

# Free Trade Agreement (FTA) on Trade in Services

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**CHAPTER 8**  
**TRADE IN SERVICES**

**Article 8.1: Definitions**

For the purposes of this Chapter:

- (a) **aircraft repair and maintenance services** means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and does not include so-called line maintenance;
- (b) **commercial presence** means any type of business or professional establishment, including through:
  - (i) the constitution, acquisition, or maintenance of a juridical person; or
  - (ii) the creation or maintenance of a branch or a representative office,  
  
within the territory of a Party for the purpose of supplying a service;
- (c) **computer reservation system services** means services provided by computerised systems that contain information about air carriers' schedules, availability, fares, and fare rules, through which reservations can be made or tickets may be issued;
- (d) **juridical person** means any entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or government-owned, including any corporation, trust, partnership, joint venture, sole proprietorship, or association;
- (e) **juridical person of a Party** means a juridical person which is either:
  - (i) constituted or otherwise organised under the law of that Party, and is engaged in substantive business operations in the territory of that Party or any other Party; or

- (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
    - (A) natural persons of that Party; or
    - (B) juridical persons of that Party identified under subparagraph (e)(i);
- (f) For Thailand and Viet Nam, a juridical person is:
  - (i) **owned** by persons of a Party if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Party;
  - (ii) **controlled** by persons of a Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;
  - (iii) **affiliated** with another person when it controls, or is controlled by, that other person, or when it and the other person are both controlled by the same person;
- (g) **measures by a Party affecting trade in services** includes measures in respect of:
  - (i) the purchase or use of, or payment for, a service;
  - (ii) the access to and use of, in connection with the supply of a service, services which are required by a 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;
- (h) **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;
- (i) **natural person of a Party** means a natural person who resides in the territory of that Party or elsewhere and who under the law of that Party:

- (i) is a national of that Party; or
  - (ii) has the right of permanent residence<sup>1</sup> in that Party, in the case of a Party which accords substantially the same treatment to its permanent residents as it does to its nationals in respect of measures affecting trade in services, provided no Party is obligated to accord to such permanent residents treatment more favourable than would be accorded by that Party to such permanent residents;
- (j) **sector** of a service means:
- (i) with reference to a commitment, one or more, or all, subsectors of that service, as specified in a Party's Schedule in Annex II (Schedules of Specific Commitments for Services) or Schedule in Annex III (Schedules of Reservations and Non-Conforming Measures for Services and Investment); and
  - (ii) otherwise, the whole of that service sector, including all of its subsectors;
- (k) **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;
- (l) **services** includes any service in any sector except services supplied in the exercise of governmental authority;
- (m) **service consumer** means any person that receives or uses a service;
- (n) **service of another Party** means a service which is supplied:

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<sup>1</sup> Where a Party has made a reservation with respect to permanent residents in its Schedules in Annex II (Schedules of Specific Commitments for Services), Annex III (Schedules of Reservations and Non-Conforming Measures for Services and Investment), or Annex IV (Schedules of Specific Commitments on Temporary Movement of Natural Persons), that reservation shall not prejudice that Party's rights and obligations in GATS.

- (i) from or in the territory of that other Party, or in the case of maritime transport, by a vessel registered under the laws and regulations of that other Party, or by a person of that other Party which supplies the service through the operation of a vessel 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;
- (o) **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;
- (p) **service supplier** means a person that supplies a service:<sup>2, 3</sup>
- (q) **supply of a service** includes the production, distribution, marketing, sale, and delivery of a service;
- (r) **trade in services** means the supply of a service:
  - (i) from the territory of one Party into the territory of any other Party;
  - (ii) in the territory of one Party to the service consumer of any other Party;
  - (iii) by a service supplier of one Party, through commercial presence in the territory of any other Party;

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<sup>2</sup> 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.

<sup>3</sup> The Parties confirm their shared understanding that “service supplier” in this Chapter has the same meaning that it has under subparagraph (g) of Article XXVIII of GATS.

- (iv) by a service supplier of one Party, through presence of natural persons of a Party in the territory of any other Party; and
- (s) **traffic rights** means the rights for scheduled and non-scheduled services to operate or 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 8.2: Scope**

1. This Chapter shall apply to measures by a Party affecting trade in services.
2. For the purposes of this Chapter, “measures by a Party” means measures taken by:
  - (a) central, regional, or local governments and authorities of that Party; and
  - (b) non-governmental bodies in the exercise of powers delegated by central, regional, or local governments or authorities of that Party.

In fulfilling its obligations and commitments under this Chapter, each Party shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory.
3. This Chapter shall not apply to:
  - (a) government procurement;
  - (b) subsidies or grants, including government-supported loans, guarantees, and insurance, provided by a Party or to any conditions attached to the receipt 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;

- (c) services supplied in the exercise of governmental authority;
  - (d) cabotage in maritime transport services; and
  - (e) 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:<sup>4</sup>
    - (i) aircraft repair and maintenance services;
    - (ii) the selling and marketing of air transport services;
    - (iii) computer reservation system services;
    - (iv) specialty air services;
    - (v) ground handling services; and
    - (vi) airport operation services.
4. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding nationality, citizenship, residence or employment on a permanent basis.
5. For greater certainty, Annex 8A (Financial Services), Annex 8B (Telecommunications Services), and Annex 8C (Professional Services) are an integral part of this Chapter.

### **Article 8.3: Scheduling of Commitments**

1. Each Party shall make commitments under Article 8.4 (National Treatment) and Article 8.5 (Market Access) in accordance with either Article 8.7 (Schedules of Specific Commitments) or Article 8.8 (Schedules of Non-Conforming Measures).
2. A Party making commitments in accordance with Article 8.7 (Schedules of Specific Commitments) shall make commitments

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<sup>4</sup> Notwithstanding subparagraphs (iv) through (vi), this Chapter shall apply to measures affecting specialty air services, ground handling services, and airport operation services only for a Party that opts to make commitments in relation to such services in accordance with Article 8.3 (Scheduling of Commitments).

under the applicable paragraphs in Article 8.4 (National Treatment) and Article 8.5 (Market Access), and shall also make commitments under either Article 8.6 (Most-Favoured-Nation Treatment) or Article 8.10 (Transparency List). A Party making commitments in accordance with Article 8.7 (Schedules of Specific Commitments) may also make commitments under Article 8.9 (Additional Commitments).

3. A Party making commitments in accordance with Article 8.8 (Schedules of Non-Conforming Measures) shall make commitments under the applicable paragraphs in Article 8.4 (National Treatment), Article 8.5 (Market Access), Article 8.6 (Most-Favoured-Nation Treatment), and Article 8.11 (Local Presence). A Party making commitments in accordance with Article 8.8 (Schedules of Non-Conforming Measures) may also make commitments under Article 8.9 (Additional Commitments).
4. Notwithstanding paragraph 2, Least Developed Country Parties which are Member States of ASEAN making commitments in accordance with Article 8.7 (Schedules of Specific Commitments) are not obliged to make commitments under either Article 8.6 (Most-Favoured-Nation Treatment) or Article 8.10 (Transparency List). These Parties may, however, do so on a voluntary basis.

#### **Article 8.4: National Treatment**

1. A Party making commitments in accordance with Article 8.7 (Schedules of Specific Commitments) shall, in the sectors inscribed in its Schedule in Annex II (Schedules of Specific Commitments for Services) and subject to any conditions and qualifications set out therein, 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.<sup>5</sup>
2. A Party making commitments in accordance with Article 8.8 (Schedules of Non-Conforming Measures) 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

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<sup>5</sup> Specific commitments assumed under this Article shall not be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.



suppliers, subject to its non-conforming measures as provided in Article 8.8 (Schedules of Non-Conforming Measures).<sup>6</sup>

3. A Party may meet the requirement under paragraph 1 or 2 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.
4. 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.

#### **Article 8.5: Market Access**

1. With respect to market access through the modes of supply identified in subparagraph (r) of Article 8.1 (Definitions), a Party making commitments in accordance with Article 8.7 (Schedules of Specific Commitments) 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 in Annex II (Schedules of Specific Commitments for Services).<sup>7</sup>
2. The measures which a Party shall not adopt or maintain either on the basis of a regional subdivision or on the basis of its entire territory, either in sectors where market access commitments are undertaken and in accordance with its specific commitments, as provided in Article 8.7 (Schedules of Specific Commitments), or subject to its non-conforming measures, as provided in the Article 8.8 (Schedules of Non-Confirming Measures), are defined as:
  - (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive

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<sup>6</sup> Nothing 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.

<sup>7</sup> 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 (r)(i) of Article 8.1 (Definitions) and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph (r)(iii) of Article 8.1 (Definitions), it is thereby committed to allow related transfers of capital into its territory.

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;<sup>8</sup>
- (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 8.6: Most-Favoured-Nation Treatment**

1. A Party making commitments in accordance with Article 8.7 (Schedules of Specific Commitments) that opts under paragraph 2 of Article 8.3 (Scheduling of Commitments) to make commitments on Most-Favoured-Nation Treatment shall:
  - (a) in respect of the sectors and subsectors inscribed in its Schedule in Annex II (Schedules of Specific Commitments for Services) that are identified with an “MFN”;
  - (b) in respect of the sectors and subsectors set out in its Most-Favoured-Nation Treatment Sectoral Coverage Appendix to its Schedule in Annex II (Schedules of Specific Commitments for Services); or

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<sup>8</sup> This subparagraph does not cover measures of a Party which limit inputs for the supply of services.

- (c) in respect of the sectors and subsectors that are not contained in its Most-Favoured-Nation Treatment Sectoral Exemption List Appendix to its Schedule in Annex II (Schedules of Specific Commitments for Services),

and subject to any conditions and qualifications set out therein, 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 of any non-Party.

2. A Party making commitments in accordance with Article 8.8 (Schedules of Non-Conforming Measures) shall, subject to its non-conforming measures set out in its Schedule in Annex III (Schedules of Reservations and Non-Conforming Measures for Services and Investment), 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 of any non-Party.
3. Notwithstanding paragraphs 1 and 2, each Party reserves the right to adopt or maintain any measure that accords differential treatment to services and service suppliers of any other Party or of any non-Party under any bilateral or multilateral international agreement in force at, or signed prior to, the date of entry into force of this Agreement.
4. Notwithstanding paragraphs 1 and 2, each Party which is a Member State of ASEAN reserves the right to adopt or maintain any measure that accords differential treatment to services and service suppliers of any other Party which is a Member State of ASEAN taken under an agreement on the liberalisation of trade in goods or services or investment as part of a wider process of economic integration among the Parties which are Member States of ASEAN.
5. The provisions of this Chapter shall not be construed as to prevent any Party from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.

## **Article 8.7: Schedules of Specific Commitments**

1. A Party making commitments in accordance with this Article shall set out in its Schedule in Annex II (Schedules of Specific Commitments for Services), the specific commitments it undertakes under Article 8.4 (National Treatment), Article 8.5 (Market Access), and Article 8.9 (Additional Commitments). With respect to sectors where such commitments are undertaken, each Schedule in Annex II (Schedules of Specific Commitments for Services) 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 time frame for implementation of such commitments.
2. Measures inconsistent with both Article 8.4 (National Treatment) and Article 8.5 (Market Access) shall be inscribed in the column relating to Article 8.5 (Market Access). In this case, the inscription shall be considered to provide a condition or qualification to Article 8.4 (National Treatment) as well.
3. Each Party making commitments in accordance with this Article shall identify in its Schedule in Annex II (Schedules of Specific Commitments for Services) sectors or subsectors for future liberalisation with "FL". In these sectors and subsectors, any applicable terms, limitations, conditions, and qualifications, referred to in subparagraphs 1(a) and (b) shall be limited to existing measures of that Party.
4. If a Party amends a measure referred to in paragraph 3 in a manner that reduces or eliminates the inconsistency of that measure with Article 8.4 (National Treatment) or Article 8.5 (Market Access), as it existed immediately before the amendment, that Party shall not subsequently amend that measure in a manner that increases the measure's inconsistency with Article 8.4 (National Treatment) or Article 8.5 (Market Access).
5. Notwithstanding paragraph 3, Least Developed Country Parties which are Member States of ASEAN are not obliged to identify

sectors or subsectors for future liberalisation. These Parties may, however, do so on a voluntary basis.

#### **Article 8.8: Schedules of Non-Conforming Measures**

1. For a Party making commitments in accordance with this Article, Article 8.4 (National Treatment), Article 8.5 (Market Access), Article 8.6 (Most-Favoured-Nation Treatment), and Article 8.11 (Local Presence) shall not apply to:
  - (a) any existing non-conforming measure that is maintained by that Party at:
    - (i) the central level of government, as set out by that Party in List A of its Schedule in Annex III (Schedules of Reservations and Non-Conforming Measures for Services and Investment);
    - (ii) a regional level of government, as set out by that Party in List A of its Schedule in Annex III (Schedules of Reservations and Non-Conforming Measures for Services and Investment); or
    - (iii) a local level of government;
  - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); and
  - (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 8.4 (National Treatment), Article 8.5 (Market Access), Article 8.6 (Most-Favoured-Nation Treatment), or Article 8.11 (Local Presence).
2. Article 8.4 (National Treatment), Article 8.5 (Market Access), Article 8.6 (Most-Favoured-Nation Treatment), and Article 8.11 (Local Presence) shall not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities set out in List B of its Schedule in Annex III (Schedules of Reservations and Non-Conforming Measures for Services and Investment).

### **Article 8.9: Additional Commitments**

1. The Parties may negotiate commitments with respect to measures affecting trade in services, including those regarding qualifications, standards, or licensing matters, not subject to scheduling, under:
  - (a) Article 8.4 (National Treatment) or Article 8.5 (Market Access) for those Parties making commitments in accordance with Article 8.7 (Schedules of Specific Commitments); or
  - (b) Article 8.4 (National Treatment), Article 8.5 (Market Access), Article 8.6 (Most-Favoured-Nation Treatment), or Article 8.11 (Local Presence) for those Parties making commitments in accordance with Article 8.8 (Schedules of Non-Conforming Measures).
2. A Party making additional commitments under subparagraph 1(a) shall inscribe such commitments in its Schedule in Annex II (Schedules of Specific Commitments for Services).
3. A Party making additional commitments under subparagraph 1(b) shall inscribe such commitments in List C of its Schedule in Annex III (Schedules of Reservations and Non-Conforming Measures for Services and Investment).

### **Article 8.10: Transparency List**

1. A Party making commitments in accordance with Article 8.7 (Schedules of Specific Commitments) that opts under paragraph 2 of Article 8.3 (Scheduling of Commitments) to make commitments under this Article shall prepare, forward to the other Parties, and make publicly available on the internet, a non-binding transparency list of its existing measures maintained at the central government level which are inconsistent with Article 8.4 (National Treatment) or Article 8.5 (Market Access) (hereinafter referred to as "Transparency List" in this Chapter). Such a Transparency List shall cover the sectors in which the Party has undertaken specific commitments in this Chapter.
2. A Party's Transparency List is made solely for the purposes of transparency, and shall be accurate at the time of submission and shall not affect the rights and obligations of that Party under this Chapter. Nothing in this Article shall prevent a Party from

amending its measures referred to in paragraph 1. If there are any discrepancies between a Party's Transparency List and its Schedule in Annex II (Schedules of Specific Commitments for Services), the latter shall prevail.

3. Each Transparency List shall include the following elements:
  - (a) the sector and subsector or activity;
  - (b) the type of inconsistency (National Treatment or Market Access);
  - (c) the legal source or authority of the measure; and
  - (d) a succinct description of the measure.
4. A Party shall update, as necessary, its Transparency List to ensure it is complete and accurate by:
  - (a) adding any new or amended inconsistent measure; or
  - (b) removing any measure that has ceased to exist, or any sector, subsector, or activity for which it no longer maintains an inconsistent measure.
5. No Party shall have recourse to dispute settlement under Chapter 19 (Dispute Settlement) for any dispute or matter of interpretation arising out of a Transparency List.

#### **Article 8.11: Local Presence**

A Party making commitments in accordance with Article 8.8 (Schedules of Non-Conforming Measures) shall not require a service supplier of another Party to establish or maintain a representative office, a branch, or any form of juridical person, or to be resident, in its territory as a condition for the supply of a service as described in subparagraph (r)(i), (ii), or (iv) of Article 8.1 (Definitions), subject to its non-conforming measures as provided in Article 8.8 (Schedules of Non-Conforming Measures).

#### **Article 8.12: Transition**

1. A Party making commitments in accordance with Article 8.7 (Schedules of Specific Commitments) (hereinafter referred to as

a “transitioning Party” in this Article) shall submit a proposed Schedule of Non-Conforming Measures (hereinafter referred to as a “Proposed Schedule” in this Article) that accords with Article 8.8 (Schedules of Non-Conforming Measures)<sup>9</sup> to the Committee on Services and Investment for circulation to the other Parties, no later than three years, or for Cambodia, Lao PDR, and Myanmar, no later than 12 years, after the date of entry into force of this Agreement.

2. The commitments contained in each transitioning Party’s Proposed Schedule shall provide an equivalent or a greater level of liberalisation and shall not result in a decrease in the level of commitments as compared to the transitioning Party’s commitments, made in accordance with paragraph 2 of Article 8.3 (Scheduling of Commitments).
3. The Parties shall consider the Proposed Schedule for the purposes of verification and clarification, and shall have the opportunity to make comments to ensure that the Proposed Schedule meets the requirements specified in paragraph 2. The verification and clarification process shall not entitle the Parties to negotiate specific new commitments.<sup>10</sup> The transitioning Party shall have the opportunity to respond to any comments received and to modify or revise its Proposed Schedule, as may be necessary, with a view to resolving any ambiguities, omissions, or errors in its Proposed Schedule.
4. Upon completion of the verification and clarification process referred to in paragraph 3, the Committee on Services and Investment may adopt, by consensus, the transitioning Party’s Proposed Schedule, which shall replace the transitioning Party’s Schedule in Annex II (Schedules of Specific Commitments for Services) subject to paragraph 5 (hereinafter referred to as an “Adopted Schedule” in this Article). The transitioning Party shall then submit its Adopted Schedule to the Depository and notify it

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<sup>9</sup> For the purposes of a Proposed Schedule referred to in this paragraph and an Adopted Schedule referred to in paragraph 4, the references to “existing” in subparagraph 1(a) of Article 8.8 (Schedules of Non-Conforming Measures) shall be deemed to mean “in effect on the date of entry into force of the Party’s Adopted Schedule”.

<sup>10</sup> For greater certainty, nothing in this Article requires a Party to make commitments under Article 8.6 (Most-Favoured-Nation Treatment) in respect of a specific sector or subsector.



in writing of the completion of any applicable domestic processes.<sup>11</sup>

5. Notwithstanding Article 20.4 (Amendments), once a transitioning Party has submitted its Adopted Schedule to the Depositary and notified it in writing of the completion of any applicable domestic processes, the transitioning Party's Adopted Schedule shall enter into force between the transitioning Party and each other Party 60 days after the date of the transitioning Party's notification to the Depositary. However, if a Party notifies the Depositary in writing within 60 days of the date of the transitioning Party's notification to the Depositary that the Adopted Schedule will not enter into force for that Party within 60 days of the transitioning Party's notification to the Depositary, the Adopted Schedule shall enter into force between the transitioning Party and that Party on the date on which that Party notifies the Depositary in writing of the completion of its applicable domestic processes, or on such other date as the transitioning Party and that Party may decide.
6. For greater certainty, a transitioning Party's Schedule in Annex II (Schedules of Specific Commitments for Services) under Article 8.7 (Schedules of Specific Commitments) shall remain in force between the transitioning Party and each other Party until the transitioning Party's Adopted Schedule has entered into force for that other Party.
7. The process referred to in paragraphs 1 through 4 shall be completed no later than six years, or for Cambodia, Lao PDR, and Myanmar, no later than 15 years, after the date of entry into force of this Agreement.

### **Article 8.13: Modification of Schedules**

1. A Party that has made commitments in accordance with Article 8.7 (Schedules of Specific Commitments) (hereinafter referred to as a "modifying Party" in this Article) may modify or withdraw any commitment in its Schedule in Annex II (Schedules of Specific Commitments for Services), other than commitments in sectors or

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<sup>11</sup> For greater certainty, this paragraph does not exclude the possibility of a transitioning Party, when undertaking its applicable domestic processes, requesting consultations among the Parties regarding potential revisions to its Adopted Schedule, and requesting the Committee on Services and Investment to adopt, by consensus, a revised Adopted Schedule for submission by the transitioning Party to the Depositary in accordance with this paragraph.

subsectors indicated with an “FL”, at any time after three years from the date on which that commitment has entered into force, provided that it complies with this Article and that:

- (a) it notifies the Committee on Services and Investment of its intention to modify or withdraw a commitment no later than three months before the intended date of implementation of the modification or withdrawal; and
  - (b) it enters into negotiations with any requesting Party, with a view to reaching agreement on any necessary compensatory adjustment.
2. In achieving a compensatory adjustment through the negotiations referred to in subparagraph 1(b), the Parties concerned shall endeavour to maintain a general level of mutually advantageous commitments no less favourable to trade than that provided for in the modifying Party’s Schedule in Annex II (Schedules of Specific Commitments for Services) prior to such negotiations.
  3. Any compensatory adjustment made pursuant to this Article shall be accorded on a non-discriminatory basis to all Parties.
  4. If the Parties concerned are unable to reach an agreement on the compensatory adjustment within three months following the last date on which a request under subparagraph 1(b) has been made, or another period agreed by the modifying Party and each requesting Party, a requesting Party may refer the matter to arbitration. Any Party that wishes to enforce a right that it may have to compensation must participate in the arbitration. 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. Arbitrations undertaken pursuant to paragraph 4 shall be conducted in accordance with the procedures set out in paragraphs 7 through 19 of *Procedures for the Implementation of Article XXI of the General Agreement on Trade in Services adopted on 19 July 1999(S/L/80)*, as may be amended, (hereinafter referred to as “the GATS Article XXI Procedures” in this Chapter), which shall apply *mutatis mutandis*, unless otherwise decided by the Committee on Services and Investment under paragraph 10 or unless the parties to the arbitration agree otherwise.

6. 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. Such a modification or withdrawal may be implemented solely with respect to the modifying Party.
7. If no Party has requested:
  - (a) negotiations under subparagraph 1(b) within 45 days of the date of a notification made pursuant to subparagraph 1(a); or
  - (b) arbitration pursuant to paragraph 4,the modifying Party shall be free to implement its proposed modification or withdrawal, notwithstanding Article 20.4 (Amendments), in accordance with the procedures set out in paragraphs 20 through 22 of the GATS Article XXI Procedures, which shall apply *mutatis mutandis*, unless otherwise decided by the Committee on Services and Investment under paragraph 10.
8. For the avoidance of doubt, for the purposes of paragraphs 5 and 7, references in the GATS Article XXI Procedures to:
  - (a) “the Secretariat” and “the Council for Trade in Services” shall be read as references to the Committee on Services and Investment;
  - (b) “Article XXI” shall be read as references to Article 8.13 (Modification of Schedules); and
  - (c) “Members of the WTO” shall be read as references to the Parties.
9. In the event of any inconsistency between this Agreement and the GATS Article XXI Procedures, this Agreement shall prevail to the extent of the inconsistency.
10. The Committee on Services and Investment may establish or amend procedures for the modification or withdrawal of a Party’s commitments in its Schedule in Annex II (Schedules of Specific Commitments for Services) or the conduct of arbitration, under this Article. Any Party that seeks to modify or withdraw its commitments under this Article shall do so in accordance with any such procedures.

## **Article 8.14: 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.
2. Each Party shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force:
  - (a) all relevant measures of general application affecting trade in services; and
  - (b) all international agreements pertaining to or affecting trade in services to which a Party is a signatory.
3. To the extent possible, each Party shall make the measures and international agreements referred to in paragraph 2 publicly available on the internet and, to the extent provided under its legal framework, in the English language.
4. Where publication referred to in paragraphs 2 and 3 is not practicable, such information<sup>12</sup> shall be made otherwise publicly available.
5. Each Party shall designate a contact point to facilitate communications among the Parties on any matter covered by this Chapter. On 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.
6. Each Party shall respond promptly to any request 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

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<sup>12</sup> For greater certainty, such information may be published in each Party's chosen language.

- (b) any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services.

### **Article 8.15: Domestic Regulation**

1. Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective, and impartial manner.
2. Each Party shall maintain or institute as soon as practicable judicial, arbitral, or administrative tribunals or procedures which provide, on 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.
3. Nothing in paragraph 2 shall 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.
4. If the results of the negotiations related to paragraph 4 of Article VI of GATS enter into effect, the Parties shall review the results of such negotiations and shall amend this Article as appropriate, after consultation among the Parties to bring the results of such negotiations into effect under this Chapter.
5. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards, and licensing requirements do not constitute unnecessary barriers to trade in services, while recognising the right to regulate and to introduce new regulations on the supply of services in order to meet its policy objectives, each Party shall endeavour to ensure that any such measures that it adopts or maintains are:
  - (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.
- 6. In determining whether a Party is in conformity with its obligations under subparagraph 5(a), international standards of relevant international organisations<sup>13</sup> applied by that Party shall be taken into account.
- 7. Where a Party requires authorisation for the supply of a service, it shall ensure that its competent authorities:
  - (a) ensure that any authorisation fees charged for the completion of relevant application procedures are reasonable, transparent, and do not in themselves restrict the supply of a service. For the purposes of this subparagraph, authorisation fees do not include fees for the use of natural resources, payment for auction, tendering, or other non-discriminatory means of awarding concessions, or mandated contributions to universal services provision;
  - (b) within a reasonable period of time after the submission of an application considered complete under its laws and regulations, inform the applicant of the decision concerning the application;
  - (c) to the extent practicable, establish an indicative time frame for processing of an application;
  - (d) on request of the applicant, provide, without undue delay, information concerning the status of the application;
  - (e) in the case of an incomplete application and on 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 time frame;
  - (f) if an application is terminated or denied, to the extent possible and without undue delay, inform the applicant in writing of the reasons for such action. The applicant will

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<sup>13</sup> "Relevant international organisations" refers to international bodies whose membership is open to the relevant bodies of the Parties.

- have the possibility of resubmitting, at its discretion, a new application;
- (g) to the extent permissible under its laws and regulations, do not require physical presence in the territory of a Party for the submission of an application for a licence or qualification;
  - (h) endeavour to accept applications in electronic format under the equivalent conditions of authenticity as paper submissions, in accordance with its laws and regulations; and
  - (i) where they deem appropriate, accept copies of documents authenticated in accordance with its laws and regulations, in place of original documents.
8. Each Party shall provide adequate procedures to verify the competence of professionals of another Party. If licensing or qualification requirements include the completion of an examination, each Party shall, to the extent practicable, ensure that:
- (a) the examination is scheduled at reasonable intervals; and
  - (b) a reasonable period of time is provided to enable interested persons to submit an application.
9. Each Party shall, subject to its laws and regulations, permit service suppliers of another Party to use, without undue restrictions, the business names under which they trade in the territory of that other Party.
10. Paragraphs 1 through 9 shall not apply to a sector or measure to the extent that such sector or measure is not subject to Article 8.4 (National Treatment) or Article 8.5 (Market Access) by reason of a Party's commitments made in accordance with either Article 8.7 (Schedules of Specific Commitments) or Article 8.8 (Schedules of Non-Conforming Measures).

#### **Article 8.16: Recognition**

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing, or certification of service suppliers, and subject to the requirements of paragraph

- 4, a Party may recognise the education or experience obtained, requirements met, or licences or certifications granted in a particular country. Such recognition, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement with the country concerned, or may be accorded autonomously.
2. A Party that is party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for the other Parties, upon request, to negotiate their accession to such an agreement or arrangement, or to negotiate comparable ones with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for any other Party to demonstrate that education, experience, licences, or certifications obtained or requirements met in that other Party's territory should be recognised.
  3. Nothing in Article 8.6 (Most-Favoured-Nation Treatment) shall be construed to require any Party to accord such recognition to the education or experience obtained, requirements met, or licences or certifications granted in another Party.
  4. A Party shall not accord recognition in a manner which would constitute a means of discrimination between other Parties in the application of its standards or criteria for the authorisation, licensing, or certification of service suppliers, or a disguised restriction on trade in services.
  5. Where appropriate, recognition should be based on multilaterally agreed criteria. In appropriate cases, Parties shall work in cooperation with relevant inter-governmental and non-governmental organisations towards the establishment and adoption of common international standards and criteria for recognition and common international standards for the practice of relevant services trades and professions.
  6. As set out in Annex 8C (Professional Services), each Party shall endeavour to facilitate trade in professional services, including through encouraging relevant bodies in its territory to enter into negotiations for agreements or arrangements on recognition.

#### **Article 8.17: 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 8.4 (National Treatment) and Article 8.5 (Market Access).

2. Where a Party's monopoly supplier of a service 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 commitments, that Party shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.
3. If a Party has a reason to believe that a monopoly supplier of a service of any other Party is acting in a manner inconsistent with paragraph 1 or 2, it may request that other Party establishing, maintaining, or authorising such a 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 8.18: Business Practices**

1. The Parties recognise that certain business practices of service suppliers, other than those falling under Article 8.17 (Monopolies and Exclusive Service Suppliers), may restrain competition and thereby restrict trade in services.
2. Each Party shall, on request of any other Party, enter into consultations with a view to eliminating practices referred to in paragraph 1. The requested Party 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 requested Party may also provide other information available to the requesting Party, subject to its laws and regulations and to the conclusion of a satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Party.

### **Article 8.19: Payments and Transfers**

1. Except under the circumstances envisaged in Article 17.15 (Measures to Safeguard the Balance of Payments), a Party shall not apply restrictions on international transfers or payments for current transactions relating to its commitments.
2. Nothing in this Chapter shall affect the rights and obligations of a Party as a member of the IMF under the IMF Articles of Agreement, as may be amended, including the use of exchange actions which are in conformity with the IMF Articles of Agreement, as may be amended, provided that the Party shall not impose restrictions on any capital transaction inconsistently with its commitments under this Chapter regarding such transactions, except under Article 17.15 (Measures to Safeguard the Balance of Payments) or on request of the IMF.

### **Article 8.20: Denial of Benefits**

1. A Party may deny the benefits of this Chapter:
  - (a) to the supply of any service, if it establishes that the service is supplied from or in the territory of a non-Party;
  - (b) to a service supplier that is a juridical person, if it establishes that it is not a service supplier of another Party;
  - (c) 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 and regulations of a non-Party; and
    - (ii) by a person of a non-Party which operates or uses the vessel in whole or in part.
2. A Party may deny the benefit of this Chapter to a service supplier of another Party, if the service supplier is a juridical person owned or controlled by persons of a non-Party, and the denying Party adopts or maintains measures with respect to the non-Party or a person of 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.

### **Article 8.21: Safeguard Measures**

1. The Parties shall review the incorporation of safeguard measures pending any further developments in the multilateral fora pursuant to Article X of GATS.
2. In the event that a Party encounters difficulties in the implementation of its commitments under this Chapter, that Party may request consultations with the other Parties to address such difficulties.

### **Article 8.22: Subsidies**

1. Notwithstanding paragraph 3(b) of Article 8.2 (Scope), the Parties shall review the issue of disciplines on subsidies related to trade in services in light of any disciplines agreed under Article XV of GATS with a view to their incorporation into this Chapter.
2. A Party which considers that it is adversely affected by a subsidy of another Party related to trade in services may request consultations with that other Party on such matters. The requested Party shall accord sympathetic consideration to such a request.
3. No Party shall have recourse to dispute settlement under Chapter 19 (Dispute Settlement) for any request made or consultations held under this Article, or any other dispute arising under this Article.

### **Article 8.23: Increasing Participation of Least Developed Country Parties which are Member States of ASEAN**

To increase the participation of Least Developed Country Parties which are Member States of ASEAN, this Chapter shall facilitate:

- (a) strengthening their domestic services capacity and their efficiency and competitiveness, *inter alia*, through access to technology on a commercial basis;
- (b) improving their access to distribution channels and information networks; and

- (c) the liberalisation of market access in sectors and modes of supply of export interest to them, and the provision of market access in sectors beneficial to them.

#### **Article 8.24: Review of Commitments**

The Parties shall review the commitments on trade in services as necessary, but no later than the general review of this Agreement under Article 20.8 (General Review), with a view to further improving commitments under this Chapter so as to progressively liberalise trade in services among the Parties.

#### **Article 8.25: Cooperation**

The Parties shall strengthen cooperation efforts in sectors, including sectors which are not covered by current cooperation arrangements. The Parties shall discuss and agree on the sectors for cooperation and develop cooperation programmes in these sectors in order to improve their domestic services capacity and their efficiency and competitiveness.

## ANNEX 8A

### FINANCIAL SERVICES

#### Article 1: Definitions

For the purposes of this Annex:

- (a) **financial institution** means any financial intermediary or other juridical person that is authorised to do business and regulated or supervised as a financial institution, under the laws and regulations of the Party in whose territory it is located;
- (b) **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**

- (i) direct insurance (including co-insurance):
  - (A) life; and
  - (B) non-life;
- (ii) reinsurance and retrocession;
- (iii) insurance intermediation, such as brokerage and agency;
- (iv) services auxiliary to insurance, such as consultancy, actuarial, risk assessment, and claim settlement services;

#### **Banking and other financial services (excluding insurance)**

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

- (vi) lending of all types, including consumer credit, mortgage credit, factoring, and financing of commercial transaction;
- (vii) financial leasing;
- (viii) all payment and money transmission services, including credit, charge and debit cards, travellers cheques, and bankers drafts;
- (ix) guarantees and commitments;
- (x) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
  - (A) money market instruments (including cheques, bills, certificates of deposits);
  - (B) foreign exchange;
  - (C) derivative products including futures and options;
  - (D) exchange rate and interest rate instruments, including products such as swaps and forward rate agreements;
  - (E) transferable securities; and
  - (F) other negotiable instruments and financial assets, including bullion;
- (xi) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
- (xii) money broking;
- (xiii) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository, and trust services;

- (xiv) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
  - (xv) provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; and
  - (xvi) advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (v) through (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;
- (c) **financial service supplier** means any natural person or juridical person of a Party seeking to supply or supplying financial services but the term “financial service supplier” does not include a public entity;
- (d) **new financial service** means any financial service which is not supplied in the territory of a Party but is supplied and regulated in the territory of any other Party. This may include a service related to current and new products, or the manner in which a product is delivered;
- (e) **public entity** means:
- (i) a government, a central bank, or a monetary authority, of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or
  - (ii) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions; and
- (f) **self-regulatory organisation** means any non-governmental body, including any securities or futures exchange or market, clearing or payment settlement agency, or other organisation or association, that:

- (i) is recognised as a self-regulatory organisation and exercises regulatory or supervisory authority over financial service suppliers or financial institutions by legislation or delegation from central, regional, or local governments or authorities; or
- (ii) exercises regulatory or supervisory authority over financial service suppliers or financial institutions by legislation or delegation from central, regional, or local governments or authorities.

## **Article 2: Scope**

1. This Annex shall apply to measures by a Party 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 (r) of Article 8.1 (Definitions).
2. For the purposes of subparagraph (l) of Article 8.1 (Definitions) and subparagraph 2(c) of Article 10.2 (Scope), “services supplied in the exercise of governmental authority” means the following:
  - (a) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;<sup>1</sup>
  - (b) activities forming part of a statutory system of social security or public retirement plans; or
  - (c) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the government.

If a Party allows any of the activities referred to in subparagraph (b) or (c) to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, “services” shall include such activities.
3. Subparagraph (o) of Article 8.1 (Definitions) and the definition set out in subparagraph 2(c) of Article 10.2 (Scope) shall not apply to services covered by this Annex.

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<sup>1</sup> Activities referred to in this subparagraph include any regulatory and enforcement activities conducted in pursuit of monetary or exchange rate policies.



4. Article 8.11 (Local Presence) shall not apply to services covered by this Annex.
5. In the event of any inconsistency between this Annex and any other provision in this Agreement, this Annex shall prevail to the extent of the inconsistency.

### **Article 3: New Financial Services**

1. Each host Party shall endeavour to permit financial institutions of another Party established in the territory of the host Party to supply a new financial service in the territory of the host Party that the host Party would permit its own financial institutions, in like circumstances, to supply without adopting a law or modifying an existing law.<sup>2</sup>
2. Where an application is approved, the supply of the new financial service is subject to relevant licensing, institutional or juridical form, or other requirements of the host Party.

### **Article 4: Prudential Measures**

Notwithstanding any other provision of this Agreement, a Party shall not be prevented from adopting or maintaining measures for prudential reasons,<sup>3</sup> including for the protection of investors, depositors, policyholders, or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement.

### **Article 5: Treatment of Certain Information**

Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual

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<sup>2</sup> For greater certainty, a Party may issue a new regulation or other subordinate measure in permitting the supply of the new financial service.

<sup>3</sup> The Parties understand that "prudential reasons" includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions or financial service suppliers, as well as the safety and financial and operational integrity of payment and clearing systems.

customers, or any confidential or proprietary information in the possession of public entities.

### **Article 6: Recognition**

1. A Party may recognise prudential measures of any international standard-setting body, another Party, or a non-Party in determining how its measures relating to financial services shall be applied.<sup>4</sup> Such recognition, which may be achieved through harmonisation or otherwise, may be based on an agreement or arrangement with the international standard-setting body, other Party, or non-Party concerned, or may be accorded autonomously.
2. A Party that is party to an agreement or arrangement 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, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation, and, if appropriate, procedures concerning the sharing of information between the parties to the agreement or arrangement.
3. Where a Party accords recognition autonomously, it shall afford adequate opportunity for any other Party to demonstrate that the circumstances referred to in paragraph 2 exist.

### **Article 7: Transparency**

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

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<sup>4</sup> For greater certainty, nothing in Article 8.6 (Most-Favoured-Nation Treatment) shall be construed to require a Party to accord such recognition to prudential measures of any other Party.

2. Each Party shall ensure that all measures of general application to which this Annex applies are administered in a reasonable, objective, and impartial manner.
3. Each Party shall ensure that measures of general application adopted or maintained by a Party are promptly published, or otherwise made publicly available.<sup>5</sup>
4. To the extent practicable, each Party shall:
  - (a) publish or make available to interested persons<sup>6</sup> in advance any regulation of general application relating to this Annex that it proposes to adopt, and the purpose of such regulation; and
  - (b) provide interested persons and other Parties with a reasonable opportunity to comment on such proposed regulation.
5. To the extent practicable, each Party should allow a reasonable period of time between the date of publication of any final regulation of general application and the date when it enters into effect.
6. Each Party shall take such reasonable measures as may be available to it to ensure that the rules of general application adopted or maintained by a self-regulatory organisation of the Party are promptly published or otherwise made available.<sup>7</sup>
7. Each Party shall maintain or establish appropriate mechanisms for responding to enquiries from interested persons of another Party regarding measures of general application covered by this Annex.
8. A Party's regulatory authority shall make available to interested persons of another Party its requirements, including any documentation required, for completing applications relating to the supply of financial services.

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<sup>5</sup> For greater certainty, each Party may publish such information in its chosen language.

<sup>6</sup> For the purposes of this Article, the Parties confirm their shared understanding that "interested persons" are persons whose direct financial interest could potentially be affected by the adoption of the regulations of general application.

<sup>7</sup> For greater certainty, each Party may publish such information in its chosen language.

9. On request of an applicant in writing, a Party's regulatory authority shall inform the applicant of the status of its application. If the authority requires additional information from the applicant, it shall notify the applicant without undue delay.
10. A Party's regulatory authority shall make an administrative decision on a complete application of a financial service supplier of another Party relating to the supply of a financial service within 180 days, and shall notify the applicant of the decision without undue delay. An application shall not be considered complete until all relevant proceedings are conducted and all necessary information is received. Where it is not practicable for such a decision to be made within 180 days, the regulatory authority shall notify the applicant without undue delay and shall endeavour to make the decision within a reasonable period of time thereafter.
11. On request of an unsuccessful applicant in writing, a Party's regulatory authority that has denied an application shall, to the extent practicable, inform the applicant of the reasons for the denial of the application.

#### **Article 8: Financial Services Exceptions**

For greater certainty, nothing in this Annex shall be construed to prevent a Party from adopting or enforcing measures necessary to secure compliance with laws or regulations that are not inconsistent with this Annex, including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Parties or between Parties and non-Parties where like conditions prevail, or a disguised restriction on investment in financial institutions or trade in financial services.

#### **Article 9: Transfers of Information and Processing of Information**

1. The Parties recognise that each Party may have its own regulatory requirements concerning the transfer of information and the processing of information.<sup>8</sup>

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<sup>8</sup> For greater certainty, a Party may adopt a different regulatory approach, and this paragraph does not affect and is without prejudice to a Party's rights and obligations under this Article.

2. A Party shall not take measures that prevent:
  - (a) transfers of information, including transfers of data by electronic or other means, necessary for the conduct of the ordinary business of a financial service supplier in its territory; or
  - (b) processing of information necessary for the conduct of the ordinary business of a financial service supplier in its territory.
3. Nothing in paragraph 2 prevents a regulatory authority of a Party, for regulatory or prudential reasons, from requiring a financial service supplier in its territory to comply with its laws and regulations in relation to data management and storage and system maintenance, as well as to retain within its territory copies of records, provided that such requirements shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement.
4. Nothing in paragraph 2 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 laws and regulations, provided that such a right shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement.
5. Nothing in paragraph 2 shall be construed to require a Party to allow the cross-border supply or consumption abroad of services in relation to which it has not made 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 (b)(xv) of Article 1 (Definitions).

#### **Article 10: Self-Regulatory Organisations**

If a Party requires a financial institution of another Party to be a member of, participate in, or have access to a self-regulatory organisation to provide a financial service in its territory, that Party shall ensure that the self-regulatory organisation observes that Party's obligations under Article 8.4 (National Treatment).

## **Article 11: Payment and Clearing Systems**

Under the terms and conditions that accord national treatment, each Party shall grant financial institutions of another Party established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This Article is not intended to confer access to the Party's lender of last resort facilities.<sup>9</sup>

## **Article 12: Consultations**

1. A Party may request consultations with another Party regarding any matter arising under this Agreement that affects financial services. The other Party shall consider such a request.
2. Consultations under this Article shall include the relevant representatives of the contact points specified in Article 13 (Contact Points).

## **Article 13: Contact Points**

1. For the purposes of this Annex, the contact points for financial services are:
  - (a) for Australia, the Department of the Treasury and the Department of Foreign Affairs and Trade and, as necessary, officials from the relevant regulatory authorities, including the Australian Prudential Regulation Authority, the Reserve Bank of Australia, and the Australian Securities and Investment Commission;
  - (b) for Brunei Darussalam, the Ministry of Finance and Economy and Autoriti Monetari Brunei Darussalam;
  - (c) for Cambodia, the Ministry of Economy and Finance, the Securities Exchange Commission of Cambodia, the National Bank of Cambodia, and the Ministry of Commerce;

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<sup>9</sup> For greater certainty, a Party need not grant access under this Article to a financial institution of another Party established in its territory if such access or treatment is not granted to its own like financial institutions.

- (d) for China, the People's Bank of China, the China Banking and Insurance Regulatory Commission, and the China Securities Regulatory Commission;
  - (e) for Indonesia, the Ministry of Trade, the Ministry of Finance, the Indonesia Financial Services Authority (OJK), and Bank Indonesia;
  - (f) for Japan, the Ministry of Foreign Affairs, the Financial Services Agency, or their successors;
  - (g) for Korea, the Financial Services Commission, and the Ministry of Trade, Industry and Energy;
  - (h) for Lao PDR, the Bank of the Lao PDR, the Ministry of Finance, and the Lao Securities Commission Office;
  - (i) for Malaysia, Bank Negara Malaysia and the Securities Commission Malaysia;
  - (j) for Myanmar, the Ministry of Planning, Finance and Industry, the Central Bank of Myanmar, the Securities and Exchange Commission of Myanmar, and the Ministry of Commerce;
  - (k) for New Zealand, the Ministry of Foreign Affairs and Trade, in coordination with financial services regulators;
  - (l) for the Philippines, the Department of Finance, the Bangko Sentral ng Pilipinas, the Securities and Exchange Commission, and the Insurance Commission;
  - (m) for Singapore, the Monetary Authority of Singapore;
  - (n) for Thailand, the Ministry of Finance, the Bank of Thailand, the Securities and Exchange Commission, and the Office of Insurance Commission; and
  - (o) for Viet Nam, the Ministry of Industry and Trade, the State Bank of Viet Nam, and the Ministry of Finance.
2. A Party shall promptly notify the other Parties of any change of its contact point.

#### **Article 14: Dispute Settlement**

Panels established pursuant to Chapter 19 (Dispute Settlement) for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute.



## ANNEX 8B

### TELECOMMUNICATIONS SERVICES

#### Article 1: Definitions

For the purposes of this Annex:

- (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 networks or services, including a service supplier other than a supplier of public telecommunications networks or services;
- (c) **essential facilities** means facilities of a public telecommunications 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) **interconnection** means linking with suppliers providing public telecommunications networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier;
- (e) **international mobile roaming service** means a commercial mobile service provided pursuant to a commercial agreement between suppliers of public telecommunications networks or services that enables end users to use their home mobile handset or other device for voice, data, or messaging services while outside the territory in which the end user's home public telecommunications network is located;
- (f) **leased circuits** means telecommunications facilities between two or more designated points that are set aside for the dedicated use of, or availability to, particular users;

- (g) **licence** means any authorisation that a Party may require of a person, in accordance with its laws and regulations, in order for such a person to offer a telecommunications network or service, including concessions, permits, or registrations;<sup>1</sup>
- (h) **major supplier** means a supplier of public telecommunications networks or services that has the ability to materially affect the terms of participation, having regard to price and supply, in the relevant market for public telecommunications networks or services as a result of:
  - (i) control over essential facilities; or
  - (ii) use of its position in the market;
- (i) **non-discriminatory** means treatment no less favourable than that accorded to any other user of like public telecommunications networks or services in like circumstances;
- (j) **number portability** means the ability of an end user of public telecommunications services to retain the same telephone numbers when switching between the same category of suppliers of public telecommunications services;
- (k) **physical co-location** means access to space in order to install, maintain, or repair equipment at premises owned or controlled and used by a major supplier to supply public telecommunications services;
- (l) **public telecommunications network** means public telecommunications infrastructure used to provide public telecommunications services between and among defined network termination points;
- (m) **public telecommunications service** means any telecommunications service required, explicitly or in effect, by a Party to be offered to the public generally. Such services may include telegraph, telephone, telex, and data transmission typically involving the real-time transmission of customer-supplied information between two or more

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<sup>1</sup> For Thailand, concessions are excluded from the definition of “licence” until 2022.

defined points without any end-to-end change in the form or content of the customer's information;

- (n) **telecommunications** means the transmission and reception of signals by any electromagnetic means;
- (o) **telecommunications regulatory body** means any body or bodies responsible under the laws and regulations of a Party for the regulation of telecommunications; and
- (p) **user** means an end user or a supplier of public telecommunications networks or services.

## **Article 2: Scope**

1. This Annex shall apply to measures by a Party affecting trade in public telecommunications services, including:
  - (a) measures relating to access to and use of public telecommunications networks or services; and
  - (b) measures relating to obligations regarding suppliers of public telecommunications networks or services.
2. This Annex shall not apply to measures affecting the cable or broadcast distribution of radio or television programming, except to ensure that cable or broadcast service suppliers have access to and use of public telecommunications networks and services.
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 networks or services, other than the former Party's commitments under Chapter 8 (Trade in Services); or
  - (b) require a Party, or require a Party to oblige a service supplier under its jurisdiction, to establish, construct, acquire, lease, operate, or supply telecommunications networks or services not offered to the public generally.

### **Article 3: Approaches to Regulation**

1. The Parties recognise the value of competitive markets to deliver a wide choice in the supply of telecommunications services and to enhance consumer welfare, and that regulation may not be needed if there is effective competition. Accordingly, the Parties recognise that regulatory needs and approaches differ market by market, and that each Party may determine how to implement its obligations under this Annex.
2. In this respect, the Parties recognise that a Party may:
  - (a) engage in direct regulation either in anticipation of an issue that the Party expects may arise or to resolve an issue that has already arisen in the market; or
  - (b) rely on the role of market forces, particularly with respect to market segments that are, or are likely to be, competitive or that have low barriers to entry, such as services provided by suppliers of telecommunications services that do not own network facilities.
3. For greater certainty, a Party that refrains from engaging in regulation in accordance with this Article remains subject to the obligations under this Annex.

### **Article 4: Access and Use<sup>2</sup>**

1. Each Party shall ensure that any service supplier of another Party is accorded access to and use of public telecommunications networks and services, including leased circuits, offered in its territory or across its borders on a timely basis, and on terms and conditions that are reasonable, non-discriminatory, and transparent, *inter alia*, through paragraphs 2 through 6.
2. Subject to paragraphs 5 and 6, each Party shall ensure that service suppliers of another Party are permitted to:
  - (a) purchase or lease and attach terminal or other equipment which interfaces with a public telecommunications network and which is necessary to supply their services;

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<sup>2</sup> For greater certainty, this Article does not prohibit any Party from requiring a service supplier to obtain a licence to supply a public telecommunications network or service in its territory.

- (b) connect leased or owned circuits with public telecommunications networks and services or with circuits leased or owned by another service supplier;<sup>3</sup> and
  - (c) use operating protocols of their choice.
- 3. Each Party shall ensure that service suppliers of another Party may use public telecommunications networks and services for the movement of information in its territory or across its 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 measures that are necessary to ensure the security and confidentiality of messages and to protect the personal information of end users of public telecommunications networks or services, provided that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.
- 5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications networks and services, other than as necessary to:
  - (a) safeguard the public service responsibilities of suppliers of public telecommunications networks and services, in particular their ability to make their networks or services available to the public generally; or
  - (b) protect the technical integrity of public telecommunications networks or services.
- 6. Provided that they satisfy the criteria set out in paragraph 5, conditions for access to and use of public telecommunications networks and services may include:

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<sup>3</sup> For Viet Nam, networks authorised to establish for the purpose of carrying out, on a non-commercial basis, voice and data telecommunications between members of a closed user group can only directly interconnect with each other where approved in writing by the telecommunications regulatory body. Viet Nam shall ensure that, upon request, an applicant receives the reasons for the denial of an authorisation. Viet Nam shall review this requirement to obtain written approval within two years of the date of entry into force of this Agreement.

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

#### **Article 5: Number Portability<sup>4</sup>**

Each Party shall ensure that a supplier of public telecommunications services in its territory provides number portability for mobile services, to the extent technically and economically feasible, on a timely basis, and on terms and conditions that are reasonable and non-discriminatory.

#### **Article 6: Competitive Safeguards**

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

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<sup>4</sup> This Article shall not apply to Cambodia, Indonesia, Lao PDR, and Myanmar.

- (c) not making available to other suppliers of public telecommunications networks or services, on a timely basis, technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

### **Article 7: Treatment by Major Suppliers**

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

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

### **Article 8: Resale**

Each Party may determine, in accordance with its laws and regulations, which public telecommunications services must be offered for resale by a major supplier based on the need to promote competition or to benefit the long-term interests of end users. Where a Party has determined that a service must be offered for resale by a major supplier, that Party shall ensure that any major supplier in its territory does not impose unreasonable or discriminatory conditions or limitations on the resale of that service.

### **Article 9: Interconnection<sup>5</sup>**

#### **Obligations relating to suppliers of public telecommunications networks or services**

1. Each Party shall ensure that a supplier of public telecommunications networks or services in its territory provides interconnection with the suppliers of public telecommunications networks or services of another Party.

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<sup>5</sup> For greater certainty, the term "interconnection", as used in this Annex, does not include access to unbundled network elements.

2. Each Party shall ensure that a supplier of public telecommunications networks or services in its territory does not use or provide commercially sensitive or confidential information of, or relating to, users acquired as a result of interconnection arrangements other than for the purpose of providing these services.

### **Obligations relating to major suppliers**

3. Each Party shall ensure that a major supplier in its territory provides interconnection for the facilities and equipment of suppliers of public telecommunications networks and services of another Party at any technically feasible point in the major supplier's network. Such interconnection shall be provided:
  - (a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates;<sup>6</sup>
  - (b) of a quality no less favourable than that provided by the major supplier for its own like services, for like services of non-affiliated service suppliers, or for its subsidiaries or other affiliates;
  - (c) on a timely basis, and on terms and conditions (including technical standards and specifications) and at cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier of public telecommunications 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
  - (d) upon request, at points in addition to the network termination points offered to the majority of suppliers of public telecommunications networks and services, subject to charges that reflect the cost of construction of necessary additional facilities.
4. Each Party shall ensure that a major supplier in its territory provides suppliers of public telecommunications services of another Party with the opportunity to interconnect their facilities and equipment with those of the major supplier through at least

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<sup>6</sup> For greater certainty, interconnection rates may be commercially negotiated between suppliers of public telecommunications networks or services.



one of the following options:

- (a) a reference interconnection offer approved by the Party's telecommunications regulatory body or any other interconnection offer containing the rates, terms and conditions that the major supplier offers generally to suppliers of public telecommunications services;
  - (b) the terms and conditions of an interconnection agreement that is in effect; or
  - (c) a new interconnection agreement through commercial negotiation.
5. Each Party shall ensure that the procedures applicable for interconnection to a major supplier are made publicly available.
6. Each Party shall ensure that a major supplier in its territory makes publicly available either its interconnection agreements or reference interconnection offer or any other interconnection offer.

#### **Article 10: Provisioning and Pricing of Leased Circuit Services**

Each Party shall ensure that a major supplier in its territory provides suppliers of public telecommunications networks or services of another Party with leased circuit services that are public telecommunications services, on a timely basis, and on terms and conditions and at rates that are reasonable, non-discriminatory, and transparent.

#### **Article 11: Co-location**

1. Each Party shall ensure that a major supplier which has control over essential facilities in its territory allows suppliers of public telecommunications networks or services of another Party physical co-location of their equipment necessary for interconnection on a timely basis, and on terms and conditions (including technical feasibility and space availability where applicable) and at rates that are reasonable, non-discriminatory, and transparent.
2. Where physical co-location is not practical for technical reasons or because of space limitations, each Party shall endeavour to ensure that a major supplier in its territory provides an alternative solution, on a timely basis, and on terms and conditions and at

rates that are reasonable, non-discriminatory, and transparent.

3. A Party may determine, in accordance with its laws and regulations, which premises owned or controlled by major suppliers in its territory are subject to paragraphs 1 and 2, having regard to factors such as the state of competition in the market where co-location is required, and whether such premises can feasibly be economically or technically substituted in order to provide a competing service.

#### **Article 12: Independent Telecommunications Regulatory Body**

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

#### **Article 13: 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 14: Licensing**

1. Where a licence is required for the supply of public telecommunications networks or services, the Party shall ensure the public availability of:
  - (a) all the licensing criteria and procedures that it applies;<sup>7</sup>
  - (b) the period of time normally required to reach a decision concerning an application for a licence; and

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<sup>7</sup> For greater certainty, this subparagraph includes any fee for applying for or obtaining a licence.

- (c) the general terms and conditions of a licence.
2. The Party shall notify an applicant of the outcome of its application without undue delay after a decision has been taken.
  3. The Party shall ensure that, upon request, an applicant or a licensee is provided with the reasons for the:
    - (a) denial of a licence;
    - (b) imposition of supplier-specific conditions on a licence;
    - (c) refusal to renew a licence; or
    - (d) revocation of a licence.

#### **Article 15: Allocation and Use of Scarce Resources**

1. Each Party shall administer 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.

#### **Spectrum**

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. For greater certainty, a Party's measures allocating and assigning spectrum and managing frequency are not measures that are *per se* inconsistent with Article 8.5 (Market Access). Accordingly, each Party retains the right to establish and apply spectrum and frequency management policies that may have the effect of limiting the number of suppliers of public telecommunications networks or services, provided that the Party does so in a manner consistent with other provisions of Chapter 8 (Trade in Services). Such right includes the ability to allocate frequency bands, taking into account current and future needs and spectrum availability.
4. When making a spectrum allocation for commercial telecommunications services, each Party shall endeavour to rely on an open and transparent process that considers the public interest, including the promotion of competition. Each Party shall

endeavour to rely generally on market-based approaches in assigning spectrum for terrestrial commercial telecommunications services, if appropriate. In this regard, each Party may use mechanisms such as auctions, administrative incentive pricing, or unlicensed use, if appropriate, to assign spectrum for commercial use.

## **Numbers**

5. Each Party shall ensure that a supplier of public telecommunications networks or services of another Party established in the territory of the former Party is afforded access to telephone numbers in a non-discriminatory manner.

## **Article 16: Transparency**

1. Each Party shall endeavour to ensure that when its telecommunications regulatory body seeks input on a proposal for a law or regulation, that body provides relevant suppliers of public telecommunications networks or services of another Party operating in its territory an opportunity to comment.
2. Each Party shall ensure that relevant information on conditions affecting access to and use of public telecommunications networks or services is publicly available, including:
  - (a) tariffs and other terms and conditions of service;
  - (b) specifications of technical interfaces with such networks and services;
  - (c) information on bodies responsible for the preparation and adoption of standards affecting such access and use;
  - (d) conditions for attaching terminal or other equipment; and
  - (e) requirements for notification or licensing, if any.

## **Article 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 18: International Submarine Cable Systems**

Where a Party has authorised a supplier of public telecommunications networks or services in its territory to operate an international submarine cable system as a public telecommunications network or service, that Party shall ensure that such supplier accords the suppliers of public telecommunications networks or services of another Party reasonable and non-discriminatory treatment for access to the international submarine cable system.<sup>8, 9, 10</sup>

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<sup>8</sup> For greater certainty, a Party may determine the point at which access to the international submarine cable system is to be provided.

<sup>9</sup> For greater certainty, this Article does not prohibit a Party from requiring a supplier of public telecommunications networks or services to comply with relevant measures including licensing requirements, provided that such measures are not used as a means of avoiding the Party's obligations under this Article.

<sup>10</sup> For Viet Nam,

- (i) this Article shall only apply to the international submarine cable landing stations in its territory;
- (ii) this Article shall only apply to a major supplier that owns, controls, or operates the international submarine cable system including landing stations in its territory;
- (iii) co-location for international submarine cable landing stations owned, controlled, or operated by the major supplier in its territory shall exclude physical co-location; and
- (iv) this Article does not prohibit Viet Nam from requiring a supplier of public telecommunications networks or services to comply with relevant measures, including licensing requirements, provided that such measures are not used as a means of preventing access to the international submarine cable system.

## **Article 19: Unbundling of Network Elements**

Each Party shall endeavour to ensure that a major supplier in its territory offers access to network elements on an unbundled basis on terms and conditions that are reasonable, non-discriminatory, and transparent for the supply of public telecommunications services. A Party may determine the network elements required to be made available in its territory, and the suppliers that may obtain those elements, in accordance with its laws and regulations.<sup>11</sup>

## **Article 20: Access to Poles, Ducts, and Conduits**

1. Each Party shall endeavour to ensure that a major supplier in its territory provides access to poles, ducts, conduits, or any other structures as determined by the Party, owned or controlled by the major supplier, to suppliers of public telecommunications services of another Party in the Party's territory, on a timely basis, and on terms and conditions and at rates that are reasonable, non-discriminatory, and transparent, subject to technical feasibility.
2. A Party may determine, in accordance with its laws and regulations, the poles, ducts, conduits, or any other structures to which it requires major suppliers in its territory to provide access in accordance with paragraph 1. When the Party makes this determination, it shall take into account factors such as the competitive effect of lack of such access, whether such structures can be substituted in an economically or technically feasible manner in order to provide a competitive service, or other specified public interest factors.

## **Article 21: Flexibility in the Choice of Technology**

1. A Party shall not prevent suppliers of public telecommunications networks or services from having the flexibility to choose the technologies that they use to supply their services.
2. Notwithstanding paragraph 1, a Party may apply a measure that limits the technologies that a supplier of public telecommunications networks or services may use to supply its services, provided that the measure is designed to achieve a

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<sup>11</sup> For greater certainty, consistent with Article 3 (Approaches to Regulation), a Party may determine the manner in which it implements its obligations under this Article.

legitimate public policy objective and is not prepared, adopted, or applied in a manner that creates unnecessary obstacles to trade.

## **Article 22: International Mobile Roaming**

1. The Parties shall endeavour to cooperate on promoting transparent and reasonable rates for international mobile roaming services that can help promote the growth of trade among the Parties and enhance consumer welfare.
2. A Party may take steps to enhance transparency and competition with respect to international mobile roaming services, such as:
  - (a) ensuring that information regarding retail rates is easily accessible to consumers; and
  - (b) minimising impediments to roaming, whereby consumers when visiting the territory of a Party from the territory of another Party can access telecommunications services using the device of their choice.
3. The Parties recognise that a Party, where it has the authority to do so, may choose to promote competition with respect to international mobile roaming rates including through commercial arrangements, or to adopt or maintain measures affecting rates for wholesale or retail international roaming services with a view to ensuring that the rates are reasonable. If a Party considers it appropriate, it may cooperate on and implement mechanisms with other Parties to facilitate the implementation of those measures, including by entering into arrangements with those Parties.
4. If a Party (hereinafter referred to as “the first Party” in this paragraph) chooses to regulate rates or conditions for wholesale or retail international mobile roaming services, it shall ensure that a supplier of public telecommunications services of another Party (hereinafter referred to as “the second Party” in this paragraph) has access to the regulated rates or conditions for wholesale or retail international mobile roaming services for its customers roaming in the territory of the first Party if the second Party has entered into an arrangement with the first Party to reciprocally regulate rates or conditions for wholesale or retail international

mobile roaming services for suppliers of the two Parties.<sup>12</sup> The first Party may require suppliers of the second Party to fully utilise commercial negotiations to reach agreement on the terms for accessing such rates or conditions.

5. A Party that ensures access to regulated rates or conditions for wholesale or retail international mobile roaming services in accordance with paragraph 4, shall be deemed to be in compliance with Article 8.6 (Most-Favoured-Nation Treatment), Article 4 (Access and Use), and Article 7 (Treatment by Major Suppliers), with respect to international mobile roaming services.
6. Nothing in this Article shall require a Party to regulate rates or conditions for international mobile roaming services.

### **Article 23: Resolution of Telecommunications Disputes**

1. Each Party shall ensure that a supplier of public telecommunications networks or services of another Party may have timely recourse to its telecommunications regulatory body or dispute resolution body to resolve disputes arising under this Annex in accordance with its laws and regulations.
2. Each Party shall ensure that any supplier of public telecommunications networks or services aggrieved by a final determination or decision of its relevant telecommunications

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<sup>12</sup> For greater certainty:

- (a) no Party shall, solely on the basis of any obligations owed to it by the first Party under a most-favoured-nation provision, or under a telecommunications-specific non-discrimination provision, in any international trade agreement, seek or obtain for its suppliers the access to regulated rates or conditions for wholesale or retail international mobile roaming services that is provided under this Article.
- (b) access to the rates or conditions regulated by the first Party shall be available to a supplier of the second Party only if the regulated rates or conditions are reasonably comparable to those reciprocally regulated under the arrangement. The telecommunications regulatory body of the first Party shall, in the case of a disagreement, determine whether the rates or conditions are reasonably comparable. For the purposes of this footnote, "rates or conditions that are reasonably comparable" means rates or conditions agreed to be such by the relevant suppliers or, in the case of a disagreement, determined to be such by the telecommunications regulatory body of the first Party.



regulatory body may obtain a review of such determination or decision in accordance with its laws and regulations.

3. No Party shall permit the making of an application for review to constitute grounds for non-compliance with the determination or decision of its telecommunications regulatory body, unless its relevant body determines otherwise.

## **ANNEX 8C**

### **PROFESSIONAL SERVICES**

1. Each Party shall consult with relevant bodies in its territory to seek to identify professional services where two or more Parties are mutually interested in establishing dialogue on issues that relate to the recognition of professional qualifications, licensing, or registration.
2. Each Party shall encourage its relevant bodies to establish dialogues with the relevant bodies of another Party or Parties, with a view to recognising professional qualifications and facilitating licensing or registration procedures.
3. Each Party shall encourage its relevant bodies to negotiate with the relevant bodies of another Party or Parties on any form of arrangements for the mutual recognition of professional qualifications, licensing, or registration in professional services sectors of mutual interest.
4. Each Party shall encourage its relevant bodies to take into account agreements that relate to professional services in the development of agreements on the recognition of professional qualifications, licensing, and registration.
5. A Party may consider, if feasible, based on a foreign service supplier's home licence or recognised professional body membership, without the need for further written examination:
  - (a) taking steps to implement a temporary or project specific licensing or registration regime; or
  - (b) granting such licence or registration, if appropriate.

That temporary or limited licence regime should not operate to prevent a foreign service supplier from gaining a local licence once that service supplier satisfies the applicable local licensing requirements.

6. To facilitate the activities referred to in paragraphs 1 through 3, each Party shall encourage its relevant bodies to work towards the development of mutually acceptable professional standards and criteria in mutually accepted areas, which may include:

- (a) education;
  - (b) examinations;
  - (c) experience;
  - (d) conduct and ethics;
  - (e) professional development and re-certification;
  - (f) scope of practice;
  - (g) local knowledge; and
  - (h) consumer protection.
7. On request of another Party, the requested Party shall, where practicable, provide information concerning standards and criteria for the licensing and certification of professional service suppliers, or otherwise provide information relating to the appropriate regulatory or other body to consult regarding these standards and criteria.
8. Each Party shall encourage its relevant bodies to refer to international frameworks, where applicable, in developing common standards and criteria for the relevant professions.
9. The Parties may periodically review the implementation of this Annex through the Committee on Services and Investment.