

Free Trade Agreement (FTA) on Trade in Services

- AJCEPA -

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FIRST PROTOCOL TO AMEND
THE AGREEMENT ON COMPREHENSIVE ECONOMIC PARTNERSHIP
AMONG JAPAN AND MEMBER STATES OF THE ASSOCIATION
OF SOUTHEAST ASIAN NATIONS

The Governments of Japan and Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Republic of the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam, Member States of the Association of Southeast Asian Nations (hereinafter referred to as "ASEAN");

Recalling the Agreement on Comprehensive Economic Partnership among Japan and Member States of the Association of Southeast Asian Nations (hereinafter referred to as the "AJCEP Agreement"), which entered into force on 1 December 2008;

Encouraged by the achievements of the relationship between Japan and ASEAN for more than 40 years, particularly in the economic field;

Desiring to further enhance the competitiveness of Japan and the Member States of ASEAN (hereinafter referred to collectively as "ASEAN Member States" or individually as "ASEAN Member State") by using the AJCEP Agreement as the main vehicle;

Recalling further the Vision Statement on ASEAN-Japan Friendship and Cooperation (Shared Vision, Shared Identity, Shared Future) adopted by the Heads of State or Government of Japan and ASEAN Member States to commemorate the 40th Year of ASEAN-Japan Friendship and Cooperation where they expressed their commitment to further enhancing comprehensive economic partnership through, among others, strengthening cooperation in areas of mutual interest related to trade in goods, trade in services and investment, including enhancing the utilisation of the AJCEP Agreement and the implementation of the ASEAN-Japan 10-Year Strategic Economic Cooperation Roadmap;

Noting Articles 50 and 51 of the AJCEP Agreement, which reflect the intention of Japan and ASEAN Member States to discuss and negotiate provisions for trade in services and investment, and incorporate the results of the negotiations into the AJCEP Agreement;

Seeking to incorporate into the AJCEP Agreement robust Chapters on trade in services, movement of natural persons and investment and confident that the incorporation of these Chapters will strengthen the partnership between Japan and ASEAN, and support economic integration in the East Asian region; and

Noting further that Article 77 of the AJCEP Agreement provides for amendments thereto to be agreed upon by the Parties;

HAVE AGREED as follows:

Article 1
References to the Union of Myanmar

The references to "the Union of Myanmar" in the AJCEP Agreement shall be deemed to read "the Republic of the Union of Myanmar".

Article 2
Incorporation of New Annexes and Amendment
to the Table of Contents of the AJCEP Agreement

1. Appendices 1 through 5 of this Protocol shall constitute an integral part of this Protocol.
2. The table of contents of the AJCEP Agreement shall be replaced by the new table of contents as set out in Appendix 1 of this Protocol.
3. Appendices 2 through 5 of this Protocol shall be incorporated into the AJCEP Agreement as Annexes 6 through 9 of the AJCEP Agreement, respectively.

Article 3
Amendment to Chapter 1 (General Provisions)
of the AJCEP Agreement

1. Article 8 of the AJCEP Agreement shall be replaced by the following:

"Article 8
Security Exceptions

1. For the purposes of this Agreement, nothing in this Agreement shall be construed:
 - (a) to require a Party to furnish any information, the disclosure of which it considers contrary to its essential security interests;

- (b) to prevent a Party from taking any action which it considers necessary for the protection of its essential security interests:
 - (i) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials or relating to the supply of services as carried on, directly or indirectly, for the purpose of supplying or provisioning a military establishment;
 - (ii) taken in time of war, domestic emergency, or other emergency in international relations;
 - (iii) relating to fissionable and fusionable materials or the materials from which they are derived; or
 - (iv) taken to protect critical public infrastructures, including communication, power and water infrastructures, from deliberate attempts intended to disable or degrade such infrastructures; or
- (c) to prevent a Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

2. The Joint Committee shall be informed to the fullest extent possible of measures taken under subparagraphs 1(b) and (c) and of their termination."

2. Subparagraph 2(e) of Article 11 of the AJCEP Agreement shall be replaced by the following:

- "(e) adopt:
 - (i) the Implementing Regulations referred to in Rule 11 of Annex 4;

- (ii) procedures on the implementation of Annex 2 by the Parties after its amendment, upon recommendation of the Sub-Committee on Rules of Origin referred to in Article 37. These procedures shall address, *inter alia*, the date(s) on which the amended Annex 2 shall be applicable to applications for, and the issuance of, Certificates of Origin in accordance with Annex 4;
- (iii) amendments to this Agreement pursuant to paragraph 5 of Article 77; and
- (iv) any necessary decisions; and"

Article 4
Amendment to Chapter 6 (Trade in Services)
of the AJCEP Agreement

Chapter 6 of the AJCEP Agreement shall be replaced by the following:

"Chapter 6
Trade in Services

Article 50.1
Definitions

For the purposes of this Chapter, the term:

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

- (d) "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 may be made or tickets may be issued;
- (e) "direct taxes" comprises all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation;
- (f) "juridical person" means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;
- (g) "juridical person of another Party" means a juridical person which is either:
 - (i) constituted or otherwise organised under the law of that other Party, and is engaged in substantive business operations in the territory of that other Party or any other Party; or
 - (ii) in the case of the supply of a service through commercial presence, owned or controlled by:

- (A) natural persons of that other Party; or
 - (B) juridical persons of that other Party identified under subparagraph (i);
- (h) 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; and
 - (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;
- (i) "measure" means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;

Note: "measure" shall include taxation measures to the extent covered by the GATS.
- (j) "measures by a Party" means measures taken by:
 - (i) central, regional or local governments and authorities of a Party; and
 - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities of a Party;
- (k) "measures by a Party affecting trade in services" includes measures in respect of:

- (i) the purchase, payment or use of a service;
 - (ii) the access to and use of, in connection with the supply of a service, services which are required by the Party 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 another Party;
- (l) "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;
- (m) "natural person of another Party" means a natural person who resides in the territory of that other Party or elsewhere, and who under the law of that other Party:
- (i) is a national of that other Party; or
 - (ii) has the right of permanent residence in that other 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, as notified to all other Parties after the entry into force of the First Protocol to Amend the Agreement on Comprehensive Economic Partnership Among Japan and Member States of the Association of Southeast Asian Nations (hereinafter referred to as "the First Protocol"), provided that no Party is obliged to accord to such permanent residents treatment more favourable than would be accorded by that other Party to such permanent residents. Such notification shall include the assurance to assume, with respect to the permanent residents, in accordance with its laws and regulations, the same responsibilities that other Party bears with respect to its nationals;

Note: In the case of the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Republic of the Union of Myanmar, the Republic of the Philippines, the Kingdom of Thailand, the Socialist Republic of Viet Nam and Japan, natural person of another Party shall be limited to a natural person who resides in the territory of that other Party or elsewhere and who under the law of that other Party is a national of that other Party. Therefore, in line with the principle of reciprocity, this Chapter shall not apply to the permanent residents of the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Republic of the Union of Myanmar, the Republic of the Philippines, the Kingdom of Thailand, the Socialist Republic of Viet Nam and Japan. Once any of these Parties enacts its laws on the treatment of permanent residents of another Party or non-Party, there shall be negotiations among the Parties on the issue of whether to include permanent residents in the coverage of natural person under this Chapter in respect of that Party.

- (n) "person" means either a natural person or a juridical person;

- (o) "sector" of a service means:
 - (i) with reference to a specific commitment, one or more, or all, subsectors of that service, as specified in a Party's Schedule of Specific Commitments; or
 - (ii) otherwise, the whole of that service sector, including all of its subsectors;
- (p) "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;
- (q) "services" includes any service in any sector except services supplied in the exercise of governmental authority;
- (r) "service consumer" means any person that receives or uses a service;
- (s) "service of another Party" means a service which is supplied:
 - (i) from or in the territory of that other Party, or in the case of maritime transport, by a vessel registered under the laws of that other Party, or by a person of that other Party which supplies the service through the operation of a vessel and/or its use in whole or in part; or
 - (ii) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of that other Party;
- (t) "service supplier" means any person that supplies a service;

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

- (u) "supply of a service" includes the production, distribution, marketing, sale and delivery of a service;
- (v) "trade in services" means the supply of a service:
 - (i) from the territory of a Party into the territory of any other Party ("cross-border supply");
 - (ii) in the territory of a Party to the service consumer of any other Party ("consumption abroad");
 - (iii) by a service supplier of a Party, through commercial presence in the territory of any other Party ("commercial presence");
 - (iv) by a service supplier of a Party, through presence of natural persons of a Party in the territory of any other Party ("presence of natural persons"); and

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

Article 50.2
Scope

1. This Chapter shall apply to measures by a Party affecting trade in services.
2. This Chapter shall not apply to:
 - (a) government procurement;
 - (b) cabotage in maritime transport services;
 - (c) 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; and
 - (d) measures by a Party affecting natural persons of another Party seeking access to the employment market of the former Party, or measures regarding nationality or citizenship, or residence or employment on a permanent basis.
3. The Annex A to Chapter 6 provides for supplementary provisions to this Chapter on financial services, including scope and definitions.

4. The Annex B to Chapter 6 provides for supplementary provisions to this Chapter on telecommunications services, including scope and definitions.

Article 50.3
Most-Favoured-Nation Treatment

1. Each Party shall accord to services and service suppliers of another Party treatment no less favourable than that it accords to like services and service suppliers of any other Party or a non-Party.

2. Paragraph 1 shall not apply to any measure by a Party with respect to sectors, subsectors or activities, as set out in Annex 7.

3. Notwithstanding paragraphs 1 and 2, the Parties listed in Annex 8 shall be exempted from paragraphs 1 and 2 and shall endeavour to consider according to services and service suppliers of another Party treatment no less favourable than that they accord to like services and service suppliers of any other Party or a non-Party. Any decision of a Party with regard to this paragraph shall not be subject to dispute settlement procedures provided for in Chapter 9.

Article 50.4
Transparency

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

Publication

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

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

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

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

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

5. To the extent possible and required under its laws and regulations, each Party shall provide a reasonable opportunity for comments by interested persons of the Parties on any regulation of general application affecting trade in services that it proposes to adopt, amend or repeal, before adoption, amendment or repeal, and publish the comments received from the public and results of its consideration to the comments.

Note: For greater certainty, a Party may consolidate the comments and the results, and may publish them in a separate document from the one that sets forth the final text of the proposed regulation.

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 subparagraph 2(a) or international agreements referred to in subparagraph 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 Chapter, whether or not that other Party has been previously notified of the new or changed law, regulation or administrative guideline.

8. Each Party shall, to the extent possible and required under its laws and regulations, respond to enquiries from interested persons of the Parties regarding any relevant measure of general application of the Party relating to the subject matter of this Chapter.

9. Each Party shall prepare a non-legally binding list (transparency list) on laws and, to the extent possible, other measures at the central government level, which are inconsistent with the obligations under Articles 50.3, 50.17 and 50.18. Such a list shall cover (i) the sectors where specific commitments are undertaken in this Agreement and/or in any other agreements in force on the date of entry into force of the First Protocol pertaining to or affecting trade in services to which the Party preparing the list is a party and (ii) to the extent possible, other sectors that are not included in the sectors referred to in (i), shall be exchanged among the Parties and made public within six (6) years for newer ASEAN Member States and four (4) years for the remaining Parties, from the date of entry into force of the First Protocol, and may be subject to future review and revision as necessary. This list shall not form an integral part of this Agreement and shall not be subject to dispute settlement procedures provided for in Chapter 9. The list shall include the following elements:

- (a) sector and sub-sector or matter;
- (b) type of inconsistency (i.e. Most-Favoured-Nation Treatment, Market Access and/or National Treatment);
- (c) legal source or authority of the measure;
and
- (d) succinct description of the measure.

Note: Nothing in this paragraph shall be construed to oblige any Party to enter into negotiations with any other Party in respect of any matter relating to the list. The list under this paragraph will be made solely for the purposes of transparency, and shall not be construed to affect the rights and obligations of a Party under this Chapter. For greater certainty, the information contained in this list will also not prevent Parties from introducing new measures or changes. Any review or revision under this paragraph will be solely for the purposes of updating such list.

10. In preparation of such list, a Party, upon request of another Party, may provide technical assistance to the requesting Party, subject to the available resources.

Article 50.5 Domestic Regulation

1. In sectors where specific commitments are undertaken under Articles 50.17 through 50.23, each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

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

(b) Subparagraph 2(a) shall not be construed to require a Party to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.

3. Where authorisation is required for the supply of a service on which a specific commitment under this Chapter has been made, the competent authorities of each Party shall:

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

4. The competent authorities of a Party shall endeavour, in accordance with the laws and regulations of the Party, to establish standards for taking administrative decisions in response to submitted applications. The competent authorities shall endeavour to:

- (a) make such standards as specific as possible; and
- (b) make such standards publicly available except when it would extraordinarily raise administrative difficulties for the Party.

5. The competent authorities of a Party shall endeavour, in accordance with the laws and regulations of the Party, to:

- (a) establish standard periods of time between the receipt of applications by the competent authorities and the administrative decisions taken in response to submitted applications; and

- (b) make publicly available such periods of time, if established.

6. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements of service suppliers of another Party do not constitute unnecessary barriers to trade in services, each Party shall aim to ensure that such requirements 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.

7. (a) In sectors in which a Party has undertaken specific commitments subject to any terms, limitations, conditions or qualifications set out therein, that Party shall not apply licensing and qualification requirements and technical standards that nullify or impair its obligation under this Chapter in a manner which:

- (i) does not comply with the criteria outlined in subparagraph 6(a), (b) or (c); and
- (ii) could not reasonably have been expected of that Party at the time the specific commitments in those sectors were made.

(b) In determining whether a Party is in conformity with the obligation under subparagraph 7(a), account shall be taken of international standards of relevant international organisations applied by that Party.

Note: The term "relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of at least all the Parties.

8. In sectors where specific commitments regarding professional services are undertaken, each Party shall provide for adequate procedures to verify the competence of professionals of any other Party.

9. If the results of the negotiations related to paragraph 4 of Article VI of the GATS enter into effect, this Article shall be amended, as appropriate, after consultations among the Parties, to bring those results into effect under this Agreement.

Article 50.6 Administrative Guidance

1. Where a competent authority of the central government of a Party renders administrative guidance with regard to any matter covered by this Chapter, such competent authority is encouraged to ensure that the administrative guidance does not exceed the scope of its competence. The competent authority is also encouraged to ensure that the administrative guidance does not require the person concerned to comply with the administrative guidance without voluntary cooperation of such person.

2. Such competent authority is encouraged to ensure, in accordance with the laws and regulations of its Party, that the person concerned is not treated unfavourably solely on account of non-compliance of such person with such administrative guidance.

3. Such competent authority is encouraged to provide, in accordance with the laws and regulations of its Party, to the person concerned in writing, upon the request of such person, the purposes and contents of the administrative guidance.

4. For the purposes of this Article, the term "administrative guidance" means any guidance, recommendation or advice by a competent authority of the central government of a Party which requires a person to do or refrain from doing any act but does not create, impose limitations on, or in any way affect, rights and obligations of such person in order to pursue administrative objectives.

Article 50.7 Recognition

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

2. Two (2) or more Parties may enter into, or encourage their relevant competent bodies to enter into, negotiations on recognition of qualification requirements, qualification procedures, licensing and/or registration procedures for the purposes of fulfilment of their respective standards or criteria for the authorisation, licensing or certification of service suppliers.

3. 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 the territory of that other Party should be recognised.

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

5. Where a Party recognises, by an agreement or arrangement between the Party and another Party or a non-Party or unilaterally, the education or experience obtained, requirements met, or licences or certifications granted in that other Party or the non-Party, nothing in Article 50.3 shall be construed to require the former Party to accord such recognition to the education or experience obtained, requirements met, or licences or certifications granted in the other Parties.

Article 50.8
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 50.3 and specific commitments.

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, the former Party may request that other 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 50.9
Business Practices

1. The Parties recognise that certain business practices of service suppliers, other than those falling under Article 50.8, 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 cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The Party addressed shall also provide other information available to the requesting Party, subject to its laws and to the conclusion of satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Party.

Article 50.10
Safeguards

1. The Parties note the multilateral negotiations pursuant to Article X of the 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 Chapter so as to incorporate the results of such multilateral negotiations.

2. In the event that the implementation of the commitments made in this Chapter 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 Party or Parties concerned. 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 its request for consultations under this paragraph.

3. Any measures taken pursuant to paragraph 2 shall be mutually agreed by the consulting Parties.

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 Sub-Committee on Trade in Services referred to in Article 50.24 following the conclusion of consultations.

Article 50.11
Payments and Transfers

1. Except under the circumstances envisaged in Article 50.12, a Party shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments.

2. Nothing in this Chapter shall affect the rights and obligations of the Parties as members of the International Monetary Fund (hereinafter referred to as "IMF") under the Articles of Agreement of the International Monetary Fund (hereinafter referred to as the "Articles of Agreement of the IMF"), including the use of exchange actions which are in conformity with the Articles of Agreement of the IMF, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article 50.12 or at the request of the IMF.

Article 50.12
Restrictions to Safeguard the Balance of Payments

1. In the event of serious balance of payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on trade in services on which it has undertaken specific commitments including on payments or transfers for transactions related to such commitments.

2. The restrictions referred to in paragraph 1:

- (a) shall not discriminate among Parties;
- (b) shall be consistent with the Articles of Agreement of the IMF;

- (c) shall avoid unnecessary damage to the commercial, economic and financial interests of the other Parties;
- (d) shall not exceed those necessary to deal with the circumstances described in paragraph 1; and
- (e) shall be temporary and be phased out progressively as the situation specified in paragraph 1 improves.

3. In determining the incidence of such restrictions, a Party may give priority to the supply of services which are more essential to its economic or development programmes. However, such restrictions shall not be adopted or maintained for the purposes of protecting a particular service sector.

4. Any restrictions adopted or maintained under paragraph 1, or any changes therein, shall be promptly notified to the other Parties.

5. Where a Party has adopted restrictions pursuant to paragraph 1 and if consultations in relation to the restrictions adopted by it are not taking place at the World Trade Organization, the Party, upon request, shall promptly commence consultations with any requesting Party in order to review those restrictions adopted by the former Party.

Article 50.13 General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Parties where like conditions prevail, or a disguised restriction on trade in services, nothing in this Chapter shall be construed to prevent the adoption or enforcement by any Party of measures:

- (a) necessary to protect public morals or to maintain public order;

Note: The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to secure compliance with laws or regulations which are not inconsistent with this Chapter including those relating to:
 - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;
 - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts; or
 - (iii) safety;
- (d) inconsistent with Article 50.18, provided that the difference in treatment is aimed at ensuring the equitable or effective imposition or collection of direct taxes in respect of services or service suppliers of other Parties; or

Note: Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:

- (i) apply to non-resident service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the territory of the Party;
- (ii) apply to non-residents in order to ensure the imposition or collection of taxes in the territory of the Party;
- (iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures;

- (iv) apply to consumers of services supplied in or from the territory of another Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the territory of the Party;
- (v) distinguish service suppliers subject to tax on worldwide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or
- (vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base.

Tax terms or concepts in this subparagraph and this Note are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the law of the Party taking the measure.

- (e) inconsistent with Article 50.3, provided that the difference in treatment is the result of an agreement on the avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Party is bound.

Article 50.14 Subsidies

1. Except where provided in this Article, this Chapter shall not apply to subsidies or grants provided by a Party, or to any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic services, service consumers or service suppliers. If such subsidies or grants significantly affect trade in services committed under this Chapter, any Party may request consultations with a view to an amicable resolution of this matter. The requested Party shall accord sympathetic consideration to such request.

2. Pursuant to this Chapter, the Parties shall:
- (a) on request, provide information on subsidies related to trade in services committed under this Chapter to any requesting Party; and
 - (b) review the treatment of subsidies when relevant disciplines are developed by the World Trade Organization.

Article 50.15
Cooperation

The Parties shall strengthen cooperation efforts in services sectors, including sectors which are not covered by existing cooperation arrangements in accordance with Chapter 8. The Parties are encouraged to discuss and mutually agree on the sectors for cooperation and develop cooperation programmes in these sectors in order to improve their domestic capacities, efficiencies and competitiveness.

Article 50.16
Increasing Participation
of Newer ASEAN Member States

In order to increase the benefits of this Chapter for the newer ASEAN Member States, and in accordance with Articles 2, 3 and 52, 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 50.17
Market Access

1. With respect to market access through the modes of supply identified in subparagraph (v) of Article 50.1, a 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 Schedule of Specific Commitments in Annex 6.

Note: If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (v) (i) of Article 50.1 and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (v) (iii) of Article 50.1, it is thereby committed to allow related transfers of capital into its territory.

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 Schedule of Specific Commitments in Annex 6, are defined as:

- (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
- (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
- (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;

Note: This subparagraph does not cover measures of a Party which limit inputs for the supply of services.

- (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 50.18
National Treatment

1. In the sectors inscribed in its Schedule of Specific Commitments in Annex 6, 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.

Note: For greater certainty, no specific commitments in this Article shall be construed to require any Party to compensate for any inherent competitive disadvantages, which result from the foreign character of the relevant services or service suppliers.

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.

4. A Party shall not invoke the preceding paragraphs under Chapter 9 with respect to a measure of any other Party that falls within the scope of an international agreement between them relating to the avoidance of double taxation.

Article 50.19
Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 50.17 and 50.18, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule of Specific Commitments in Annex 6.

Article 50.20
Schedules of Specific Commitments

1. Each Party shall set out in a schedule the specific commitments it undertakes under Articles 50.17, 50.18 and 50.19. With respect to sectors or subsectors where such commitments are undertaken, each Schedule of Specific Commitments in Annex 6 shall specify:

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

2. With respect to sectors or subsectors where the specific commitments are undertaken and which are indicated with "SS", any terms, limitations, conditions and qualifications referred to in subparagraphs 1(a) and (b), other than those based on measures pursuant to immigration laws and regulations, shall be limited to existing non-conforming measures.

Note: For the purposes of this paragraph, "existing" means in effect on the date of entry into force of the First Protocol.

3. Measures inconsistent with both Articles 50.17 and 50.18 shall be inscribed in both the columns relating to Articles 50.17 and 50.18.

Article 50.21
Application and Extension of Commitments

Each Party shall make its individual Schedule of Specific Commitments under Article 50.20 and shall apply such Schedule to other Parties.

Article 50.22
Progressive Liberalisation

The Parties may enter into successive rounds of negotiations so as to progressively liberalise trade in services among the Parties.

Article 50.23
Modification of Schedules

1. A Party may modify or withdraw any commitment in its Schedule of Specific Commitments, at any time after three (3) years from the date on which that commitment has entered into force provided that:

- (a) it notifies the other Parties as well as the ASEAN Secretariat of its intention to modify or withdraw a commitment no later than three (3) months before the intended date of implementation of the modification or withdrawal; and

- (b) it enters into negotiations with any affected Party to agree to the necessary compensatory adjustment.

2. In achieving a compensatory adjustment, the Parties shall ensure that the general level of mutually advantageous commitment is not less favourable to trade than provided for in the Schedules of Specific Commitments prior to such negotiations.

3. Any compensatory adjustment pursuant to this Article shall be accorded on a non-discriminatory basis to all the Parties.

4. If the Parties concerned are unable to reach an agreement on the compensatory adjustment, the matter shall be settled by arbitration under Chapter 9. The modifying Party may not modify or withdraw its commitment until it has made compensatory adjustments in conformity with the findings of the arbitration.

5. If the modifying Party implements its proposed modification or withdrawal and does not comply with the findings of the arbitration, any Party that participated in the arbitration may modify or withdraw substantially equivalent benefits in conformity with those findings. Notwithstanding Articles 50.3 and 50.21, such a modification or withdrawal may be implemented solely with respect to the modifying Party.

Article 50.24 Sub-Committee on Trade in Services

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Trade in Services (hereinafter referred to in this Article as "the Sub-Committee") shall be established pursuant to Article 11.

2. The functions of the Sub-Committee shall be to:

- (a) review the implementation and operation of this Chapter;
- (b) review commitments, with respect to measures affecting trade in services, with a view to achieving further liberalisation on a mutually advantageous basis and securing an overall balance of rights and obligations;

- (c) discuss any issues related to this Chapter;
- (d) report the outcome of discussions of the Sub-Committee to the Joint Committee; and
- (e) carry out other functions as may be delegated by the Joint Committee in accordance with Article 11 of this Agreement.

3. The Sub-Committee shall be:

- (a) composed of representatives of the Governments of Japan and all ASEAN Member States; and
- (b) co-chaired by an official of the Government of Japan and an official of one of the Governments of the ASEAN Member States.

4. The Sub-Committee, based on the consensus of the Parties, may invite representatives of relevant entities other than the Governments with the necessary expertise relevant to the issues to be discussed to participate in the Sub-Committee's discussions.

5. The Sub-Committee shall meet at such venues and times as may be agreed by the Parties.

Article 50.25 Review

1. With the objective of further liberalising trade in services among the Parties, including the possibility of the re-negotiation of the format of schedules, the Parties shall undertake a review of this Chapter with Annexes A and B to this Chapter and Annexes 6 through 8 at the occasion of a general review pursuant to Article 75 or other occasions as may be otherwise agreed by the Parties.

2. If, after the entry into force of the First Protocol, a Party has undertaken further liberalisation autonomously in any of services sectors, subsectors or activities, pursuant to Article 50.22, it may consider any requests by the other Parties for the possible incorporation into this Agreement of such autonomous liberalisation.

Article 50.26
Denial of Benefits

A Party may deny the benefits of this Chapter:

- (a) to the supply of a 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.

Annex A to Chapter 6
Financial Services

Article A.1
Scope and Definitions

1. This Annex shall apply 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 subparagraph (u) of Article 50.1.

2. (a) For the purposes of this Annex, the term:

- (i) "financial service" means any service of a financial nature offered by a financial service supplier of a Party. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services include the following activities:

Insurance and insurance-related services

(A) direct insurance (including co-insurance):

(1) life; and

(2) non-life;

(B) reinsurance and retrocession;

(C) insurance intermediation, such as brokerage and agency;

(D) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services;

Banking and other financial services (excluding insurance)

(E) acceptance of deposits and other repayable funds from the public;

- (F) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
- (G) financial leasing;
- (H) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
- (I) guarantees and commitments;
- (J) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
 - (1) money market instruments (including cheques, bills, certificates of deposits);
 - (2) foreign exchange;
 - (3) derivative products including, but not limited to, futures and options;
 - (4) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
 - (5) transferable securities; and
 - (6) other negotiable instruments and financial assets, including bullion;
- (K) 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;

- (L) money broking;
 - (M) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
 - (N) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
 - (O) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and
 - (P) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (E) through (O), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;
- (ii) "financial service supplier" means any natural or juridical person of a Party wishing to supply or supplying financial services but "financial service supplier" does not include a public entity;
 - (iii) "public entity" means:
 - (A) a government, a central bank or 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

- (B) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions; and
- (iv) "self-regulatory organisation" means:
 - (A) in the case of Japan, any non-governmental body, including any securities or futures exchange or market, clearing agency, or other organisation or association that exercises delegated regulatory or supervisory authority over financial service suppliers; and
 - (B) in the case of an ASEAN Member State, any non-governmental body, including any securities or futures exchange or market, clearing or payment settlement agency, or any other organisation or association that is recognised by legislation as a self-regulatory organisation and exercises regulatory or supervisory authority over financial service suppliers pursuant to legislation or delegation from central, regional or local governments or authorities;
- (b) For the purposes of subparagraph (q) of Article 50.1, "services supplied in the exercise of governmental authority" means the following:
 - (i) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;
 - (ii) activities forming part of a statutory system of social security or public retirement plans; and

- (iii) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government;
- (c) For the purposes of subparagraph (q) of Article 50.1, if a Party allows any of the activities referred to in subparagraph (b) (ii) or (iii) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, "services" shall include such activities; and
- (d) The term "a service supplied in the exercise of governmental authority" as defined in subparagraph (a) of Article 50.1 shall not apply to services covered by this Annex.

Article A.2
Transparency

1. The Parties recognise that regulatory transparency in financial services is important in facilitating the ability of financial service suppliers to gain access to and operate in each other's market.

2. Each Party shall endeavour to take such reasonable measures as may be available to it to ensure that the rules of general application adopted or maintained by self-regulatory organisations in the Party are promptly published or otherwise made publicly available.

3. Each Party shall, to the extent possible, maintain or establish appropriate mechanisms for responding to enquiries from interested persons of another Party regarding measures of general application to which this Annex applies.

Note: 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.

4. Competent authorities of each Party shall use their 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.

5. On the request of an applicant in writing, competent authorities of a Party shall inform the applicant of the status of its application. If an authority requires additional information from the applicant, it shall notify the applicant within a reasonable period of time.

6. (a) A competent authority of each Party 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 one hundred eighty (180) days and shall notify the applicant of the decision within a reasonable period of time. An application shall not be considered complete until all relevant proceedings are conducted and the competent authority considers all necessary information is received.

(b) Where it is not practicable for a decision to be made within one hundred eighty (180) days, the competent authority shall notify the applicant without delay and shall endeavour to make the decision within a reasonable period of time thereafter.

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

Article A.3
Transfers of Information and
Processing of Information

1. A Party shall not take measures that prevent:

(a) transfers of information including transfers of data by electronic means necessary for the conduct of the ordinary business of a financial service supplier;

- (b) the processing of financial information including transfers of data by electronic means necessary for the conduct of the ordinary business of a financial service supplier; or
- (c) transfers of equipment necessary for the conduct of the ordinary business of a financial service supplier, subject to importation rules consistent with international agreements.

2. Nothing in paragraph 1:

- (a) restricts the right of a Party to protect personal data, personal privacy and the confidentiality of individual records and accounts including in accordance with its domestic laws and regulations so long as such right shall not be used as a means of avoiding the commitments or obligations of the Party under this Agreement;
- (b) prevents a competent authority of a Party for regulatory or prudential reasons from requiring a financial service supplier in its territory to comply with domestic regulations 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 subparagraph 2(a)(i)(O) of Article A.1.

Article A.4
Domestic Regulation

1. Notwithstanding any other provisions of Chapter 6, including Annexes A and B to Chapter 6 and Annexes 6 through 8, 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 Party's financial system. Where such measures do not conform with the provisions of Chapter 6, they shall not be used as a means of avoiding the commitments or obligations of the Party under that Chapter.

2. Nothing in Chapter 6, including Annexes A and B to Chapter 6 and Annexes 6 through 8, 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 A.5
Recognition of Prudential Measures

Where a Party recognises, by an agreement or arrangement, prudential measures of a non-Party or of any international regulatory body in determining how the Party's measures relating to financial services shall be applied, that Party shall afford adequate opportunity for the other Parties to negotiate their accession to such an agreement or arrangement, or to negotiate a comparable agreement or arrangement 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 Party accords such recognition autonomously, it shall afford adequate opportunity for the other Parties to demonstrate that such circumstances exist.

Article A.6
Settlement of Disputes

Arbitral tribunals established under Article 64 for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute.

Annex B to Chapter 6
Telecommunications Services

Article B.1
Scope

1. This Annex shall apply to measures by a Party affecting trade in public telecommunications transport networks and services.
2. This Annex shall not apply to measures affecting broadcasting services as defined in the laws and regulations of each Party.
3. Nothing in this Annex shall be construed to:
 - (a) require a Party to authorise a service supplier of another Party to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services other than as provided for in its Schedule of Specific Commitments in Annex 6; or
 - (b) require a Party (or require a Party 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 B.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) "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;
- (e) "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;
- (f) "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;
- (g) "personal data" means any information about an identified or identifiable natural person;
- (h) "public telecommunications transport network" means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points;

- (i) "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, 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;
- (j) "telecommunications" means the transmission and reception of signals by any electromagnetic means;
- (k) "telecommunications regulatory body" means any body or bodies in the territory of a Party which is or are responsible, under the laws and regulations of the Party, for the regulation of telecommunications; and
- (l) "users" means end users or suppliers of public telecommunications transport networks or services.

Article B.3
Access and Use

1. Each Party shall ensure that any service supplier of another Party 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, for the supply of a service included in its Schedule of Specific Commitments in Annex 6. This obligation shall be applied, *inter alia*, through paragraphs 2 through 6.

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

- (a) to purchase or lease and attach terminal or other equipment which interfaces with the network and which is necessary to supply their services;

- (b) to 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) to 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 Party shall ensure that service suppliers of another Party 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 Party.

4. Notwithstanding paragraph 3, a Party may take such measures as are necessary:

- (a) to ensure the security and confidentiality of messages; or
- (b) to protect the personal data of end users of public telecommunications transport networks or services subject to the requirement 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 Party shall ensure that no condition is imposed on access to and use of public telecommunications transport networks and services other than as necessary:

- (a) to 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) to 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 inter-operability of public telecommunications transport services and to encourage the achievement of the goals set out in Article B.17;
- (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 B.4 Number Portability

Each Party 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 laws and regulations, to the extent technically and economically feasible, on a timely basis and on reasonable terms and conditions.

Article B.5 Competitive Safeguard

1. Each Party 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.

Article B.6
Treatment by Major Suppliers

Each Party shall ensure that a major supplier in its territory accords to suppliers of public telecommunications transport networks and services of another Party 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; and
- (b) the availability of technical interfaces necessary for interconnection.

Article B.7
Resale

Each Party 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 Party.

Article B.8
Interconnection

1. Each Party 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 Party to the extent provided for in its laws and regulations.

2. Each Party 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 Party 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 Party need not pay for network components or facilities that it does not require for the services to be provided; and
- (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 Party shall ensure that suppliers of public telecommunications transport networks or services of another Party 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 Party'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 Party shall ensure that the procedures applicable for interconnection to a major supplier are made publicly available.

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

6. Each Party 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 B.9

Provisioning and Pricing of Leased Circuit Services

Each Party 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 Party 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 B.10
Co-location

Each Party shall ensure, in accordance with its 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 Party to locate their equipment within the major supplier's buildings on terms and conditions, including technical feasibility and space availability where applicable, and at cost-oriented rates, that are reasonable, non-discriminatory (including with respect to timeliness) and transparent.

Article B.11
Independent Telecommunications Regulatory Body

1. Each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of telecommunications services.

Note: For greater certainty, "supplier of telecommunications services" is not limited to a supplier of public telecommunications transport networks or services.

2. Each Party shall ensure that the decisions of, and the procedures used by, its telecommunications regulatory body are impartial with respect to all market participants.

Article B.12
Universal Service

Each Party 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 Party.

Article B.13
Licensing

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 Party shall make publicly available:

- (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.

2. The competent authority of a Party 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 Party shall make known to the applicant, upon request, the reason for the denial.

Article B.14
Allocation and Use of Scarce Resources

1. Each Party 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 Party 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 Party's measures allocating and assigning spectrum and managing frequency are not measures that are *per se* inconsistent with Article 50.17. Accordingly, each Party 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 Chapter 6. Such right includes the ability to allocate frequency bands, taking into account current and future needs and spectrum availability.

Article B.15
Transparency

Each Party 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 B.16
Settlement of Disputes

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

2. Each Party shall ensure, in accordance with its 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 Party 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 Party 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 laws and regulations.

Article B.17
Relation to International Organisations

The Parties 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 B.18
Transitional Arrangements

Noting each Party's different stage of development, and noting each Party's commitments under the GATS, a Party may delay the application of the following Articles as indicated in the Attachment to this Annex on Transitional Arrangements:

- (a) Article B.5 Competitive Safeguard;
- (b) Article B.7 Resale;
- (c) Article B.8 Interconnection;
- (d) Article B.9 Provisioning and Pricing of Leased Circuit Services;
- (e) Article B.10 Co-location;
- (f) Article B.11 Independent Telecommunications Regulatory Body;
- (g) Article B.13 Licensing; and
- (h) Article B.14 Allocation and Use of Scarce Resources.

Attachment to Annex B to Chapter 6 on Transitional Arrangements

Party	Article B.5 Competitive Safeguard	Article B.7 Resale	Article B.8 Interconnection	Article B.9 Provisioning and Pricing of Leased Circuit Services	Article B.10 Co-location	Article B.11 Independent Telecommunications Regulatory Body	Article B.13 Licensing	Article B.14 Allocation and Use of Scarce Resources
Kingdom of Cambodia	Commits to apply this Article no later than three (3) years from the date of entry into force of the Law and regulations on Telecommunications.	Commits to apply this Article no later than three (3) years from the date of entry into force of the Law and regulations on Telecommunications.	Commits to apply this Article no later than three (3) years from the date of entry into force of the Law and regulations on Telecommunications.	Commits to apply this Article no later than three (3) years from the date of entry into force of the Law and regulations on Telecommunications.	Commits to apply this Article no later than three (3) years from the date of entry into force of the Law and regulations on Telecommunications.	Commits to apply this Article as soon as the Law and regulations on Telecommunications enters into force.	Commits to apply this Article as soon as the Law and regulations on Telecommunications enters into force.	Commits to apply this Article no later than three (3) years from the date of entry into force of the Law and regulations on Telecommunications and the Law on Radio Communication.
Republic of Indonesia	None	Commits to apply five (5) years after this obligation is reflected in the new Telecommunications Law.	None	Commits to apply five (5) years after this obligation is reflected in the new Telecommunications Law.	Commits to apply five (5) years after this obligation is reflected in the new Telecommunications Law.	None	None	None
Laos People's Democratic Republic	None	Commits to apply this Article in 2020.	None	Commits to apply this Article in 2020.	Commits to apply this Article in 2020.	None	Commits to apply this Article in 2018.	Commits to apply this Article in 2018.
Republic of the Union of Myanmar	None	None	None	Commits to apply this Article after this obligation is reflected in domestic laws and regulations by 2018.	None. For greater certainty, the application of this Article is based on effective commercial arrangement between parties.	None	None	None

Party	Article B.5 Competitive Safeguard	Article B.7 Resale	Article B.8 Interconnection	Article B.9 Provisioning and Pricing of Leased Circuit Services	Article B.10 Co-location	Article B.11 Independent Telecommunications Regulatory Body	Article B.13 Licensing	Article B.14 Allocation and Use of Scarce Resources
Republic of the Philippines	None (Competition Safeguard is provided under the existing rules of the National Telecommunications Commission).	Resale of private leased lines is not allowed. Private leased circuit services shall not be connected to a public switched telephone network.	Commits to apply this Article on a reciprocal basis.	Commits to apply this Article on a reciprocal basis.	Commits to apply this Article on a reciprocal basis.	None	None	None
Kingdom of Thailand	Commits to apply after the expiration of the last concession contract in 2018.	None	None	None	Commits to apply after the expiration of the last concession contract in 2018.	None	None	None
Socialist Republic of Viet Nam	None	Commits to apply this Article in 2020.	None	Commits to apply this Article in 2020.	Commits to apply this Article in 2020. For greater certainty, service suppliers from other Parties are not allowed to locate their equipment within a submarine cable landing station under the laws and regulations of the Socialist Republic of Viet Nam.	None, on the condition that this obligation only applies to suppliers of public telecommunications transport networks or services.	None	None

Article 5
Incorporation of Chapter 6 *bis*
(Movement of Natural Persons)
into the AJCEP Agreement

The following Chapter on Movement of Natural Persons shall be inserted into the AJCEP Agreement as Chapter 6 *bis*:

"Chapter 6 *bis*
Movement of Natural Persons

Article 50 *bis*.1
Objectives

The objectives of this Chapter are to:

- (a) provide the rights and obligations in relation to the movement of natural persons between the Parties for the purposes of trade in services and investment;
- (b) facilitate the movement of natural persons engaged in the conduct of trade and investment between the Parties; and
- (c) establish streamlined and transparent procedures for applications for immigration formalities for the entry and temporary stay of natural persons to whom this Chapter applies.

Article 50 *bis*.2
Scope

1. This Chapter shall apply to measures affecting the movement of natural persons of a Party who enter the territory of another Party and who fall under one of the categories referred to in paragraph 1 of Article 50 *bis*.4.

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

3. This Chapter shall not prevent a Party from applying measures to regulate the entry and temporary stay of natural persons of another Party in its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in a manner so as to nullify or impair the benefits accruing to another Party under the terms of the specific commitments.

Note: The sole fact of requiring a visa for natural persons of a certain nationality or citizenship and not for those of others shall not be regarded as nullifying or impairing benefits under the terms of specific commitments set out in Annex 9.

Article 50 *bis*.3
Definitions

For the purposes of this Chapter, the term:

- (a) "natural person of another Party" means a natural person who resides in the territory of that other Party or elsewhere, and who under the law of that other Party:
 - (i) is a national of that other Party; or
 - (ii) has the right of permanent residence in that other 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, as notified to all other Parties after the entry into force of the First Protocol, provided that no Party is obliged to accord to such permanent residents treatment more favourable than would be accorded by that other Party to such permanent residents. Such notification shall include the assurance to assume, with respect to the permanent residents, in accordance with its laws and regulations, the same responsibilities that other Party bears with respect to its nationals;

Note: In the case of the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Republic of the Union of Myanmar, the Republic of the Philippines, the Kingdom of Thailand, the Socialist Republic of Viet Nam and Japan, natural person of another Party shall be limited to a natural person who resides in the territory of that other Party or elsewhere and who under the law of that other Party is a national of that other Party. Therefore, in line with the principle of reciprocity, this Chapter shall not apply to the permanent residents of the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Republic of the Union of Myanmar, the Republic of the Philippines, the Kingdom of Thailand, the Socialist Republic of Viet Nam and Japan. Once any of these Parties enacts its laws on the treatment of permanent residents of another Party or non-Party, there shall be negotiations among the Parties on the issue of whether to include permanent residents in the coverage of natural person under this Chapter in respect of that Party.

(b) "short-term business visitor" means:

in the context of entry and temporary stay of a natural person of another Party in an ASEAN Member State, a natural person seeking to enter or stay in the territory of an ASEAN Member State temporarily, whose remuneration and financial support for the duration of the visit is derived from outside of that ASEAN Member State:

- (i) as a representative of a goods seller/service supplier, for the purpose of negotiating the sale of goods or supply of services or entering into agreements to sell goods or supply services for that goods seller/service supplier, where such negotiations do not involve direct sale of goods or supply of services to the general public;
- (ii) as an employee of a juridical person as defined in subparagraphs (f)(i) through (iii) only for the purpose of establishing an investment or setting up a commercial presence, for the juridical person in the territory of that ASEAN Member State;
- (iii) for the purpose of participating in business negotiations or meetings; or
- (iv) for the purpose of establishing an investment or setting up a commercial presence in the territory of that ASEAN Member State; and

in the context of entry and temporary stay of a natural person of an ASEAN Member State in Japan, the activities of a short-term business visitor allowed in Japan are described in the terms of the specific commitments set out in Annex 9;

(c) "contractual service supplier" means:

in the context of entry and temporary stay of a natural person of another Party in an ASEAN Member State, a natural person who is an employee of a juridical person established in the territory of another Party which has no commercial presence in the territory of that ASEAN Member State where services will be provided, who:

- (i) enters the territory of that ASEAN Member State temporarily in order to supply a service pursuant to a contract or contracts between his or her employer and a service consumer or service consumers in the territory of that ASEAN Member State;
- (ii) is either an executive, manager, or specialist as defined in subparagraphs (f)(i) through (iii), who receives remuneration from his or her employer;
- (iii) must possess the appropriate educational and professional qualifications relevant to the service to be provided; and
- (iv) as may be applicable, has been an employee of the juridical person for a period as may be specified in the terms of specific commitments set out in Annex 9; and

in the context of entry and temporary stay of a natural person of an ASEAN Member State in Japan, the activities of contractual service supplier allowed in Japan are described in the terms of the specific commitments set out in Annex 9;

(d) "granting Party" means a Party who receives an application for entry and temporary stay from a natural person of another Party who is covered by Article 50 *bis.2*;

(e) "immigration formality" means:

with respect to an ASEAN Member State, a visa, permit, pass or other documents or electronic authority in accordance with the laws and regulations of that ASEAN Member State granting a natural person of another Party the right to temporarily enter, stay, work, or to establish commercial presence in the territory of the granting Party; and

with respect to Japan, only visa, which grants entry and temporary stay in accordance with the laws and regulations of Japan;

(f) "intra-corporate transferee" means:

in the context of entry and temporary stay of a natural person of another Party in an ASEAN Member State, a natural person who is an employee of a juridical person established in the territory of another Party, who is transferred temporarily for the supply of a service through commercial presence (either through a representative office, branch, subsidiary or affiliate) in the territory of that ASEAN Member State, and who has been an employee of the juridical person for a period as may be specified in the terms of specific commitments set out in Annex 9, and who is:

(i) an "executive": being a natural person within the organisation who primarily directs the management of the organisation, exercises wide latitude in decision making and receives only general supervision or direction from higher level executives, the board of directors or stockholders of the business; an executive would not directly perform tasks related to the actual provision of the service or services of the organisation;

(ii) a "manager": being a natural person within the organisation who primarily directs the organisation/department/subdivision and exercises supervisory and control functions over other supervisory, managerial or professional staff. It does not include first line supervisors unless employees supervised are professionals; and it does not include employees who primarily perform tasks necessary for the provision of the service; or

(iii) a "specialist": being a natural person within the organisation who possesses knowledge at an advanced level of expertise essential to the establishment/provision of the service and/or possesses proprietary knowledge of the organisation's service, research equipment, techniques or management; and it may include, but is not limited to, members of a licensed profession; and

in the context of entry and temporary stay of a natural person of an ASEAN Member State in Japan, the activities of intra-corporate transferee allowed in Japan are described in the terms of the specific commitments set out in Annex 9; and

(g) "entry and temporary stay" means entry into and stay in the territory of a Party by a natural person of another Party, without the intent to establish permanent residence.

Article 50 *bis*.4
Specific Commitments

1. Each Party shall grant entry and temporary stay to natural persons of another Party in accordance with this Chapter including the terms of the categories in Annex 9, provided that the natural persons comply with the laws and regulations, including prescribed application procedures for the immigration formality sought and eligibility requirements, of the former Party related to movement of natural persons applicable to entry and temporary stay, which are not inconsistent with the provisions of this Chapter. Such natural persons may include:

- (a) short-term business visitors;
- (b) intra-corporate transferees;
- (c) contractual service suppliers;
- (d) investors; and
- (e) other categories as may be specified in Annex 9.

2. A Party may deny entry and temporary stay to natural persons of another Party that do not comply with paragraph 1.

3. No Party shall impose or maintain any limitations on the total number of visas to be granted in that Party to natural persons of another Party unless otherwise specified in Annex 9.

Article 50 *bis*.5
Processing of Applications

1. Each Party shall process without undue delay complete applications for immigration formalities or extensions thereof received from an applicant who is a natural person of another Party covered by Article 50 *bis*.2 or his or her employer.

2. If the competent authorities of a Party require additional information in order to process the application for an immigration formality, they shall, where applicable, endeavour to notify the applicant without undue delay.

3. Each Party shall, upon request and within a reasonable period of time after receiving a complete application for an immigration formality, notify the applicant of:

- (a) the receipt of the application;
- (b) the status of the application; and
- (c) the decision concerning the application including, if approved, the period of stay and other conditions.

4. Each Party shall endeavour to simplify the requirements including required documentation, and to facilitate and expedite the procedures, relating to entry and temporary stay, in accordance with its laws and regulations.

5. Any fees imposed by a Party in respect of the processing of an application referred to in paragraph 1 shall be reasonable and in accordance with its laws and regulations.

Article 50 *bis*.6
Transparency

Each Party shall:

- (a) publish or otherwise make publicly available explanatory material and relevant forms and documents on all relevant immigration formalities which pertain to or affect the operation of this Chapter;
- (b) maintain or establish contact points or other appropriate mechanisms to respond to enquiries from interested persons regarding its laws and regulations relating to entry and temporary stay of natural persons;

- (c) to the extent possible, allow reasonable time between publication of new regulations affecting entry and temporary stay of natural persons and their effective date. Such publication may be made electronically available; and
- (d) upon modifying or amending any immigration measure that affects the entry and temporary stay of natural persons, ensure that the information published or otherwise made available pursuant to subparagraph (a) is updated as soon as possible.

Article 50 *bis*.7
Recognition

1. For the purposes of smooth movement of natural persons under this Chapter, a Party may recognise the education or experience obtained, requirements met, or licences or certifications granted in another Party for the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing or certification of natural persons of that other Party.

2. Recognition referred to in paragraph 1, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement between the Parties concerned or may be accorded unilaterally.

3. Where a Party recognises by agreement or arrangement between the Party and a non-Party or unilaterally, the education or experience obtained, requirements met, or licences or certifications granted in the non-Party, the Party shall accord to the other Parties an adequate opportunity to demonstrate that the education or experience obtained, requirements met or licences or certifications granted in the other Parties should also be recognised.

Article 50 *bis*.8
Application of Chapter 9

1. Without prejudice to Chapter 9, the Parties shall endeavour to resolve any differences arising out of the implementation of this Chapter through consultations.

2. A Party shall not have recourse to Chapter 9 regarding a refusal to grant entry and temporary stay under this Chapter unless:

- (a) the matter involves a pattern of practice on the part of the granting Party; and
- (b) the natural persons of the Party concerned have exhausted the domestic remedies, where available, regarding the particular matter.

Article 50 *bis*.9
General Exceptions

For the purposes of this Chapter, Article 50.13 shall apply *mutatis mutandis*.

Article 50 *bis*.10
Measures Pursuant to Immigration Laws and
Regulations

Except for this Chapter and Chapters 1, 9 and 10, nothing in this Agreement shall impose any obligation on each Party regarding measures affecting the movement of natural persons of another Party.

Note: For greater certainty, the measures affecting the movement of natural persons of another Party include immigration formalities."

Article 6
Amendment to Chapter 7 (Investment)
of the AJCEP Agreement

Chapter 7 of the AJCEP Agreement shall be replaced by the following:

"Chapter 7
Investment

Article 51.1
Scope and Coverage

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:

- (a) investors of another Party; and
- (b) covered investments.

2. This Chapter shall not apply to:

- (a) any measure that a Party adopts or maintains with respect to government procurement;
- (b) subsidies or grants provided by a Party;
- (c) services supplied in the exercise of governmental authority, provided that such services are supplied neither on a commercial basis, nor in competition with one or more service suppliers; and
- (d) claims arising out of events which occurred prior to the date of entry into force of the First Protocol.

3. This Chapter shall not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapters 6 and 6 *bis*.

4. Notwithstanding paragraph 3, Articles 51.4, 51.9, 51.10, 51.11, 51.12 and 51.13 shall apply to any measure affecting the supply of a service by a service supplier of a Party through commercial presence in the territory of another Party covered by Chapter 6, but only to the extent that any such measure relates to a covered investment and an obligation under this Chapter.

Note: For greater certainty, paragraph 4 shall not preclude a Party from applying Articles 8, 51.14, 51.15, 51.19, 51.20, 51.21 or other relevant provisions of this Chapter to any measure affecting the supply of a service by a service supplier of a Party through commercial presence in the territory of another Party covered by Chapter 6, but only to the extent that any such measure relates to a covered investment and an obligation under this Chapter.

Article 51.2
Definitions

For the purposes of this Chapter, the term:

- (a) "covered investment" means, with respect to a Party, an investment in its territory of an investor of another Party in existence as of the date of entry into force of the First Protocol or established, acquired or expanded thereafter, and which, where applicable, has been admitted, according to its laws, regulations and national policies;

Note 1: For greater certainty, "national policies" means those policies affecting an investment that are endorsed and announced by the Government of a Party, and made publicly available in a written form. Each Party shall, upon request by another Party, respond to specific questions from, and provide information to, the latter Party, in the English language, with respect to such national policies.

Note 2: In the case of the Kingdom of Thailand, this Chapter shall apply to covered investments which, where applicable, have been specifically approved in writing for protection by the competent authorities, in accordance with its laws, regulations and national policies.

Note 3: In the case of the Kingdom of Cambodia and the Socialist Republic of Viet Nam, "has been admitted" means "has been specifically registered or approved in writing, as the case may be".

- (b) "freely usable currency" means any currency designated as such by the IMF under the Articles of Agreement of the IMF as may be amended;
- (c) "investment" means every kind of asset that an investor owns or controls, which has the characteristics of an investment, such as the commitment of capital or other resources, the expectation of gains or profits, or the assumption of risk, including:
 - (i) movable and immovable property, any other tangible and intangible property, and any other related property rights, such as leases, mortgages, liens and pledges;
 - (ii) shares, stocks, bonds, debentures, loans and other forms of debt or equity participation in a juridical person, including rights or interests derived therefrom;
 - (iii) intellectual property rights that are conferred pursuant to the laws and regulations of a Party in whose territory the investment is made, including, where applicable, copyrights and related rights, patent rights and rights relating to utility models, trademarks, industrial designs, layout-designs of integrated circuits, new varieties of plants, trade names, indications of source or geographical indications, undisclosed information, and goodwill;
 - (iv) rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts;
 - (v) rights conferred pursuant to laws and regulations or contracts such as concessions, licences, authorisations and permits, including those for the exploration and exploitation of natural resources; and

(vi) claims to money and to any performance under contract having a financial value, but the term "investment" does not include claims to money that arise solely from:

(A) commercial contracts for the sale of goods or services by a natural or juridical person in the territory of a Party to a natural or juridical person in the territory of another Party; or

(B) the extension of credit in connection with a commercial transaction, such as trade financing;

The term "investment" also includes returns, which are the amounts yielded by or derived from an investment, in particular, though not exclusively, profits, interests, capital gains, dividends, royalties and fees. A change in the form in which assets are invested does not affect their character as investments;

Note: The term "investment" does not include an order or judgment entered in a judicial or administrative action.

(d) "investor of a Party" means:

(i) a natural person of a Party; or

(ii) a juridical person of a Party,

that seeks to make, is making, or has made investments in the territory of another Party;

Note: The Parties understand that an investor of a Party that "seeks to make" investments refers to an investor of a Party that has taken active steps to initiate a notification or approval process, where applicable, for making an investment for a permit or licence which authorises the investor to establish investments.

- (e) "juridical person of a Party" means any legal entity duly constituted or otherwise organised under a Party's applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture, or other association or organisation;
- (f) "measure" means any measure, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form, affecting investors or investments;
- (g) "measure by a Party" means any measure adopted or maintained by:
 - (i) central, regional or local governments and authorities of a Party; and
 - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities of a Party; and
- (h) "natural person of a Party" means, for the purposes of subparagraph (d), a natural person who under the law of that Party:
 - (i) is a national or citizen of that Party; or
 - (ii) has the right of permanent residence in that Party, where both that Party and another Party recognise permanent residents and accord substantially the same treatment to their respective permanent residents as they accord to their respective nationals in respect of measures affecting investment.

Article 51.3
National Treatment

Each Party shall accord to investors of another Party and to their covered investments treatment no less favourable than that it accords, in like circumstances, to its own investors and to their investments with respect to establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory.

Note: The application of this Article is subject to Article 51.23.

Article 51.4
General Treatment

1. Each Party shall accord to covered investments fair and equitable treatment and full protection and security, in accordance with customary international law.
2. For greater certainty, the concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required under the customary international law referred to in paragraph 1, and do not create additional substantive rights.
3. The Parties understand that:
 - (a) "fair and equitable treatment" requires each Party not to deny justice in any legal or administrative proceedings in accordance with the principle of due process of law; and
 - (b) "full protection and security" requires each Party to take such measures as may be reasonably necessary to ensure the protection and security of the covered investment.
4. A determination that there has been a breach of another provision of this Chapter, or of a separate international agreement, does not establish that there has been a breach of this Article.

Article 51.5
Prohibition of Performance Requirements

1. No Party shall impose or enforce as a condition for establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory of an investor of another Party any of the following requirements:

- (a) to export a given level or percentage of goods;
- (b) to achieve a given level or percentage of domestic content;
- (c) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from a person or any other entity in its territory;
- (d) to relate the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with the investments of that investor; or
- (e) to restrict sales of goods in its territory that the investments of that investor produce or provide by relating such sales to the volume or value of its exports or foreign exchange earnings.

2. No Party may condition the receipt or continued receipt of an advantage, in connection with investment activities in its territory of an investor of another Party, on compliance with any of the following requirements:

- (a) to achieve a given level or percentage of domestic content;
- (b) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods from a person or any other entity in its territory;
- (c) to relate the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with investments of that investor; or

- (d) to restrict sales of goods in its territory that investments of that investor produce or provide by relating such sales to the volume or value of its exports or foreign exchange earnings.

3. Subparagraphs 2(a) and (b) shall not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

4. For greater certainty, paragraphs 1 and 2 do not apply to any requirement other than the requirements set out in those paragraphs.

Note: The application of this Article is subject to Article 51.23.

Article 51.6 Senior Management and Boards of Directors

1. A Party shall not require a juridical person of that Party that is a covered investment to appoint to senior management positions natural persons of any particular nationality.

2. A Party may require that a majority of the members of the board of directors, or any committee thereof, of a juridical person of that Party that is a covered investment, be of a particular nationality or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

Note: The application of this Article is subject to Article 51.23.

Article 51.7 Reservations and Exceptions

1. Articles 51.3, 51.5 and 51.6 shall not apply to:

- (a) any existing non-conforming measure that is maintained by the following, as set out in the Schedule of each Party in Annex 10-I:

- (i) the central government of the Party; or
 - (ii) a prefecture of Japan or a regional government of an ASEAN Member State;
- (b) any existing non-conforming measure that is maintained by a local government of a Party other than those referred to in subparagraph (a) (ii);
 - (c) the continuation or prompt renewal of any non-conforming measure referred to in subparagraphs (a) and (b); or
 - (d) an amendment or modification to any non-conforming measure referred to in subparagraphs (a) and (b), provided that the amendment or modification does not decrease the conformity of the measure, as it existed at the date of entry into force of the Party's Schedule in Annex 10-I, with Articles 51.3, 51.5 and 51.6.

2. Articles 51.3, 51.5 and 51.6 shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities set out in its Schedule in Annex 10-II.

3. No Party shall, under any measure adopted and covered by its Schedule in Annex 10-II, require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment that exists at the time that the measure becomes effective, unless otherwise specified in the initial approval by the relevant authorities.

4. In cases where a Party makes an amendment or a modification pursuant to subparagraph 1(d) to any existing non-conforming measure set out in its Schedule in Annex 10-I, or adopts any new or more restrictive measure with respect to sectors, subsectors or activities set out in its Schedule in Annex 10-II, the Party shall, prior to the implementation of the amendment or modification or the new or more restrictive measure, or as soon as possible thereafter:

- (a) notify the other Parties of detailed information on such amendment or modification, or such measure; and
- (b) respond, upon request of another Party, to specific questions from another Party, with respect to such amendment or modification, or such measure.

5. Each Party shall endeavour, where appropriate, to reduce or eliminate the reservations specified in its Schedules in Annexes 10-I and 10-II respectively.

6. Article 51.3 shall not apply to any measure covered by the exceptions to, or derogations from, obligations under Articles 3 and 4 of the Agreement on the Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement (hereinafter referred to as "TRIPS Agreement") as specifically provided in Articles 3 through 5 of the TRIPS Agreement.

Note: The application of this Article is subject to Article 51.23.

Article 51.8 Public Comments

Each Party shall, to the extent provided for under its domestic legal framework, endeavour to provide, except in cases of emergency, a reasonable opportunity for comments by the public before the adoption of regulations of general application that affect any matter covered by this Chapter.

Article 51.9 Expropriation and Compensation

1. No Party shall expropriate or nationalise covered investments, or take any measure equivalent to expropriation or nationalisation (hereinafter referred to as "expropriation"), except:

- (a) for a public purpose;
- (b) in accordance with due process of law;

- (c) on a non-discriminatory basis; and
- (d) upon payment of prompt, adequate and effective compensation.

2. For the purposes of subparagraph 1(d), the compensation shall:

- (a) be equivalent to the fair market value of the expropriated investment at the time when the expropriation was publicly announced, or when the expropriation occurred, whichever is earlier;

Note: In the case of the Republic of the Philippines, the time when the expropriation was publicly announced refers to the date of filing of the Petition for Expropriation.

- (b) not reflect any change in value occurring because the intended expropriation had become publicly known earlier;
- (c) be settled and paid without undue delay; and

Note: The Parties understand that there may be legal and administrative processes that need to be observed before payment can be made.

- (d) be effectively realisable and freely transferable.

3. The compensation shall include appropriate interest. The compensation, including any accrued interest, shall be payable either in the currency of the expropriating Party, or if requested by the investor, in a freely usable currency.

4. If an investor requests payment in a freely usable currency, the compensation, including any accrued interest, shall be converted into the currency of payment at the market exchange rate prevailing on the date of payment.

5. Notwithstanding paragraphs 1 through 4, any measure of expropriation relating to land shall be as defined in the existing domestic laws and regulations of the expropriating Party on the date of entry into force of the First Protocol, and shall be, for the purposes of and upon payment of compensation, in accordance with the aforesaid laws and regulations. Such compensation shall be subject to any subsequent amendments to the aforesaid laws and regulations relating to the amount of compensation where such amendments follow the general trends in the market value of the land.

6. This Article shall not apply to the issuance of compulsory licences concerning intellectual property rights in accordance with the TRIPS Agreement.

Article 51.10
Compensation for Losses or Damages

Each Party shall accord to investors of another Party that have suffered loss or damage relating to their covered investments in the territory of the former Party owing to war, armed conflict or a state of emergency such as revolution, insurrection, civil strife or any other similar event in that former Party, treatment, as regards restitution, indemnification, compensation or any other settlement, that is no less favourable than that which it accords to its own investors or to investors of a non-Party.

Article 51.11
Transfers

1. Each Party shall allow all transfers relating to covered investments to be made freely and without delay into and out of its territory. Such transfers shall include:

- (a) the initial capital and additional amounts to maintain or increase investments;
- (b) profits, interest, capital gains, dividends, royalties, technical assistance fees, management fees and other current income accruing from covered investments;

- (c) payments made under a contract, including payments made under a loan agreement in connection with covered investments;
- (d) proceeds from the total or partial sale or liquidation of covered investments;
- (e) earnings and other remuneration of personnel engaged in activities in connection with covered investments;
- (f) payments made in accordance with Articles 51.9 and 51.10; and
- (g) payments arising out of the settlement of an investment dispute under Article 51.13.

2. Each Party shall allow transfers referred to in paragraph 1 to be made in a freely usable currency at the market rate of exchange prevailing in its territory on the date of the transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may delay or prevent a transfer through the equitable, non-discriminatory and good-faith application of its laws and regulations relating to:

- (a) bankruptcy, insolvency or the protection of the rights of creditors;
- (b) issuing, trading or dealing in securities, futures, options or derivatives;
- (c) criminal or penal offences;
- (d) obligations arising from social security, public retirement or compulsory savings scheme;
- (e) ensuring compliance with orders or judgments in judicial or administrative proceedings;
- (f) severance entitlement of employees;
- (g) reports or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; and

- (h) the requirement to register and satisfy any other formalities imposed by the central bank and any other relevant authorities of a Party.

Note: For greater certainty, by virtue of paragraph 1 of Article 6, each Party may delay or prevent a transfer through the equitable, non-discriminatory and good-faith application of its laws and regulations relating to taxation measures.

4. Nothing in this Chapter shall affect the rights and obligations of the Parties as members of the IMF under the Articles of Agreement of the IMF, including the use of exchange actions which are in conformity with the Articles of Agreement of the IMF.

Article 51.12 Subrogation

1. Where a Party or an agency authorised by that Party has granted a contract of insurance or any form of financial guarantee with regard to a covered investment by one of its investors in the territory of another Party and when payment has been made under such contract or financial guarantee by the former Party or the agency authorised by it, the latter Party shall recognise the subrogation or transfer of any right or claim with regard to such investment. The subrogated or transferred right or claim shall not be greater than the original right or claim of the investor.

2. Where a Party or an agency authorised by the Party has made a payment to its investor and has taken over rights and claims of the investor, that investor shall not, unless authorised to act on behalf of the Party or the agency authorised by the Party making the payment, pursue those rights and claims against the other Party.

3. In the exercise of subrogated rights or claims, a Party or an agency authorised by the Party exercising such rights or claims shall disclose the coverage of the claims arrangement with its investors to the other Party referred to in paragraph 2.

4. Articles 51.9, 51.10 and 51.11 shall apply *mutatis mutandis* as regards payment to be made to the Party or the agency prescribed in paragraphs 1 and 2 by virtue of such subrogation or transfer of rights or claims, and the transfer of such payment.

Article 51.13
Settlement of Investment Disputes
between a Party and an Investor of Another Party

1. This Article shall apply to investment disputes between a Party and an investor of another Party concerning an alleged breach of an obligation of the former Party under this Chapter which causes loss or damage to the covered investment of the investor.

2. For the purposes of this Chapter, the term:

- (a) "disputing investor" means an investor of a Party that makes a claim against another Party under this Article;
- (b) "disputing Party" means a Party against which a claim is made under this Article;
- (c) "disputing parties" means a disputing investor and a disputing Party;
- (d) "disputing party" means either a disputing investor or a disputing Party;
- (e) "ICSID Convention" means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, 18 March 1965;
- (f) "ICSID Additional Facility Rules" means the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes;
- (g) "New York Convention" means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958;

- (h) "UNCITRAL Arbitration Rules" means the arbitration rules of the United Nations Commission on International Trade Law adopted by the United Nations General Assembly, 15 December 1976; and
- (i) "UNCITRAL Conciliation Rules" means the conciliation rules of the United Nations Commission on International Trade Law adopted by the United Nations General Assembly, 4 December 1980.

3. Subject to subparagraph 10(c), nothing in this Article shall be construed so as to prevent a disputing investor from seeking administrative or judicial settlement within the territory of the disputing Party.

4. A natural person possessing the nationality or citizenship of the disputing Party shall not pursue a claim against that Party under this Article.

5. Any investment dispute shall, as far as possible, be settled amicably through consultations between the disputing parties.

6. In the event that an investment dispute cannot be settled by consultation as provided for in paragraph 5, the disputing investor may, subject to this Article, submit to courts or administrative tribunals of the disputing Party or to conciliation or arbitration under this Article a claim:

- (a) that the disputing Party has breached an obligation under Article 51.3, Article 51.4, subparagraphs 1(a) through (d) of Article 51.5, Article 51.6, Article 51.9, Article 51.10 and Article 51.11 relating to the management, conduct, operation, or sale or other disposition of a covered investment; and
- (b) that the disputing investor or its covered investment has incurred loss or damage by reason of, or arising out of, that breach.

7. (a) A disputing investor may submit a claim referred to in paragraph 6 at the choice of the disputing investor to one of the following alternatives:

- (i) courts or administrative tribunals of the disputing Party, provided that such courts or administrative tribunals have jurisdiction over such claim;
 - (ii) conciliation or arbitration under the ICSID Convention and the ICSID Rules of Procedure for Conciliation Proceedings and the ICSID Rules of Procedure for Arbitration Proceedings, provided that both the disputing Party and the Party of the disputing investor are parties to the ICSID Convention;
 - (iii) conciliation or arbitration under the ICSID Additional Facility Rules, provided that either the disputing Party or the Party of the disputing investor, but not both, is a party to the ICSID Convention;
 - (iv) conciliation under the UNCITRAL Conciliation Rules or arbitration under the UNCITRAL Arbitration Rules; or
 - (v) if agreed with the disputing Party, any other arbitration institution or arbitration under any other arbitration rules.
- (b) For the purposes of subparagraph 7(a), a disputing investor may submit a claim to conciliation or arbitration under subparagraphs (a)(ii) through (v), only if the investment dispute cannot be resolved as provided for in paragraph 5 within one hundred and eighty (180) days from the date of receipt by the disputing Party of a written request for consultation and negotiation.

8. Once the disputing investor has submitted the claim to the courts or administrative tribunals of the disputing Party, the choice of forum shall be final.

9. (a) Each Party hereby consents to the submission of a claim to conciliation or arbitration set forth in paragraph 7 in accordance with the procedures set out in this Article.

Note 1: Notwithstanding subparagraph 9(a), in the event of an investment dispute between the Republic of Indonesia and an investor of another Party or the Republic of the Philippines and an investor of another Party, consent to the submission of a claim under the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings shall be subject to a separate written agreement between the disputing parties. For greater certainty, the institution of proceedings, commencement of conciliation proceedings, or reference to arbitration under subparagraphs 7(a)(iii) and (iv) shall be governed by the applicable arbitration or conciliation rules. For the avoidance of doubt, the aforementioned separate written agreement applies only to the submission of a claim under the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings.

Note 2: Notwithstanding subparagraph 9(a), in the case of an investment dispute between the Kingdom of Thailand and an investor of another Party or between another Party and an investor of the Kingdom of Thailand, the disputing Party consents to the submission of a claim to conciliation or arbitration set forth in paragraph 7, provided that the Kingdom of Thailand and the other Party had consented to submission of a claim to the conciliation or arbitration in existing international agreements to which both the Kingdom of Thailand and that other Party are parties. Such consent shall be subject to the same conditions and limitations as stipulated in such international agreements.

- (b) The consent given under subparagraph 9(a) and the submission by a disputing investor of an investment dispute to conciliation or arbitration shall satisfy the requirements of:
 - (i) Chapter II of the ICSID Convention or the ICSID Additional Facility Rules, for written consent of the parties to an investment dispute; and
 - (ii) Article II of the New York Convention for an agreement in writing.

10. The submission of a claim to conciliation or arbitration under subparagraph 7(a)(ii), (iii), (iv) or (v) in accordance with the provisions of this Article shall be conditional upon:

- (a) the submission of the claim to such conciliation or arbitration taking place within three (3) years from the time at which the disputing investor became aware, or should reasonably have become aware, of a breach of an obligation referred to in subparagraph 6(a) causing loss or damage to the disputing investor or its covered investment;
- (b) the disputing investor providing written notice, which shall be submitted at least ninety (90) days before the claim is submitted, to the disputing Party of the disputing investor's intent to submit the claim to such conciliation or arbitration. The notice shall:
 - (i) specify either subparagraph 7(a)(ii), (iii), (iv) or (v) as the forum for dispute settlement and, in the case of subparagraphs 7(a)(ii) through (iv), whether conciliation or arbitration is being sought; and
 - (ii) briefly summarise the alleged breach of the disputing Party under this Chapter, including the Articles alleged to have been breached, and the loss or damage allegedly caused to the disputing investor or its covered investment; and

- (c) the written request or invitation to conciliate or notice of arbitration being accompanied by the disputing investor's written waiver of any right to initiate or continue before any court or administrative tribunal under the law of either Party or other dispute settlement mechanisms including investment dispute settlement mechanisms under any other bilateral or multilateral agreement to which both the disputing Party and the Party of the disputing investor are parties, any proceedings with respect to any measure of the disputing Party alleged to constitute a breach referred to in paragraph 6. Accordingly, once the disputing investor has submitted the claim to any of the conciliation or arbitration under subparagraph 7(a)(ii), (iii), (iv) or (v), the choice of forum shall be final.

11. Notwithstanding subparagraph 10(c), the disputing investor may initiate or continue an action that seeks interim injunctive relief for the sole purpose of preserving the disputing investor's rights and interests and does not involve the payment of damages or resolution of the substance of the matter in dispute before a court or an administrative tribunal under the law of the disputing Party.

12. No Party shall give diplomatic protection, nor bring an international claim, in respect of an investment dispute which one of its investors and any one of the other Parties shall have consented to submit or have submitted to conciliation or arbitration under this Article, unless such other Party has failed to abide by and comply with the award rendered in such investment dispute. Diplomatic protection, for the purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the investment dispute.

13. An arbitral tribunal established under paragraph 7 shall decide the issues in dispute in accordance with this Chapter, and applicable rules of international law and, where applicable, relevant domestic laws of the disputing Party.

Note: The arbitral tribunal does not have jurisdiction to determine the legality of a measure alleged to constitute a breach of this Chapter under the domestic law of the disputing Party.

14. An arbitral tribunal shall address and decide on any objection by the disputing Party that a claim is not admissible, or the claim is outside the jurisdiction or competence of the arbitral tribunal, provided that the disputing Party so requests as soon as possible after the arbitral tribunal is established, and in no event later than the date that the arbitral tribunal fixes for the disputing Party to submit its counter-memorial.

15. Notwithstanding paragraph 14, the arbitral tribunal may on its initiative consider, at any stage of the proceeding, whether the claim is admissible, or within the jurisdiction or competence of the arbitral tribunal.

16. In general, the arbitral tribunal should decide on the objection referred to in paragraph 14 as a preliminary question. However, the arbitral tribunal may join it to the merits of the claim. In considering whether to join the objection to the merits of the claim, the arbitral tribunal shall, as far as possible, obtain the consent of the disputing parties.

17. Unless the disputing parties have agreed to another expedited procedure for making preliminary objections, a disputing Party may, no later than ninety (90) days after the constitution of the arbitral tribunal, and in any event before the first session of the arbitral tribunal, file an objection that a claim is manifestly without legal merit. The disputing Party shall specify as precisely as possible the basis for the objection. The arbitral tribunal, after giving the disputing parties the opportunity to present their observations on the objection, shall, at its first session or promptly thereafter, notify the disputing parties of its decision on the objection. The decision of the arbitral tribunal shall be without prejudice to the right of a disputing Party to file an objection pursuant to paragraph 14 or to object, in the course of the proceeding, that a claim lacks legal merit.

18. If the arbitral tribunal decides that the claim is not admissible, or the claim is outside the jurisdiction or competence of the arbitral tribunal, or that the claim is manifestly without legal merit, it shall render an award to that effect.

19. The arbitral tribunal may, if warranted, award the prevailing disputing party reasonable costs and fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the arbitral tribunal shall consider whether either the claim or the objection was frivolous or manifestly without legal merit, and shall provide the disputing parties with a reasonable opportunity to comment.

20. (a) The arbitral tribunal shall at the request of a disputing Party, or may on its own account, request a joint interpretation of any provision of this Chapter that is in issue in an investment dispute. The Parties shall submit in writing any joint decision declaring their interpretation made by consensus to the arbitral tribunal within sixty (60) days from the date of receipt of the request. Without prejudice to subparagraph (b), if the Parties fail to issue such a decision within sixty (60) days, any interpretation submitted by a Party shall be forwarded to the disputing parties and the arbitral tribunal, which shall decide the issue on its own account.

(b) A joint decision of the Joint Committee on the interpretation of any provision of this Chapter under subparagraph 2(e)(iv) of Article 11 shall be binding on an arbitral tribunal, and any decision or award issued by an arbitral tribunal must be consistent with that joint decision.

21. Unless the disputing parties agree otherwise, the arbitration shall be held in a country that is a party to the New York Convention.

22. Each Party shall provide for the enforcement of an award in its territory.

23. An award made by an arbitral tribunal shall be final and binding upon the disputing parties. An award shall have no binding force except between the disputing parties and in respect of the particular case.

Article 51.14
General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between the Parties or their investors where like conditions prevail, or a disguised restriction on investors or investments made by investors of another Party, nothing in this Chapter shall be construed to prevent the adoption or enforcement by any Party of measures:

- (a) necessary to protect public morals or to maintain public order, provided that the public order exception may only be invoked where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society;
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter including those relating to:
 - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;
 - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts; or
 - (iii) safety;

- (d) imposed for the protection of national treasures of artistic, historic or archaeological value; or
- (e) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.

Article 51.15

Special Formalities and Information Requirements

1. Nothing in Article 51.3 shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with investments, including a requirement that investments be legally constituted or comply with registration requirements, provided that such formalities do not materially impair the rights afforded by a Party to investors of another Party and investments pursuant to this Chapter.

2. Notwithstanding Article 51.3, a Party may require an investor of another Party, or a covered investment, to provide information concerning that investment solely for information or statistical purposes. The Party shall protect any confidential information from any disclosure that would prejudice legitimate commercial interests of particular juridical persons, public or private, or the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good-faith application of its law.

Article 51.16

Special and Differential Treatment for the Newer ASEAN Member States

In order to increase benefits of this Chapter for the newer ASEAN Member States, and in accordance with Articles 2, 3 and 52, special and differential treatment should be accorded to the newer ASEAN Member States under this Chapter, through:

- (a) access to information on the investment policies of other Parties, business information, relevant databases and contact point for investment promotion;

- (b) technical assistance to strengthen their capacity in relation to investment policies and promotion including in areas such as human resource development;
- (c) commitments in areas of interest to the newer ASEAN Member States; and
- (d) recognising that commitments by each newer ASEAN Member State may be made in accordance with its individual stage of development.

Article 51.17
Promotion of Investment

1. Each Party should further promote investment in order to strengthen the economic relationship among Parties.

2. Subject to their laws and regulations and the availability of funds, the Parties shall cooperate in promoting and increasing awareness of ASEAN-Japan as an investment area, where possible, through, among others:

- (a) organising investment promotion activities;
- (b) promoting business matching events;
- (c) organising and supporting the organisation of various briefings and seminars on investment opportunities and on investment laws, regulations and policies; and
- (d) conducting information exchanges on other issues of mutual concern relating to investment promotion and facilitation.

Article 51.18
Facilitation of Investment

1. Each Party shall endeavour to further create stable, favourable and transparent conditions in order to encourage greater investment by investors of another Party in its territory.

2. Subject to their laws and regulations and the availability of funds, the Parties shall cooperate to facilitate investments among Japan and ASEAN Member States, where possible, through, among others:

- (a) creating the necessary environment for all forms of investment;
- (b) simplifying procedures for investment applications and approvals;
- (c) promoting dissemination of investment information, including investment rules, regulations, policies and procedures; and
- (d) establishing one-stop investment centres in the respective host Parties to provide assistance and advisory services to the business sectors including facilitation of operating licences and permits.

Article 51.19
Temporary Safeguard Measures

1. A Party may adopt or maintain measures not conforming with its obligations under Article 51.3 relating to cross-border capital transactions and Article 51.11:

- (a) in the event of serious balance-of-payments and external financial difficulties or threat thereof; or
- (b) in cases where, in exceptional circumstances, movements of capital cause or threaten to cause serious difficulties for macroeconomic management, in particular, monetary and exchange rate policies.

2. The measures referred to in paragraph 1 shall:

- (a) be consistent with the Articles of Agreement of the IMF;
- (b) avoid unnecessary damage to the commercial, economic and financial interests of another Party;

- (c) not exceed those necessary to deal with the circumstances described in paragraph 1;
- (d) be temporary and phased out progressively as the situation specified in paragraph 1 improves; and
- (e) be applied such that any one of the other Parties is treated no less favourably than any other Party or non-Party.

3. Any measures adopted or maintained under paragraph 1 shall be promptly notified to the other Parties.

Article 51.20 Prudential Measures

1. Notwithstanding any other provisions in this Chapter, a Party shall not be prevented from taking measures relating to financial services for prudential reasons, including measures for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by an entity supplying financial services, or to ensure the integrity and stability of its financial system.

2. Where the measures taken by a Party pursuant to paragraph 1 do not conform with this Chapter, they shall not be used as a means of avoiding the commitments or obligations of the Party under this Chapter.

3. Nothing in this Chapter 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 51.21 Denial of Benefits

1. A Party may deny the benefits of this Chapter to an investor of another Party that is a juridical person of the latter Party and to its investments if the juridical person is owned or controlled by an investor of a non-Party and the denying Party:

- (a) does not maintain diplomatic relations with the non-Party; or
- (b) adopts or maintains measures with respect to the non-Party that prohibit transactions with the juridical person or that would be violated or circumvented if the benefits of this Chapter were accorded to the juridical person or to its investments.

2. A Party may deny the benefits of this Chapter to an investor of another Party that is a juridical person of the latter Party and to its investments if the juridical person is owned or controlled by an investor of a non-Party or of the denying Party and the juridical person has no substantive business operations in the territory of that latter Party.

Note: The denying Party shall endeavour to notify the other Parties of its decision to deny the benefits of this Chapter to an investor of another Party.

3. For the purposes of this Article, a juridical person is:

- (a) "owned" by an investor if more than fifty (50) per cent of the equity interest in it is beneficially owned by the investor; and
- (b) "controlled" by an investor if the investor has the power to name a majority of its directors or otherwise to legally direct its actions.

4. Following notification, and without prejudice to paragraphs 1 through 3, the Republic of the Philippines may deny the benefits of this Chapter to an investor of another Party and to investments of that investor, where it establishes that such investor has made an investment in breach of the provisions of Commonwealth Act No. 108, entitled "An Act to Punish Acts of Evasion of Laws on the Nationalization of Certain Rights, Franchises or Privileges", as amended by Presidential Decree No. 715, otherwise known as "The Anti-Dummy Law", as may be amended.

Article 51.22
Sub-Committee on Investment

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Investment (hereinafter referred to in this Article as "Sub-Committee") shall be established pursuant to Article 11.
2. The functions of the Sub-Committee shall be to:
 - (a) discuss and review the implementation and operation of this Chapter;
 - (b) review the exceptional measures maintained, amended, modified or adopted pursuant to paragraph 1 of Article 51.7 for the purpose of contributing to the reduction or elimination of such exceptional measures;
 - (c) discuss the exceptional measures adopted or maintained pursuant to paragraph 2 of Article 51.7 for the purpose of encouraging favourable conditions for investors of the Parties;
 - (d) discuss any other investment-related matters concerning this Chapter; and
 - (e) report, where appropriate, its findings to the Joint Committee.
3. The Sub-Committee shall be:
 - (a) composed of representatives of the Governments of Japan and ASEAN Member States; and
 - (b) co-chaired by an official of the Government of Japan and an official of one of the Governments of ASEAN Member States.
4. The Sub-Committee shall meet at such venues and times as may be agreed by the Parties.

5. The Sub-Committee may, upon mutual consent of the Parties, invite representatives of relevant entities other than the Governments of the Parties with the necessary expertise relevant to the issues to be discussed, and hold joint meetings with the private sectors.

Article 51.23
Work Programme

1. The Parties shall, immediately after the date of entry into force of the First Protocol, enter into consultations on the Schedules of Reservations as referred to in Article 51.7 with the participation of Japan and ASEAN Member States. The Sub-Committee on Investment referred to in Article 51.22 shall function as the forum to discuss the matter.

2. The consultations referred to in paragraph 1 shall be concluded within two (2) years from the date of entry into force of the First Protocol, unless the Parties agree otherwise.

3. The Schedules of Reservations of the Parties as a result of the consultations referred to in paragraph 1 shall enter into force and be incorporated into this Agreement as Annexes 10-I and 10-II in accordance with Article 77.

4. Article 51.7 shall not apply until the date of entry into force of the Schedules of Reservations referred to in paragraph 3. Japan and ASEAN Member States shall enter into further discussions to review subparagraph 1(d) of that Article with a view to examining a possibility for promoting further liberalisation of investment.

5. Article 51.3 shall not affect the right of each Party to adopt, maintain or apply measures that set out conditions and qualifications for admission of investment, including, but not limited to, those with regard to foreign ownership and control. Upon entry into force of the Schedules of Reservations referred to in paragraph 3, this paragraph shall cease to be effective.

6. Article 51.3 shall not apply to any measures that a Party adopts or maintains with respect to establishment, acquisition and expansion of investments until the date of entry into force of the Schedules of Reservations referred to in paragraph 3.

7. Pending entry into force of the Schedules of Reservations referred to in paragraph 3:

(a) an ASEAN Member State may adopt, maintain or apply any measures that do not conform with Article 51.3, provided that:

(i) with respect to investors of Japan or their investments, such measures comply with any other international investment agreement to which both Japan and that ASEAN Member State are parties;

(ii) with respect to investors of another ASEAN Member State or their investments, such measures comply with any other international investment agreement among ASEAN Member States and to which that ASEAN Member State is a party; and

(b) Japan may adopt, maintain or apply any measures that do not conform with Article 51.3, provided that, with respect to investors of an ASEAN Member State or their investments, such measures comply with any other international investment agreement, to which both Japan and that ASEAN Member State are parties.

Note 1: For the purposes of subparagraphs 7(a) (i) and (b), the term "other international investment agreement" means any of the following agreements, as relevant and as may be amended:

- (i) Agreement between Japan and the Republic of Singapore for a New-Age Economic Partnership, done at Singapore, 13 January 2002;
- (ii) Agreement between the Government of Japan and the Government of Malaysia for an Economic Partnership, done at Kuala Lumpur, 13 December 2005;
- (iii) Agreement between Japan and the Republic of the Philippines for an Economic Partnership, done at Helsinki, 9 September 2006;
- (iv) Agreement between Japan and the Kingdom of Thailand for an Economic Partnership, done at Tokyo, 3 April 2007;
- (v) Agreement between Japan and the Kingdom of Cambodia for the Liberalization, Promotion and Protection of Investment, done at Tokyo, 14 June 2007;
- (vi) Agreement between Japan and Brunei Darussalam for an Economic Partnership, done at Tokyo, 18 June 2007;
- (vii) Agreement between Japan and the Republic of Indonesia for an Economic Partnership, done at Jakarta, 20 August 2007;
- (viii) Agreement between Japan and the Lao People's Democratic Republic for the Liberalisation, Promotion and Protection of Investment, done at Tokyo, 16 January 2008;

- (ix) Agreement between Japan and the Socialist Republic of Viet Nam for an Economic Partnership, done at Tokyo, 25 December 2008; and
- (x) Agreement between the Government of Japan and the Government of the Republic of the Union of Myanmar for the Liberalisation, Promotion and Protection of Investment, done at Tokyo, 15 December 2013.

Note 2: For the purposes of subparagraph 7(a)(ii), the term "other international investment agreement" means any of the following agreements, as relevant and as may be amended:

- (i) ASEAN Comprehensive Investment Agreement, done at Cha-am, 26 February 2009;
- (ii) Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area, done at Cha-am, 27 February 2009;
- (iii) Agreement on Investment under the Framework Agreement on Comprehensive Economic Cooperation among the Governments of the Member Countries of the Association of Southeast Asian Nations and the Republic of Korea, done at Jeju-do, 2 June 2009;
- (iv) Agreement on Investment under the Framework Agreement on Comprehensive Economic Cooperation between the Association of Southeast Asian Nations and the People's Republic of China, done at Bangkok, 15 August 2009;

- (v) Agreement on Investment under the Framework Agreement on Comprehensive Economic Cooperation between the Association of Southeast Asian Nations and the Republic of India, done at Nay Pyi Taw, 12 November 2014; and
- (vi) Agreement on Investment among the Governments of the Hong Kong Special Administrative Region of the People's Republic of China and the Member States of the Association of Southeast Asian Nations, done at Ha Noi, 18 May 2018.

8. Articles 51.5 and 51.6 shall not apply until the date of entry into force of the Schedules of Reservations referred to in paragraph 3.

9. The Parties shall also enter into discussions with a view to agreeing on the application of Most-Favoured-Nation treatment to this Chapter, including the Schedules of Reservations.

10. The Parties shall also enter into consultations to seek agreement on the application of Articles 51.9 and 51.13 to taxation measures that constitute expropriation.

Annex A to Chapter 7
Expropriation and Compensation

1. An action or a series of related actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in a covered investment.

2. Article 51.9 addresses two situations:

(a) the first situation is direct expropriation, where a covered investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure; and

(b) the second situation is where an action or a series of related actions by a Party that has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

3. The determination of whether an action or series of related actions by a Party, in a specific fact situation, constitutes an expropriation of the type referred to in subparagraph 2(b) requires a case-by-case, fact-based inquiry that considers, among other factors:

(a) the economic impact of the government action, although the fact that such action or series of related actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that such an expropriation has occurred;

(b) whether the government action breaches the government's prior binding written commitment to the investor, whether by contract, licence or any other legal document; and

(c) the character of the government action, including its objective and whether such action is disproportionate to the public purpose.

4. Non-discriminatory regulatory actions by a Party that are designed and applied to achieve legitimate public welfare objectives such as the protection of public health, safety and the environment do not constitute expropriation of the type referred to in subparagraph 2 (b)."

Article 7
Amendment to Chapter 10 (Final Provisions)
of the AJCEP Agreement

Paragraph 5 of Article 77 of the AJCEP Agreement shall be replaced by the following:

"5. Notwithstanding paragraph 2, amendments relating only to:

- (a) Annex 1 (provided that the amendments are made in accordance with the methodologies and procedures adopted by the Joint Committee for updating Annex 1 to reflect the amendment of the Harmonized System);
- (b) Annex 2;
- (c) Attachment to Annex 4; or
- (d) Annex 5,

may be adopted by the Joint Committee. Such amendments shall enter into force in relation to all the Parties and be implemented from such date as agreed by the Joint Committee.

Note: For greater certainty, paragraph 5 is without prejudice to the completion of any necessary internal procedures by the Government of each Party."

Article 8
Entry into Force

1. The Government of each signatory State shall notify the Governments of other signatory States in writing that its legal procedures necessary for entry into force of this Protocol have been completed. This Protocol shall enter into force on the first day of the second month following the date by which such notifications have been made by the Governments of Japan and at least one (1) ASEAN Member State in relation to those signatory States that have made such notifications by that date.

2. In relation to an ASEAN Member State making the notification referred to in paragraph 1 after the date by which the notifications have been made by the Governments of Japan and at least one (1) ASEAN Member State as referred to in paragraph 1, this Protocol shall enter into force on the first day of the second month following the date on which that ASEAN Member State makes the notification.

3. The ASEAN Member State referred to in paragraph 2 shall be bound by any amendment that may have been adopted by the Joint Committee and takes effect pursuant to paragraph 5 of Article 77 of the AJCEP Agreement by the time of entry into force of this Protocol for it. This paragraph shall not prevent the Parties of the AJCEP Agreement for which this Protocol has entered into force from applying such amendment to that ASEAN Member State before the date of entry into force of this Protocol for it.

4. This Protocol shall remain in force as long as the AJCEP Agreement remains in force.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Protocol.

DONE in duplicate in the English language and SIGNED at Tokyo on the twenty-seventh day of February in the year 2019, at Siem Reap, Cambodia on the second day of March in the year 2019, and at Hanoi on the twenty-fourth day of April in the year of 2019.

For the Government
of Japan:

河野太郎

For the Government
of Brunei Darussalam:

Amin

For the Government
of the Kingdom of Cambodia:

Sorasak

For the Government
of the Republic of Indonesia:

Enggar

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

K.P

For the Government
of Malaysia:

Darell

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

Thaung Tun

For the Government
of the Republic
of the Philippines:

RmL

For the Government
of the Republic of Singapore:

CS

For the Government
of the Kingdom of Thailand:

Chutima Bunyapraphasara

For the Government
of the Socialist Republic
of Viet Nam:

Tuan Anh