that has been published or otherwise made publicly available; and

- (b) at the request of the affected supplier of public telecommunications transport networks or services of the other Party.

2. Subject to Article 3 (Transitional Arrangements), each Party shall ensure that a supplier of public telecommunications transport networks or services of another Party who requests co-location with or leased circuits services from a major supplier that is authorised to supply public telecommunications transport networks or services in the Party's territory has recourse to a telecommunications regulatory body or a competition regulatory body to address issues in relation to such co-location or leased circuits services, including in relation to terms, conditions or rates:

- (a) within a reasonable period of time, according to a procedure that has been published or otherwise made publicly available; and
- (b) at the request of the affected supplier of public telecommunications transport networks or services of the other Party.

3. Each Party shall ensure that its telecommunications regulatory body or bodies provide, upon request by a supplier of public telecommunications transport networks or services of another Party, a written explanation of any decision by a telecommunications regulatory body that affects the supplier of public telecommunications transport networks or services of the other Party, unless such explanation is otherwise publicly available.

Article 10

Transparency

Each Party shall endeavour to make information that the Party is required to publish or make publicly available

pursuant to this Annex available on the internet.

Article 11

Telecommunications Regulatory Body

1. Each Party shall establish or maintain, as part of its domestic legal framework, a telecommunications regulatory body.
2. Each Party shall ensure that every telecommunications regulatory body that it establishes or maintains is separate from, and not accountable to, any supplier of public telecommunications transport networks or services.
3. Each Party shall ensure that the functions and responsibilities of the telecommunications regulatory body or bodies, which shall include enforcement of the commitments set out in Article 6 (Interconnection), and all of its decision-making powers, shall be set out in the Party's domestic laws or regulations.
4. Each Party shall ensure that the decisions of, and the procedures used by, its telecommunications regulatory body or bodies are impartial with respect to all interested persons.
5. Each Party shall ensure that any supplier of public telecommunications transport networks or services of another Party that is aggrieved, or whose interests are adversely affected by a determination or decision of a telecommunications regulatory body of that Party, may obtain review of the determination or decision by an administrative, arbitral or judicial tribunal or authority or according to administrative, arbitral or judicial procedures. Where such procedures are not independent of the telecommunications regulatory body, the Party shall ensure that the procedures in fact provide for an objective and impartial review.

Article 12

Universal Service

Each Party has the right to define the kind of universal service obligation it wishes to maintain. Such obligations, including any cross subsidisation policy set out under each Party's domestic laws, shall not be regarded as anti-competitive *per se*, provided 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 Party.

Article 13

Allocation and Use of Scarce Resources⁴

1. Each Party shall administer its procedures for the allocation and use of scarce resources, including frequencies and numbers, in an objective, timely, transparent and non-discriminatory manner.
2. Each Party shall publish or otherwise make publicly available the current state of allocated frequency bands.⁵
3. Parties are not required to publish identification of frequencies allocated for specific government uses, or to otherwise make them publicly available.

⁴ Decisions on the allocation and assignment of spectrum and frequency management are not measures that are *per se* inconsistent with Article 4 (Market Access) of Chapter 8 (Trade in Services). Accordingly, each Party retains the ability to exercise its spectrum and frequency management policies, which may affect the number of service suppliers, provided that this is done in a manner that is consistent with this Chapter. Each Party also retains the right to allocate frequency bands taking into account existing and future needs.

⁵ Parties are not required to publish information about the allocation of individual frequencies to specific licencees.

APPENDIX ON TRANSITIONAL ARRANGEMENTS

Party	Article 4	Article 6	Article 7	Article 8	Article 9.2
Brunei	Obligation to apply from 1 January 2009.	Obligation to apply from 1 January 2009.	Obligation to apply from 1 January 2009.	Obligation to apply from 1 January 2009.	Obligation to apply from 1 January 2009.
Cambodia			Obligation to apply from no later than 3 years after the date of entry into force of this Agreement.	Obligation to apply from no later than 1 year from the date of entry into force of the law on Telecommunication. Cambodia shall endeavour to ensure that the Law on Telecommunication enters into force within 3 years of entry into force of this Agreement.	Obligation to apply from the date of application of Article 7 (for co-location) and 8 (for leased circuit services) respectively.
Laos	Obligation to apply from: (i) Three years after the date of Laos' accession to the WTO; or	Obligation to apply from: (i) Three years after the date of Laos' accession to the WTO; or	Obligation to apply from three years after the date of: (i) Laos' accession to the WTO; or (ii) entry into force of	Obligation to apply from three years after the date of: (i) Laos' accession to the WTO; or (ii) entry into force of	Obligation to apply from three years after the date of: (i) Laos' accession to the WTO; or (ii) entry into force of

Party	Article 4	Article 6	Article 7	Article 8	Article 9.2
	(ii) three years after the date of entry into force of domestic legislation implementing this obligation; whichever is the earlier.	(ii) three years after the date of entry into force of domestic legislation implementing this obligation; whichever is the earlier.	domestic legislation implementing this obligation; whichever is the earlier.	domestic legislation implementing this obligation; whichever is the earlier.	domestic legislation implementing this obligation; whichever is the earlier.
Myanmar	Obligation to apply from the date of completion of the review of current sector policy and regulatory arrangement allowing multi-telco participation in telecommunications services	Obligation to apply from the date of completion of the review of current sector policy and regulatory arrangement allowing multi-telco participation in telecommunications services	Obligation to apply from the date of completion of the review of current sector policy and regulatory arrangement allowing multi-telco participation in telecommunications services	Obligation to apply from the date of completion of the review of current sector policy and regulatory arrangement allowing multi-telco participation in telecommunications services	Obligation to apply from the date the new Telecommunications Law comes into force.

Party	Article 4	Article 6	Article 7	Article 8	Article 9.2
Singapore	Commits to apply this Article upon the entry into force of this Agreement.	Commits to apply this Article on a reciprocal basis, i.e. Singapore will only give commitments relating to this Article to another Party, if and when the same commitments have been made by that Party.	Commits to apply this Article on a reciprocal basis, i.e. Singapore will only give commitments relating to this Article to another Party, if and when the same commitments have been made by that Party.	Commits to apply this Article on a reciprocal basis, i.e. Singapore will only give commitments relating to this Article to another Party, if and when the same commitments have been made by that Party.	Commits to apply this Article on a reciprocal basis, i.e. Singapore will only give commitments relating to this Article to another Party, if and when the same commitments have been made by that Party.
Thailand¹	Obligation to apply after the expiration of the last concession contract.	Obligation to apply after the expiration of the last concession contract.	Obligation to apply after the expiration of the last concession contract.	Obligation to apply after the expiration of the last concession contract.	Obligation to apply from the date of entry into force of this Agreement.
Viet Nam			To apply three years after these obligations are duly reflected in Viet Nam's domestic laws and regulations.	To apply three years after these obligations are duly reflected in Viet Nam's domestic laws and regulations.	To apply three years after these obligations are duly reflected in Viet Nam's domestic laws and regulations.

¹ The last concession contract will be expired in the year 2018.