ASEAN COMPREHENSIVE INVESTMENT AGREEMENT

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

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

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

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

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

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

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

HAVE AGREED as follows:

SECTION A

Article 1
Objective

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

(a) progressive liberalisation of the investment regimes of Member States;

(b) provision of enhanced protection to investors of all Member States and their investments;

(c) improvement of transparency and predictability of investment rules, regulations and procedures conducive to increased investment among Member States;

(d) joint promotion of the region as an integrated investment area; and

(e) cooperation to create favourable conditions for investment by investors of a Member State in the territory of the other Member States.

Article 2
Guiding Principles

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

(a) provide for investment liberalisation, protection, investment promotion and facilitation;

(b) progressive liberalisation of investment with a view towards achieving a free and open investment environment in the region;

(c) benefit investors and their investments based in ASEAN;

(d) maintain and accord preferential treatment among Member States;

(e) no back-tracking of commitments made under the AIA Agreement and the ASEAN IGA;

(f) grant special and differential treatment and other flexibilities to Member States depending on their level of development and sectoral sensitivities;

(g) reciprocal treatment in the enjoyment of concessions among Member States, where appropriate; and

(h) accommodate expansion of scope of this Agreement to cover other sectors in the future.

Article 3
Scope of Application

1. This Agreement shall apply to measures adopted or maintained by a Member State relating to:

(a) investors of any other Member State; and

(b) investments, in its territory, of investors of any other Member State.

2. This Agreement shall apply to existing investments as at the date of entry into force of this Agreement as well as to investments made after the entry into force of this Agreement.

3. For the purpose of liberalisation and subject to Article 9 (Reservations), this Agreement shall apply to the following sectors:

(a) manufacturing;

(b) agriculture;

(c) fishery;

(d) forestry;

(e) mining and quarrying;

(f) services incidental to manufacturing, agriculture, fishery, forestry, mining and quarrying; and

(g) any other sectors, as may be agreed upon by all Member States.

4. This Agreement shall not apply to:

(a) any taxation measures, except for Articles 13 (Transfers) and 14 (Expropriation and Compensation);

(b) subsidies or grants provided by a Member State;

(c) government procurement;

(d) services supplied in the exercise of governmental authority by the relevant body or authority of a Member State. For the purposes of this Agreement, a service supplied in the exercise of governmental authority means any service, which is supplied neither on a commercial basis nor in competition with one or more service suppliers; and

(e) measures adopted or maintained by a Member State affecting trade in services under the ASEAN Framework Agreement on Services signed in Bangkok, Thailand on 15 December 1995 ("AFAS").

5. Notwithstanding sub-paragraph 4 (e), for the purpose of protection of investment with respect to the commercial presence mode of service supply, Articles 11 (Treatment of Investment), 12 (Compensation in Cases of Strife), 13 (Transfers), 14 (Expropriation and Compensation) and 15 (Subrogation) and Section B (Investment Disputes Between an Investor and a Member State), shall apply, *mutatis mutandis*, to any measure affecting the supply of a service by a service supplier of a Member State through commercial presence in the territory of any other Member State but only to the extent that they relate to an investment and obligation under this Agreement regardless of whether or not such service sector is scheduled in the Member States' schedule of commitments made under AFAS.

6. Nothing in this Agreement shall affect the rights and obligations of any Member State under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.

Article 4
Definitions

For the purpose of this Agreement:

(a) "**covered investment**" means, with respect to a Member State, an investment in its territory of an investor of any other Member State in existence as of the date of entry into force of this Agreement or established, acquired or expanded thereafter, and has been admitted according to its laws, regulations, and national policies, and where applicable, specifically approved in writing[1] by the competent authority of a Member State;

(b) "**freely usable currency**" means a freely usable currency as determined by the International Monetary Fund ("IMF") under its Articles of Agreement and any amendments thereto;

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

(c) "**investment**"[2] means every kind of asset, owned or controlled, by an investor, including but not limited to the following:

(i) movable and immovable property and other property rights such as mortgages, liens or pledges;

(ii) shares, stocks, bonds and debentures and any other forms of participation in a juridical person and rights or interest derived therefrom;

(iii) intellectual property rights which are conferred pursuant to the laws and regulations of each Member State;

(iv) claims to money or to any contractual performance related to a business and having financial value;[3]

(v) rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts; and

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

[3] For greater certainty, investment does not mean claims to money that arise solely from:
(a) commercial contracts for sale of goods or services; or
(b) the extension of credit in connection with such commercial contracts.

(vi) business concessions required to conduct economic activities and having financial value conferred by law or under a contract, including any concessions to search, cultivate, extract or exploit natural resources.

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

(d) “**investor**” means a natural person of a Member State or a juridical person of a Member State that is making, or has made an investment in the territory of any other Member State;

(e) “**juridical person**” means any legal entity duly constituted or otherwise organised under the applicable law of a Member State, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any enterprise, corporation, trust, partnership, joint venture, sole proprietorship, association, or organisation;

(f) “**measures**” means any measure of a Member State, whether in the form of laws, regulations, rules, procedures, decisions, and administrative actions or practice, adopted or maintained by:

(i) central, regional or local government or authorities; or

(ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

(g) "**natural person**" means any natural person possessing the nationality or citizenship of, or right of permanent residence in the Member State in accordance with its laws, regulations and national policies;

(h) "**newer ASEAN Member States**" means the Kingdom of Cambodia, the Lao People's Democratic Republic, the Union of Myanmar and the Socialist Republic of Viet Nam;

(i) "**WTO**" means the World Trade Organization; and

(j) "**WTO Agreement**" means the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh, Morocco on 15 April 1994, as may be amended.

Article 5
National Treatment

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

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

Article 6
Most-Favoured-Nation Treatment[4]

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

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

3. Paragraphs 1 and 2 shall not be construed so as to oblige a Member State to extend to investors or investments of other Member States the benefit of any treatment, preference or privilege resulting from:

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[4] For greater certainty:
(a) this Article shall not apply to investor-State dispute settlement procedures that are available in other agreements to which Member States are party; and
(b) in relation to investments falling within the scope of this Agreement, any preferential treatment granted by a Member State to investors of any other Member State or a non-Member State and to their investments, under any existing or future agreements or arrangements to which a Member State is a party shall be extended on a most-favoured-nation basis to all Member States.

(a) any sub-regional arrangements between and among Member States;[5] or

(b) any existing agreement notified by Member States to the AIA Council pursuant to Article 8(3) of the AIA Agreement.[6]

Article 7
Prohibition of Performance Requirements

1. The provisions of the Agreement on Trade-Related Investment Measures in Annex 1A to the WTO Agreement (TRIMs), which are not specifically mentioned in or modified by this Agreement, shall apply, *mutatis mutandis*, to this Agreement.

2. Member States shall undertake joint assessment on performance requirements no later than 2 years from the date of entry into force of this Agreement. The aim of such assessment shall include reviewing existing performance requirements and considering the need for additional commitments under this Article.

3. Non-WTO Members of ASEAN shall abide by the WTO provisions in accordance with their accession commitments to the WTO.

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[5] For greater certainty, sub-regional arrangements between and among Member States shall include but not be limited to Greater Mekong Sub-region ("GMS"), ASEAN Mekong Basin Development Cooperation ("AMBDC"), Indonesia-Malaysia-Thailand Growth Triangle ("IMT-GT"), Indonesia-Malaysia-Singapore Growth Triangle ("IMS-GT"), Brunei-Indonesia-Malaysia-Philippines East ASEAN Growth Area ("BIMP-EAGA").

[6] This sub-paragraph refers to the Treaty of Amity and Economic Relations between the Kingdom of Thailand and the United States of America signed in Bangkok, Thailand on 29 May 1966.

Article 8
Senior Management and Board of Directors

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

2. A Member State may require that a majority of the board of directors of a juridical person of that Member State, be of a particular nationality, or resident in the territory of the Member State, provided that this requirement does not materially impair the ability of the investor to exercise control over its investment.

Article 9
Reservations

1. Articles 5 (National Treatment) and 8 (Senior Management and Board of Directors) shall not apply to:

(a) any existing measure that is maintained by a Member State at:

(i) the central level of government, as set out by that Member State in its reservation list in the Schedule referred to in paragraph 2;

(ii) the regional level of government, as set out by that Member State in its reservation list in the Schedule referred to in paragraph 2; and

(iii) a local level of government;

(b) the continuation or prompt renewal of any reservations referred to sub-paragraph (a).

2. Each Member State shall submit its reservation list to the ASEAN Secretariat for the endorsement of the AIA Council within 6 months after the date of signing of this Agreement. This list shall form a Schedule to this Agreement.

3. Any amendment or modification to any reservations contained in the Schedule referred to in paragraph 2 shall be in accordance with Article 10 (Modification of Commitments).

4. Each Member State shall reduce or eliminate the reservations specified in the Schedule in accordance with the three phases of the Strategic Schedule of the AEC Blueprint and Article 46 (Amendments).

5. Articles 5 (National Treatment) and 6 (Most-Favoured-Nation Treatment) shall not apply to any measure covered by an exception to, or derogation from, the obligations under Articles 3 and 4 of the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement, as may be amended ("TRIPS Agreement"), as specifically provided in those Articles and in Article 5 of the TRIPS Agreement.

Article 10
Modification of Commitments

1. For a period of 12 months after the date of submission of each Member State's reservation list, a Member State may adopt any measures or modify any of its reservations made in the Schedule under Article 9 (Reservations) for prospective applications to investors of any other Member States and their investments, provided that such measures or modification shall not adversely affect any existing investors and investments.

2. After the expiration of the period referred to in paragraph 1, a Member State may, by negotiation and

agreement with any other Member States to which it made commitments under this Agreement, adopt any measure, or modify or withdraw such commitments and reservations, provided that such measure, modification or withdrawal shall not adversely affect any existing investors or investments.[7]

3. In any such negotiations and agreement referred to in paragraph 2, which may include provisions for compensatory adjustments with respect to other sectors, the Member States concerned shall maintain a general level of reciprocal and mutually advantageous commitments and reservations that is not less favourable to investors and investments than that provided for in this Agreement prior to such negotiations and agreements.

4. Notwithstanding paragraphs 1 and 2, a Member State shall not, under any measure adopted pursuant to this Article after the entry into force of this Agreement, require an investor of any other Member State, by reason of that investor's nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective, unless otherwise specified in the initial approval by the relevant authorities.

Article 11
Treatment of Investment

1. Each Member State shall accord to covered investments of investors of any other Member State, fair and equitable treatment and full protection and security.

2. For greater certainty:

[7] For the avoidance of doubt, Member States shall not adopt any measures or modify any of its reservation under the Schedule for a period of 6 months after the expiration of the period specified in paragraph 1.

(a) fair and equitable treatment requires each Member State not to deny justice in any legal or administrative proceedings in accordance with the principle of due process; and

(b) full protection and security requires each Member State to take such measures as may be reasonably necessary to ensure the protection and security of the covered investments.

3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

Article 12
Compensation in Cases of Strife

Each Member State shall accord to investors of any other Member State, in relation to their covered investments which suffered losses in its territory due to armed conflict or civil strife or state of emergency, non-discriminatory treatment with respect to restitution, compensation or other valuable consideration.

Article 13
Transfers

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

(a) contributions to capital, including the initial contribution;

(b) profits, capital gains, dividends, royalties, license fees, technical assistance and technical and

management fees, interest and other current income accruing from any covered investment;

(c) proceeds from the total or partial sale or liquidation of any covered investment;

(d) payments made under a contract, including a loan agreement;

(e) payments made pursuant to Articles 12 (Compensation in Cases of Strife) and 14 (Expropriation and Compensation);

(f) payments arising out of the settlement of a dispute by any means including adjudication, arbitration or the agreement of the Member States to the dispute; and

(g) earnings and other remuneration of personnel employed and allowed to work in connection with that covered investment in its territory.

2. Each Member State shall allow transfers relating to a covered investment to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.

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

(a) bankruptcy, insolvency, or the protection of the rights of creditors;

(b) issuing, trading, or dealing in securities, futures, options, or derivatives;

(c) criminal or penal offences and the recovery of the proceeds of crime;

(d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings;

(f) taxation;

(g) social security, public retirement, or compulsory savings schemes;

(h) severance entitlements of employees; and

(i) the requirement to register and satisfy other formalities imposed by the Central Bank and other relevant authorities of a Member State.

4. Nothing in this Agreement shall affect the rights and obligations of the Member States as members of the IMF, under the Articles of Agreement of the IMF, including the use of exchange actions which are in conformity with the Articles of Agreement of the IMF, provided that a Member State shall not impose restrictions on any capital transactions inconsistently with its specific commitments under this Agreement regarding such transactions, except:

(a) at the request of the IMF;

(b) under Article 16 (Measures to Safeguard the Balance-of-Payments); or

(c) where, in exceptional circumstances, movements of capital cause, or threaten to cause, serious economic or financial disturbance in the Member State concerned.

5. The measures taken in accordance with sub-paragraph 4(c)[8]:

(a) shall be consistent with the Articles of Agreement of the IMF;

(b) shall not exceed those necessary to deal with the circumstances described in sub-paragraph 4(c);

(c) shall be temporary and shall be eliminated as soon as conditions no longer justify their institution or maintenance**;**

(d) shall promptly be notified to the other Member States;

(e) shall be applied such that any one of the other Member States is treated no less favourably than any other Member State or non-Member State;

(f) shall be applied on a national treatment basis; and

(g) shall avoid unnecessary damage to investors and covered investments, and the commercial, economic and financial interests of the other Member State(s).

[8] For greater certainty, any measures taken to ensure the stability of the exchange rate including to prevent speculative capital flows shall not be adopted or maintained for the purpose of protecting a particular sector.

Article 14
Expropriation and Compensation[9]

1. A Member State shall not expropriate or nationalise a covered investment either directly or through measures equivalent to expropriation or nationalisation ("expropriation"),[10] except:

(a) for a public purpose;

(b) in a non-discriminatory manner;

(c) on payment of prompt, adequate, and effective compensation; and

(d) in accordance with due process of law.

2. The compensation referred to in sub-paragraph 1(c) shall:

(a) be paid without delay;[11]

(b) be equivalent to the fair market value of the expropriated investment immediately before or at the time when the expropriation was publicly announced, or when the expropriation occurred, whichever is applicable;

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[9] This Article shall be read with Annex 2 (Expropriation and Compensation).

[10] For the avoidance of doubt, any measure of expropriation relating to land shall be as defined in the Member States' respective existing domestic laws and regulations and any amendments thereto, and shall be for the purposes of and upon payment of compensation in accordance with the aforesaid laws and regulations.

[11] Member States understand that there may be legal and administrative processes that need to be observed before payment can be made.

(c) not reflect any change in value because the intended expropriation had become known earlier; and

(d) be fully realisable and freely transferable in accordance with Article 13 (Transfers) between the territories of the Member States.

3. In the event of delay, the compensation shall include an appropriate interest in accordance with the laws and regulations of the Member State making the expropriation. The compensation, including any accrued interest, shall be payable either in the currency in which the investment was originally made or, if requested by the investor, in a freely usable currency.

4. If an investor requests payment in a freely useable currency, the compensation referred to in sub-paragraph 1(c), including any accrued interest, shall be converted into the currency of payment at the market rate of exchange prevailing on the date of payment.

5. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights in accordance with the TRIPS Agreement.

Article 15
Subrogation

1. If a Member State or an agency of a Member State makes a payment to an investor of that Member State under a guarantee, a contract of insurance or other form of indemnity it has granted on non-commercial risk in respect of an investment, the other Member State shall recognise the subrogation or transfer of any right or title in respect of such investment. The subrogated or transferred right or claim shall not be greater than the original right or claim of the

investor. This, however, does not necessarily imply recognition of the latter Member State of the merits of any case or the amount of any claims arising therefrom.

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

3. In the exercise of subrogated rights or claims, a Member State or the agency of the Member State exercising such rights or claims shall disclose the coverage of the claims arrangement with its investors to the relevant Member State.

Article 16
Measures to Safeguard the Balance-of-Payments

1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a Member State may adopt or maintain restrictions on payments or transfers related to investments. It is recognised that particular pressures on the balance-of-payments of a Member State in the process of economic development may necessitate the use of restrictions to ensure, *inter alia*, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development.

2. The restrictions referred to in paragraph 1 shall:

   (a) be consistent with the Articles of Agreement of the IMF;

(b) avoid unnecessary damage to the commercial, economic and financial interests of another Member State;

(c) not exceed those necessary to deal with the circumstances described in paragraph 1;

(d) be temporary and be phased out progressively as the situation specified in paragraph 1 improves;

(e) be applied such that any one of the other Member States is treated no less favourably than any other Member State or non-Member State.

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

4. To the extent that it does not duplicate the process under WTO, IMF, or any other similar processes, the Member State adopting any restrictions under paragraph 1 shall commence consultations with any other Member State that requests such consultations in order to review the restrictions adopted by it.

Article 17
General Exceptions

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Member States or their investors where like conditions prevail, or a disguised restriction on investors of any other Member State and their investments, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Member State of measures:

(a) necessary to protect public morals or to maintain public order;[12]

(b) necessary to protect human, animal or plant life or health;

(c) necessary to secure compliance with laws or regulations which are not inconsistent with this Agreement, including those relating to:

(i) the prevention of deceptive and fraudulent practices to deal with the effects of a default on a contract;

(ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;

(iii) safety;

(d) aimed at ensuring the equitable or effective[13] imposition or collection of direct taxes in respect of investments or investors of any Member State;

(e) imposed for the protection of national treasures of artistic, historic or archaeological value;

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[12] The public order exception may be invoked by a Member State only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

[13] For the purpose of this sub-paragraph, footnote 6 of Article XIV of the General Agreement on Trade in Services in Annex 1B to the WTO Agreement (GATS) is incorporated into and forms an integral part of this Agreement, *mutatis mutandis*.

(f) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.

2. Insofar as measures affecting the supply of financial services are concerned, paragraph 2 (Domestic Regulation) of the Annex on Financial Services of the General Agreement on Trade in Services in Annex 1B to the WTO Agreement ("GATS") shall be incorporated into and form an integral part of this Agreement, *mutatis mutandis*.

Article 18
Security Exceptions

Nothing in this Agreement shall be construed:

(a) to require any Member State to furnish any information, the disclosure of which it considers contrary to its essential security interests; or

(b) to prevent any Member State from taking any action which it considers necessary for the protection of its essential security interests, including but not limited to:

(i) action relating to fissionable and fusionable materials or the materials from which they derived;

(ii) action relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;

(iii) action taken in time of war or other emergency in domestic or international relations;

(iv) action taken so as to protect critical public infrastructure, including communication, power and water infrastructures, from deliberate attempts intended to disable or degrade such infrastructure; or

(c) to prevent any Member State from taking any action pursuant to its obligations under the United Nations Charter for the maintenance of international peace and security.

Article 19
Denial of Benefits

1. A Member State may deny the benefits of this Agreement to:

(a) an investor of another Member State that is a juridical person of such other Member State and to investments of such investor if an investor of a non-Member State owns or controls the juridical person and the juridical person has no substantive business operations in the territory of such other Member State;

(b) an investor of another Member State that is a juridical person of such other Member State and to investments of such investor if an investor of the denying Member State owns or controls the juridical person and the juridical person has no substantive business operations in the territory of such other Member State; and

(c) an investor of another Member State that is a juridical person of such other Member State and to an investment of such investor if investors of a non-Member State own or control the juridical person, and the denying Member State does not maintain diplomatic relations with the non-Member State.

2. Following notification to the Member State of the investor, and without prejudice to paragraph 1, a Member State may deny the benefits of this Agreement to investors of another Member State and to investments of that investor, where it establishes that such investor has made an investment in breach of the domestic laws of the denying Member State by misrepresenting its ownership in those areas of investment which are reserved for natural or juridical persons of the denying Member State.

3. A juridical person is:

(a) “owned” by an investor in accordance with the laws, regulations and national policies of each Member States;

(b) “controlled” by an investor if the investor has the power to name a majority of its directors or otherwise to legally direct its actions.

Article 20
Special Formalities and Disclosure of Information

1. Nothing in Articles 5 (National Treatment) or 6 (Most-Favoured-Nation Treatment) shall be construed to prevent a Member State from adopting or maintaining a measure that prescribes special formalities in connection with investments, including a requirement that investments be legally constituted or assume a certain legal form under the laws or regulations of the Member State and compliance with

registration requirements, provided that such formalities do not materially impair the rights afforded by a Member State to investors of another Member State and investments pursuant to this Agreement.

2. Notwithstanding Articles 5 (National Treatment) or 6 (Most-Favoured-Nation Treatment), a Member State may require an investor of another Member State, or a covered investment, to provide information concerning that investment solely for informational or statistical purposes. The Member State shall protect any confidential information from any disclosure that would prejudice legitimate commercial interests or particular juridical persons, public or private or the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Member State from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

Article 21
Transparency

1. In order to achieve the objectives of this Agreement, each Member State shall:

(a) promptly and at least annually inform the AIA Council of any investment-related agreements or arrangements which it has entered into and where preferential treatment was granted;

(b) promptly and at least annually inform the AIA Council of the introduction of any new law or of any changes to existing laws, regulations or administrative guidelines, which significantly affect investments or commitments of a Member State under this Agreement;

(c) make publicly available, all relevant laws, regulations and administrative guidelines of general application that pertain to, or affect investments in the territory of the Member State; and

(d) establish or designate an enquiry point where, upon request of any natural person, juridical person or any other Member State, all information relating to the measures required to be published or made available under sub-paragraphs (b) and (c) may be promptly obtained.

2. Nothing in this Agreement shall require a Member State to furnish or allow access to any confidential information, including information concerning particular investors or investments, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular juridical persons, public or private.

Article 22
Entry, Temporary Stay and Work of Investors and Key Personnel

Subject to its immigration and labour laws, regulations and national policies relating to the entry, temporary stay and authorisation to work, and consistent with its commitments under AFAS, each Member State shall grant entry, temporary stay and authorisation to work to investors, executives, managers and members of the board of directors of a juridical person of any other Member State, for the purpose of establishing, developing, administering or advising on the operation in the territory of the former Member State of an investment to which they, or a juridical person of the other Member States that employs such

executives, managers and members of the board of directors, have committed or are in the process of committing a substantial amount of capital or other resources.

Article 23
Special and Differential Treatment for the Newer ASEAN Member States

In order to increase the benefits of this Agreement for the newer ASEAN Member States, and in accordance with the objectives and principles set out in the Preamble and Articles 1 (Objective) and 2 (Guiding Principles), Member States recognise the importance of according special and differential treatment to the newer ASEAN Member States, through:

(a) technical assistance to strengthen their capacity in relation to investment policies and promotion, including in areas such as human resource development;

(b) commitments in areas of interest to the newer ASEAN Member States; and

(c) recognising that commitments by each newer ASEAN Member State may be made in accordance with its individual stage of development.

Article 24
Promotion of Investment

Member States shall cooperate in increasing awareness of ASEAN as an integrated investment area in order to increase foreign investment into ASEAN and intra-ASEAN investments through, among others:

(a) encouraging the growth and development of ASEAN small and medium enterprises and multi-national enterprises;

(b) enhancing industrial complementation and production networks among multi-national enterprises in ASEAN;

(c) organising investment missions that focus on developing regional clusters and production networks;

(d) organising and supporting the organisation of various briefings and seminars on investment opportunities and on investment laws, regulations and policies; and

(e) conducting exchanges on other issues of mutual concern relating to investment promotion.

Article 25
Facilitation of Investment

Member States shall endeavour to cooperate in the facilitation of investments into and within ASEAN through, among others:

(a) creating the necessary environment for all forms of investments;

(b) streamlining and simplifying procedures for investment applications and approvals;

(c) promoting dissemination of investment information, including investment rules, regulations, policies and procedures;

(d) establishing one-stop investment centres;

(e) strengthening databases on all forms of investments for policy formulation to improve ASEAN's investment environment;

(f) undertaking consultation with the business community on investment matters; and

(g) providing advisory services to the business community of the other Member States.

Article 26
Enhancing ASEAN Integration

Member States recognise the importance of fostering ASEAN economic integration through various initiatives, including the Initiative for ASEAN Integration, Priority Integration Sectors, and AEC, all of which include cooperation on investment. In order to enhance ASEAN economic integration, Member States shall endeavour to, among others:

(a) harmonise, where possible, investment policies and measures to achieve industrial complementation;

(b) build and strengthen capacity of Member States, including human resource development, in the formulation and improvement of investment policies to attract investment;

(c) share information on investment policies and best practices, including promoted activities and industries; and

(d) support investment promotion efforts amongst Member States for mutual benefits.

Article 27
Disputes Between or Among Member States

The ASEAN Protocol on Enhanced Dispute Settlement Mechanism signed in Vientiane, Lao PDR on 29 November 2004, as amended, shall apply to the settlement of disputes concerning the interpretation or application of this Agreement.

SECTION B

Investment Dispute Between an Investor and a Member State

Article 28
Definitions

For the purpose of this Section:

(a) "**Appointing Authority**" means:

(i) in the case of arbitration under Article 33(1)(b) or (c), the Secretary-General of ICSID;

(ii) in the case of arbitration under Article 33(1)(d), the Secretary-General of the Permanent Court of Arbitration; or

(iii) in the case of arbitration under Article 33(1)(e) and (f), the Secretary-General, or a person holding equivalent position, of that arbitration centre or institution;

(b) "**disputing investor**" means an investor of a Member State that makes a claim on its own behalf under this Section, and where relevant, includes an investor of a Member State that makes a claim on behalf of a juridical person of the other Member State that the investor owns or controls;

(c) "**disputing Member State**" means a Member State against which a claim is made under this Section;

(d) "**disputing parties**" means a disputing investor and a disputing Member State;

(e) "**ICSID**" means the International Centre for Settlement of Investment Disputes;

(f) "**ICSID Additional Facility Rules**" means the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes;

(g) "**ICSID Convention**" means the Convention on the Settlement of Investment Disputes between States and National of other States, done at Washington, D.C., United States of America on 18 March 1965;

(h) "**New York Convention**" means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, United States of America on 10 June 1958;

(i) "**non-disputing Member State**" means the Member State of the disputing investor; and

(j) "**UNCITRAL Arbitration Rules**" means the arbitration rules of the United Nations Commission on International Trade Law, approved by the United Nations General Assembly on 15 December 1976.

Article 29
Scope of Coverage

1. This Section shall apply to an investment dispute between a Member State and an investor of another Member State that has incurred loss or damage by reason of an alleged breach of any rights conferred by this Agreement with respect to the investment of that investor.

2. A natural person possessing the nationality or citizenship of a Member State shall not pursue a claim against that Member State under this Section.

3. This Section shall not apply to claims arising out of events which occurred, or claims which have been raised prior to the entry into force of this Agreement.

4. Nothing in this Section shall be construed so as to prevent a disputing investor from seeking administrative or judicial settlement available within the country of a disputing Member State.

Article 30
Conciliation

1. The disputing parties may at any time agree to conciliation, which may begin at any time and be terminated at the request of the disputing investor at any time.

2. If the disputing parties agree, procedures for conciliation may continue while procedures provided for in Article 33 (Submission of a Claim) are in progress.

3. Proceedings involving conciliation and positions taken by the disputing parties during these proceedings shall be without prejudice to the rights of either disputing parties in any further proceedings under this Section.

Article 31
Consultations

1. In the event of an investment dispute, the disputing parties shall initially seek to resolve the dispute through consultation and negotiation, which may include the use of non-binding, third party procedures. Such consultations shall be initiated by a written request for consultations delivered by the disputing investor to the disputing Member State.

2. Consultations shall commence within 30 days of receipt by the disputing Member State of the request for consultations, unless the disputing parties otherwise agree.

3. With the objective of resolving an investment dispute through consultations, a disputing investor shall make all reasonable efforts to provide the disputing Member State, prior to the commencement of consultations, with information regarding the legal and factual basis for the investment dispute.

Article 32
Claim by an Investor of a Member State

If an investment dispute has not been resolved within 180 days of the receipt by a disputing Member State of a request for consultations, the disputing investor may, subject to this Section, submit to arbitration a claim:

(a) that the disputing Member State has breached an obligation arising under Articles 5 (National Treatment), 6 (Most-Favoured-Nation Treatment), 8 (Senior Management and Board of Directors), 11 (Treatment of Investment), 12 (Compensation in Cases of Strife), 13 (Transfers) and 14 (Expropriation and Compensation) relating to the management, conduct, operation or sale or other disposition of a covered investment; and

(b) that the disputing investor in relation to its covered investment has incurred loss or damage by reason of or arising out of that breach.

Article 33
Submission of a Claim

1. A disputing investor may submit a claim referred to in Article 32 (Claim by an Investor of a Member State) at the choice of the disputing investor:

(a) to the courts or administrative tribunals of the disputing Member State, provided that such courts or tribunals have jurisdiction over such claims; or

(b) under the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings,[14] provided that both the disputing Member State and the non-disputing Member State are parties to the ICSID Convention; or

[14] In the case of the Philippines, submission of a claim to ICSID and the ICSID Rules of Procedure for Arbitration Proceedings shall be subject to a written agreement between the disputing parties in the event that an investment dispute arises.

(c) under the ICSID Additional Facility Rules, provided that either of the disputing Member State or the non-disputing Member State is a party to the ICSID Convention; or

(d) under the UNCITRAL Arbitration Rules; or

(e) to the Regional Centre for Arbitration at Kuala Lumpur or any other regional centre for arbitration in ASEAN; or

(f) if the disputing parties agree, to any other arbitration institution,

provided that resort to any arbitration rules or fora under sub-paragraphs (a) to (f) shall exclude resort to the other.

2. A claim shall be deemed submitted to arbitration under this Section when the disputing investor's notice of or request for arbitration ("notice of arbitration") is received under the applicable arbitration rules.

3. The arbitration rules applicable under paragraph 1, as in effect on the date the claim or claims were submitted to arbitration under this Section, shall govern the arbitration except to the extent modified by this Agreement.

4. In relation to a specific investment dispute or class of disputes, the applicable arbitration rules may be waived, varied or modified by written agreement between the disputing parties. Such rules shall be binding on the relevant tribunal or tribunals established under this Section, and on individual arbitrators serving on such tribunals.

5. The disputing investor shall provide with the notice of arbitration:

(a) the name of the arbitrator that the disputing investor appoints; or

(b) the disputing investor's written consent for the Appointing Authority to appoint that arbitrator.

Article 34
Conditions and Limitations on Submission of a Claim

1. The dispute shall be submitted to arbitration under Article 33(1)(b) to (f) in accordance with this Section, and shall be conditional upon:

(a) the submission of the investment dispute to such arbitration taking place within 3 years of the time at which the disputing investor became aware, or should reasonably have become aware, of a breach of an obligation under this Agreement causing loss or damage to the disputing investor or a covered investment; and

(b) the disputing investor providing written notice, which shall be submitted at least 90 days before the claim is submitted, to the disputing Member State of its intent to submit the investment dispute to such arbitration and which briefly summarises the alleged breach of the disputing Member State under this Agreement (including the provisions alleged to have been breached) and the loss or damage allegedly caused to the disputing investor or a covered investment; and

(c) the notice of arbitration under Article 33(2) being accompanied by the disputing investor's written waiver of the disputing investor's right to initiate or continue any proceedings before the courts or administrative tribunals of the disputing Member State, or other dispute settlement procedures, of

any proceeding with respect to any measure alleged to constitute a breach referred to in Article 32 (Claim by an Investor of a Member State).

2. Notwithstanding sub-paragraph 1(c), the disputing investor shall not be prevented from initiating or continuing an action that seeks interim measures of protection for the sole purpose of preserving the disputing investor's rights and interests and does not involve the payment of damages or resolution of the substance of the matter in dispute, before the courts or administrative tribunals of the disputing Member State.

3. A Member State shall not give diplomatic protection, or bring an international claim, in respect of a dispute which one of its investors and the other Member State have consented to submit or have submitted to arbitration under this Section, unless such other Member State has failed to abide by and comply with the award rendered in such dispute. Diplomatic protection, for the purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

4. A disputing Member State shall not assert, as a defence, counter-claim, right of set-off or otherwise, that the disputing investor in relation to the covered investment has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of any alleged loss.

Article 35
Selection of Arbitrators

1. Unless the disputing parties otherwise agree, the tribunal shall comprise three arbitrators:

(a) one arbitrator appointed by each of the disputing parties; and

(b) the third arbitrator, who shall be the presiding arbitrator, appointed by agreement of the disputing parties. The third arbitrator shall be a national of a non-Member State which has diplomatic relations with the disputing Member State and non-disputing Member State, and shall not have permanent residence in either the disputing Member State or non-disputing Member State.

2. Any person appointed as an arbitrator shall have expertise or experience in public international law, international trade or international investment rules. An arbitrator shall be chosen strictly on the basis of objectivity, reliability, sound judgment and independence and shall conduct himself or herself on the same basis throughout the course of the arbitral proceedings.

3. Subject to Article 36 (Conduct of the Arbitration), if a tribunal has not been constituted within 75 days from the date that a claim is submitted to arbitration under this Section, the Appointing Authority, on the request of a disputing party, shall appoint, in his or her discretion, the arbitrator or arbitrators who have not been appointed.

4. The tribunal shall reach its decisions by a majority of votes and its decisions shall be binding.

5. The parties to the dispute shall bear the cost of their respective arbitrators to the tribunal and share equally the cost of the presiding arbitrator and other relevant costs. In all other respects, the tribunal shall determine its own procedures.

6. The disputing parties may establish rules relating to expenses incurred by the tribunal, including remuneration of the arbitrators.

7. Where any arbitrator appointed as provided for in this Article resigns or becomes unable to act, a successor shall be appointed in the same manner as prescribed for the appointment of the original arbitrator and the successor shall have all the powers and duties of the original arbitrator.

Article 36
Conduct of the Arbitration

1. Where issues relating to jurisdiction or admissibility are raised as preliminary objections, the tribunal shall decide the matter before proceeding to the merits.

2. A disputing Member State may, no later than 30 days after the constitution of the tribunal, file an objection that a claim is manifestly without merit. A disputing Member State may also file an objection that a claim is otherwise outside the jurisdiction or competence of the tribunal. The disputing Member State shall specify as precisely as possible the basis for the objection.

3. The tribunal shall address any such objection as a preliminary question apart from the merits of the claim. The disputing parties shall be given a reasonable opportunity to present their views and observations to the tribunal. If the tribunal decides that the claim is manifestly without merit, or is otherwise not within the jurisdiction or competence of the tribunal, it shall render an award to that effect.

4. The tribunal may, if warranted, award the prevailing party reasonable costs and fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claim or the objection was frivolous or manifestly without

merit, and shall provide the disputing parties a reasonable opportunity to comment.

5. Unless the disputing parties otherwise agree, the tribunal shall determine the place of arbitration in accordance with the applicable arbitration rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.

6. Where an investment dispute relate to a measure which may be a taxation measure, the disputing Member State and the non-disputing Member State, including representatives of their tax administrations, shall hold consultations to determine whether the measure in question is a taxation measure.

7. Where a disputing investor claims that the disputing Member State has breached Article 14 (Expropriation and Compensation) by the adoption or enforcement of a taxation measure, the disputing Member State and the non-disputing Member State shall, upon request from the disputing Member State, hold consultations with a view to determining whether the taxation measure in question has an effect equivalent to expropriation or nationalisation.

8. Any tribunal that may be established under this Section shall accord serious consideration to the decision of both Member States under paragraphs 6 and 7.

9. If both Member States fail either to initiate such consultations referred to paragraphs 6 and 7, or to make such joint decisions, within the period of 180 days from the date of the receipt of request for consultation referred to in Article 31 (Consultations), the disputing investor shall not be prevented from submitting its claim to arbitration in accordance with this Section.

Article 37
Consolidation

Where two or more claims have been submitted separately to arbitration under Article 32 (Claim by an Investor of a Member State) and the claims have a question of law or fact in common and arise out of the same or similar events or circumstances, all concerned disputing parties may agree to consolidate those claims in any manner they deem appropriate.

Article 38
Expert Reports

Without prejudice to the appointment of other kinds of experts where authorised by the applicable arbitration rules, the tribunal, at the request of the disputing parties, may appoint one or more experts to report to it in writing on any factual issue concerning environmental, public health, safety or other scientific matters raised by a disputing party in a proceeding, subject to such terms and conditions as the disputing parties may agree.

Article 39
Transparency of Arbitral Proceedings

1. Subject to paragraphs 2 and 3, the disputing Member State may make publicly available all awards, and decisions produced by the tribunal.

2. Any of the disputing parties that intend to use information designated as confidential information in a hearing shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect the information from disclosure.

3. Any information specifically designated as confidential that is submitted to the tribunal or the disputing parties shall be protected from disclosure to the public.

4. A disputing party may disclose to persons directly connected with the arbitral proceedings such confidential information as it considers necessary for the preparation of its case, but it shall require that such confidential information is protected.

5. The tribunal shall not require a Member State to furnish or allow access to information the disclosure of which would impede law enforcement or would be contrary to the Member State's law protecting Cabinet confidences, personal privacy or the financial affairs and accounts of individual customers of financial institutions, or which it determines to be contrary to its essential security.

6. The non-disputing Member State shall be entitled, at its cost, to receive from the disputing Member State a copy of the notice of arbitration, no later than 30 days after the date that such document has been delivered to the disputing Member State. The disputing Member State shall notify all other Member States of the receipt of the notice of arbitration within 30 days thereof.

Article 40
Governing Law

1. Subject to paragraphs 2 and 3, when a claim is submitted under Article 33 (Submission of a Claim), the tribunal shall decide the issues in dispute in accordance with this Agreement, any other applicable agreements between the Member States, and the applicable rules of international law and where applicable, any relevant domestic law of the disputing Member State.

2. The tribunal shall, on its own account or at the request of a disputing party, request a joint interpretation of any provision of this Agreement that is in issue in a dispute. The Member States shall submit in writing any joint decision declaring their interpretation to the tribunal within 60 days of the delivery of the request. Without prejudice to paragraph 3, if the Member States fail to issue such a decision within 60 days, any interpretation submitted by a Member State shall be forwarded to the disputing parties and the tribunal, which shall decide the issue on its own account.

3. A joint decision of the Member States, declaring their interpretation of a provision of this Agreement shall be binding on a tribunal, and any decision or award issued by a tribunal must be consistent with that joint decision.

Article 41
Awards

1. The disputing parties may agree on a resolution of the dispute at any time before the tribunal issues its final award.

2. Where a tribunal makes a final award against either of the disputing parties, the tribunal may award, separately or in combination, only:

(a) monetary damages and any applicable interest; and

(b) restitution of property, in which case the award shall provide that the disputing Member State may pay monetary damages and any applicable interest in lieu of restitution.

3. A tribunal may also award costs and attorney's fees in accordance with this Agreement and the applicable arbitration rules.

4. A tribunal may not award punitive damages.

5. An award made by a tribunal shall have no binding force except between the disputing parties and in respect of the particular case.

6. Subject to paragraph 7 and the applicable review procedure for an interim award, the disputing party shall abide by and comply with an award without delay.[15]

7. The disputing party may not seek enforcement of a final award until:

(a) in the case of a final award under the ICSID Convention:

(i) 120 days has elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award; or

(ii) revision or annulment proceedings have been completed;

(b) in the case of a final award under the ICSID Additional Facility Rules, the UNCITRAL Arbitration Rules, or the rules selected pursuant to Article 33(1)(e):

(i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside, or annul the award; or

[15] The Parties understand that there may be domestic legal and administrative processes that need to be observed before an award can be complied with.

(ii) a court has dismissed or allowed an application to revise, set aside, or annul the award and there is no further appeal.

8. A claim that is submitted for arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for purposes of Article 1 of the New York Convention.

9. Each Member State shall provide for the enforcement of an award in its territory.

SECTION C

Article 42
Institutional Arrangements

1. The AIA Council, as established by the AEM under the AIA Agreement, shall be responsible for the implementation of this Agreement.

2. The ASEAN Coordinating Committee on Investment ("CCI") as established by the AIA Council and comprising senior officials responsible for investment and other senior officials from relevant government agencies, shall assist the AIA Council in the performance of its functions. The CCI shall report to the AIA Council through the Senior Economic Officials Meeting ("SEOM"). The ASEAN Secretariat shall be the secretariat for the AIA Council and the CCI.

3. The functions of the AIA Council shall be to:

(a) provide policy guidance on global and regional investment matters concerning promotion, facilitation, protection, and liberalisation;

(b) oversee, coordinate and review the implementation of this Agreement;

(c) update the AEM on the implementation and operation of this Agreement;

(d) consider and recommend to the AEM any amendments to this Agreement;

(e) facilitate the avoidance and settlement of disputes arising from this Agreement;

(f) supervise and coordinate the work of the CCI;

(g) adopt any necessary decisions; and

(h) carry out any other functions as the AEM may agree.

Article 43
Consultations by Member States

The Member States agree to consult each other at the request of any Member State on any matter relating to investments covered by this Agreement, or otherwise affecting the implementation of this Agreement.

Article 44
Relation to Other Agreements

Nothing in this Agreement shall derogate from the existing rights and obligations of a Member State under any other international agreements to which it is a party.

Article 45
Annexes, Schedule and Future Instruments

This Agreement shall include the Annexes, the Schedule and the contents therein, which shall form an integral part of this Agreement, and all future legal instruments agreed pursuant to this Agreement.

Article 46
Amendments

The provisions of this Agreement may be modified through amendments mutually agreed upon in writing by the Member States.

Article 47
Transitional Arrangements Relating to the ASEAN IGA and the AIA Agreement

1. Upon the entry into force of this Agreement, the ASEAN IGA and the AIA Agreement shall be terminated.

2. Notwithstanding the termination of the AIA Agreement, the Temporary Exclusion List and the Sensitive List to the AIA Agreement shall apply to the liberalisation provisions of the ACIA, *mutatis mutandis*, until such time that the Reservation List of ACIA comes into force.

3. With respect to investments falling within the ambit of this Agreement as well as under the ASEAN IGA, or within the ambit of this Agreement and the AIA Agreement, investors of these investments may choose to apply the provisions, but only in its entirety, of either this Agreement or the ASEAN IGA or the AIA Agreement, as the case may be, for a period of 3 years after the date of termination of the ASEAN IGA and the AIA Agreement.

Article 48
Entry into Force

1. This Agreement shall enter into force after all Member States have notified or, where necessary, deposited instruments of ratification with the Secretary-General of ASEAN, which shall not take more than 180 days after the signing of this Agreement.

2. The Secretary-General of ASEAN shall promptly notify all Member States of the notifications or deposit of each instrument of ratification referred to in paragraph 1.

Article 49
Depositary

This Agreement shall be deposited with the Secretary-General of ASEAN, who shall promptly furnish a certified copy thereof to each Member State.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this ASEAN Comprehensive Investment Agreement.

DONE at Cha-am, Thailand, this 26th Day of February in the Year Two Thousand and Nine, in a single original copy in the English language.

For Brunei Darussalam:

LIM JOCK SENG
Second Minister of Foreign Affairs and Trade

For the Kingdom of Cambodia:

CHAM PRASIDH
Senior Minister and Minister of Commerce

For the Republic of Indonesia:

MARI ELKA PANGESTU
Minister of Trade

For the Lao People's Democratic Republic:

NAM VIYAKETH
Minister of Industry and Commerce

For Malaysia:

TAN SRI MUHYIDDIN YASSIN
Minister of International Trade and Industry

For the Union of Myanmar:

U SOE THA
Minister for National Planning and Economic Development

For the Republic of the Philippines:

PETER B. FAVILA
Secretary of Trade and Industry

For the Republic of Singapore:

LIM HNG KIANG
Minister for Trade and Industry

For the Kingdom of Thailand:

PORNTIVA NAKASAI
Minister of Commerce

For the Socialist Republic of Viet Nam:

VU HUY HOANG
Minister of Industry and Trade

ANNEX 1
Approval in Writing

Where specific approval in writing is required for covered investments by a Member State's domestic laws, regulations and national policies, that Member State shall:

(a) inform all the other Member States through the ASEAN Secretariat of the contact details of its competent authority responsible for granting such approval;

(b) in the case of an incomplete application, identify and notify the applicant in writing within 1 month from the date of receipt of such application of all the additional information that is required;

(c) inform the applicant in writing that the investment has been specifically approved or denied within 4 months from the date of receipt of complete application by the competent authority; and

(d) in the case an application is denied, inform the applicant in writing of the reasons for such denial. The applicant shall have the opportunity of submitting, at that applicant's discretion, a new application.

ANNEX 2
Expropriation and Compensation

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

2. Article 14(1) addresses two situations:

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

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

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

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

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

(c) the character of the government action, including, its objective and whether the action is disproportionate to the public purpose referred to in Article 14(1).

4. Non-discriminatory measures of a Member State that are designed and applied to protect legitimate public welfare objectives, such as public health, safety and the environment, do not constitute an expropriation of the type referred to in sub-paragraph 2(b).