

# 1998 FRAMEWORK AGREEMENT ON THE ASEAN INVESTMENT AREA

*Signed in Makati, Philippines on 7 October 1998*

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## 1998 FRAMEWORK AGREEMENT ON THE ASEAN INVESTMENT AREA

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The Governments of Brunei Darussalam, 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 Vietnam, Member States of the Association of South-East Asian Nations (ASEAN);

**REAFFIRMING** the importance of sustaining economic growth and development in all Member States through joint efforts in liberalising trade and promoting intra-ASEAN trade and investment flows enshrined in the Framework Agreement on Enhancing ASEAN Economic Co-operation signed in Singapore on 28 January 1992;

**RECALLING** the decision of the Fifth ASEAN Summit held on 15 December 1995 to establish an ASEAN Investment Area (hereinafter referred to as "AIA"), in order to enhance ASEAN's attractiveness and competitiveness for promoting direct investments;

**AFFIRMING** their commitment to the 1987 ASEAN Agreement for the Promotion and Protection of Investments and its 1996 Protocol to enhance investor confidence for investing in ASEAN;

**MINDFUL** of the decision to establish an ASEAN Free Trade Area (AFTA) and the implementation of the ASEAN Industrial Co-operation (AICO) Scheme, to encourage greater investment flows into the region;

**RECOGNISING** that direct investment is an important source of finance for sustaining the pace of economic, industrial, infrastructure and technology development; hence, the need to attract higher and sustainable level of direct investment flows in ASEAN;

**DETERMINED** to realise the vision of ASEAN to establish a competitive ASEAN Investment Area through a more liberal and transparent investment environment by 1st January 2010; and

**BEARING IN MIND** that the measures agreed upon to establish a competitive ASEAN Investment Area by 2010 shall contribute towards ASEAN Vision 2020.

**HAVE AGREED AS FOLLOWS:**

### ARTICLE 1 DEFINITION

For the purpose of this Agreement:

"ASEAN investor" means -

a national of a Member State; or

any juridical person of a Member State,

making an investment in another Member State, the effective ASEAN equity of which taken cumulatively with all other ASEAN equities fulfills at least the minimum percentage required to meet the national equity requirement and other equity requirements of domestic laws and published national policies, if any, of the host country in respect of that investment.

For the purpose of this definition, equity of nationals or juridical persons of any Member State shall be deemed to be the equity of nationals or juridical persons of the host country.

"effective ASEAN equity" in respect of an investment in an ASEAN Member State means ultimate holdings by nationals or juridical persons of ASEAN Member States in that investment. Where the shareholding/equity structure of an ASEAN investor makes it difficult to establish the ultimate holding structure, the rules and procedures for determining effective equity used by the Member State in which the ASEAN investor is investing may be applied. If necessary, the Co-ordinating Committee on Investment shall prepare guidelines for this purpose.

"juridical person" means any legal entity duly constituted or otherwise organised under applicable law of a Member State, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association.

"measures" means laws, regulations, rules, procedures, decisions, administrative actions, or any other actions affecting investments taken by Member States.

"national" means a natural person having the citizenship of a Member State in accordance with its applicable laws.

## **ARTICLE 2 COVERAGE**

This Agreement shall cover all direct investments other than -

portfolio investments; and

matters relating to investments covered by other ASEAN Agreements, such as the ASEAN Framework Agreement on Services.

## **ARTICLE 3 OBJECTIVES**

The objectives of this Agreement are:

- a. to establish a competitive ASEAN Investment Area with a more liberal and transparent investment environment amongst Member States in order to -
  - i. substantially increase the flow of investments into ASEAN from both ASEAN and non-ASEAN sources;
  - ii. jointly promote ASEAN as the most attractive investment area;
  - iii. strengthen and increase the competitiveness of ASEAN's economic sectors;
  - iv. progressively reduce or eliminate investment regulations and conditions which may impede investment flows and the operation of investment projects in ASEAN; and
- b. to ensure that the realisation of the above objectives would contribute towards free flow of investments by 2020.

## ARTICLE 4 FEATURES

The AIA shall be an area where:

- a. there is a co-ordinated ASEAN investment co-operation programme that will generate increased investments from ASEAN and non-ASEAN sources;
- b. national treatment is extended to ASEAN investors by 2010, and to all investors by 2020, subject to the exceptions provided for under this Agreement;
- c. all industries are opened for investment to ASEAN investors by 2010 and to all investors by 2020, subject to the exceptions provided for under this Agreement;
- d. the business sector has a larger role in the co-operation efforts in relation to investments and related activities in ASEAN; and
- e. there is freer flow of capital, skilled labour and professionals, and technology amongst Member States.

## ARTICLE 5 GENERAL OBLIGATIONS

To realise the objectives referred to in Article 3, the Member States shall:

- a. ensure that measures and programmes are undertaken on a fair and mutually beneficial basis;
- b. undertake appropriate measures to ensure transparency and consistency in the application and interpretation of their investment laws, regulations and administrative procedures in order to create and maintain a predictable investment regime in ASEAN;
- c. begin the process of facilitation, promotion and liberalisation which would contribute continuously and significantly to achieving the objective of a more liberal and transparent investment environment;
- d. take appropriate measures to enhance the attractiveness of the investment environment of Member States for direct investment flows; and
- e. take such reasonable actions as may be available to them to ensure observance of the provisions of this Agreement by the regional and local governments and authorities within their territories.

## ARTICLE 6 PROGRAMMES AND ACTION PLANS

1. Member States shall, for the implementation of the obligations under this Agreement, undertake the joint development and implementation of the following programmes:
  - a. co-operation and facilitation programme as specified in Schedule I;
  - b. promotion and awareness programme as specified in Schedule II; and
  - c. liberalisation programme as specified in Schedule III.

2. Member States shall submit Action Plans for the implementation of the programmes in paragraph 1 to the AIA Council established under Article 16 of this Agreement.
3. The Action Plans shall be reviewed every 2 years to ensure that the objectives of this Agreement are achieved.

## **ARTICLE 7 OPENING UP OF INDUSTRIES AND NATIONAL TREATMENT**

1. Subject to the provisions of this Article, each Member State shall:
  - a. open immediately all its industries for investments by ASEAN Investors;
  - b. accord immediately to ASEAN investors and their investments, in respect of all industries and measures affecting investment including but not limited to the admission, establishment, acquisition, expansion, management, operation and disposition of investments, treatment no less favourable than that it accords to its own like investors and investments ("national treatment").
2. Each Member State shall submit a Temporary Exclusion List and a Sensitive List, if any, within 6 months after the date of signing of this Agreement, of any industries or measures affecting investments (referred to in paragraph 1 above) with regard to which it is unable to open up or to accord national treatment to ASEAN investors. These lists shall form an annex to this Agreement. In the event that a Member State, for justifiable reasons, is unable to provide any list within the stipulated period, it may seek an extension from the AIA Council.
3. The Temporary Exclusion List shall be reviewed every 2 years and shall be progressively phased out by 2010 by all Member States except the Socialist Republic of Vietnam, the Lao People's Democratic Republic and the Union of Myanmar. The Socialist Republic of Vietnam shall progressively phase out the Temporary Exclusion List by 2013 and the Lao People's Democratic Republic and the Union of Myanmar shall progressively phase out their Temporary Exclusion Lists by 2015.
4. The Sensitive List shall be reviewed by 1 January 2003 and at such subsequent periodic intervals as may be decided by the AIA Council.

## **ARTICLE 8 MOST FAVOURED NATION TREATMENT**

1. Subject to Articles 7 and 9 of this Agreement, each Member State shall accord immediately and unconditionally to investors and investments of another Member State, treatment no less favourable than that it accords to investors and investments of any other Member State with respect to all measures affecting investment including but not limited to the admission, establishment, acquisition, expansion, management, operation and disposition of investments.
2. In relation to investments falling within the scope of this Agreement, any preferential treatment granted under any existing or future agreements or arrangements to which a Member State is a party shall be extended on the most favoured nation basis to all other Member States.
3. The requirement in paragraph 2 shall not apply to existing agreements or arrangements notified by Member States to the AIA Council within 6 months after the date of signing of this Agreement.

4. Nothing in paragraph 1 shall prevent any Member State from conferring special treatment or advantages to adjacent countries under growth triangles and other sub- regional arrangements between Member States.

## **ARTICLE 9 WAIVER OF MOST FAVOURED NATION TREATMENT**

1. Where a Member State is temporarily not ready to make concessions under Articles 7 of this Agreement, and another Member State has made concessions under the said Article, then the first mentioned Member State shall waive its rights to such concessions. However, if a Member State which grants such concessions is willing to forego the waiver, then the first mentioned Member State can still enjoy these concessions.
2. Having regard to the late entry into ASEAN of the Socialist Republic of Vietnam, the Lao People's Democratic Republic and the Union of Myanmar, the provisions of paragraph 1 of this Article shall only apply to the Socialist Republic of Vietnam for a period of 3 years, and the Lao People's Democratic Republic and the Union of Myanmar for a period of 5 years from the date this Agreement comes into force.

## **ARTICLE 10 MODIFICATION OF SCHEDULES, ANNEXES AND ACTION PLANS**

1. Any modification to Schedules I and II, and Action Plans thereof shall be subject to the approval of the Co-ordinating Committee on Investments (CCI) established under Article 16(4) of this Agreement.
2. Any modification to or withdrawal of any commitments in Schedule III and Action Plans thereof and the Annexes shall be subject to the consideration of the AIA Council in accordance with the provisions of the ASEAN Protocol on Notification Procedures

## **ARTICLE 11 TRANSPARENCY**

1. Each Member State shall make available to the AIA Council through publication or any other means, all relevant measures, laws, regulations and administrative guidelines which pertain to, or affect, the operation of this Agreement. This shall also apply to international agreements pertaining to or affecting investment to which a Member State is also a signatory.
2. Each Member State shall promptly and at least annually inform the AIA Council of the introduction of any new or any changes to existing laws, regulations or administrative guidelines which significantly affect investments or its commitments under this Agreement.
3. Nothing in this Agreement shall require any Member State to provide confidential information, 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 enterprises, public or private.

## **ARTICLE 12 OTHER AGREEMENTS**

1. Member States affirm their existing rights and obligations under the 1987 ASEAN Agreement for the Promotion and Protection of Investments and its 1996 Protocol. In the event that this Agreement provides for better or enhanced provisions over the said Agreement and its Protocol, then such provisions of this Agreement shall prevail.

2. This Agreement or any action taken under it shall not affect the rights and obligations of the Member States under existing agreements to which they are parties.
3. Nothing in this Agreement shall affect the rights of the Member States to enter into other agreements not contrary to the principles, objectives and terms of this Agreement.

## **ARTICLE 13 GENERAL EXCEPTIONS**

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on investment flows, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Member State of measures;

- a. necessary to protect national security and public morals;
- b. necessary to protect human, animal or plant life or health;
- c. necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:
  - i. the prevention of deceptive and fraudulent practices or to deal with the effects of a default on investment agreement.
  - 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 imposition or collection of direct taxes in respect of investments or investors of Member States.

## **ARTICLE 14 EMERGENCY SAFEGUARD MEASURES**

1. If, as a result of the implementation of the liberalisation programme under this Agreement, a Member state suffers or is threatened with any serious injury and threat, the Member State may take emergency safeguard measures to the extent and for such period as may be necessary to prevent or to remedy such injury. The measures taken shall be provisional and without discrimination.
2. Where emergency safeguard measures are taken pursuant to this Article, notice of such measure shall be given to the AIA Council within 14 days from the date such measures are taken.
3. The AIA Council shall determine the definition of serious injury and threat of serious injury and the procedures of instituting emergency safeguards measures pursuant to this Article.

## **ARTICLE 15 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 investments on which it has undertaken specific commitments, including on payments or transfers for transactions related to such

commitments. It is recognised that particular pressures on the balance of payments of a Member State in the process of economic development or economic transition 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 or economic transition.

2. Where measures to safeguard balance of payments are taken pursuant to this Article notice of such measures shall be given to the AIA Council within 14 days from the date such measures are taken.
3. The measures referred to in paragraph (1):
  - a. shall not discriminate among Member States;
  - b. shall be consistent with the Articles of Agreement of the International Monetary Fund;
  - c. shall avoid unnecessary damage to the commercial, economic and financial interests of any other Member State;
  - d. shall not exceed those necessary to deal with the circumstances described in paragraph 1; and
  - e. shall be temporary and be phased out progressively as the situation specified in paragraph 1 improves.
4. The Member States adopting the balance of payments measures shall commence consultations with the AIA Council and other Member States within 90 days from the date of notification in order to review the balance of payment measures adopted by it.
5. The AIA Council shall determine the rules applicable to the procedures under this Article.

## **ARTICLE 16 INSTITUTIONAL ARRANGEMENTS**

1. The ASEAN Economic Ministers (AEM) shall establish an ASEAN Investment Area Council (in this Agreement referred to as "the AIA Council") comprising the Ministers responsible for investment and the Secretary-General of ASEAN. The ASEAN Heads of Investment Agencies shall participate in the AIA Council meetings.
2. Notwithstanding Article 21 of this Agreement, the AIA Council shall be established upon the signing of this Agreement.
3. The AIA Council shall supervise, co-ordinate and review the implementation of this Agreement and assist the AEM in all matters relating thereto.
4. In the performance of its functions, the AIA Council shall establish a Co-ordinating Committee on Investment (CCI) comprising senior officials responsible for investment and other senior officials from relevant government agencies.
5. The Co-ordinating Committee on Investment shall report to the AIA Council through the Senior Economic Officials Meeting (SEOM).
6. The ASEAN Secretariat shall be the secretariat to the AIA Council and the Co-ordinating Committee on Investment (CCI).



## ARTICLE 17 SETTLEMENT OF DISPUTES

1. The Protocol on Dispute Settlement Mechanism for ASEAN shall apply in relation to any dispute arising from, or any differences between Member States concerning the interpretation or application of this Agreement or any arrangement arising therefrom.
2. If necessary, a specific dispute settlement mechanism may be established for the purpose of this Agreement which shall form an integral part of this Agreement.

## ARTICLE 18 AMENDMENTS

Any amendments to this Agreement shall be made by consensus and shall become effective upon the deposit of instruments of ratification or acceptance by all signatory governments with the Secretary-General of ASEAN.

## ARTICLE 19 SUPPLEMENTARY AGREEMENTS OR ARRANGEMENTS

The Schedules, Action Plans, Annexes, and any other arrangements or agreements arising under this Agreement shall form an integral part of this Agreement.

## ARTICLE 20 ACCESSION OF NEW MEMBERS

New members of ASEAN shall accede to this Agreement on terms and conditions agreed between them and signatories to this Agreement and by depositing the instrument of accession with the Secretary-General of ASEAN.

## ARTICLE 21 FINAL PROVISIONS

1. This Agreement shall enter into force upon the deposit of instruments of ratification or acceptance by all signatory governments with the Secretary-General of ASEAN. The signatory governments undertake to deposit their instruments of ratification or acceptance within 6 months after the date of signing of this Agreement.
2. 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 Framework Agreement on the ASEAN Investment Area.

**DONE at Makati, Philippines this 7th day of October 1998**, in a single copy in the English language.

For Brunei Darussalam: **ABDUL RAHMAN TAIB**, Minister of Industry and Primary Resources

For the Republic of Indonesia: **HAMZAH HAZ**, Minister of Investment/Chairman of Investment Coordinating Board

For the Lao People's Democratic Republic: **SOULIVONG DARAVONG**, Minister of Industry and Handicrafts

For Malaysia: **RAFIDAH AZIZ**, Minister of International Trade and Industry

For the Union of Myanmar: **BRIGADIER GENERAL DAVID O. ABEL**, Minister at the Office of the Chairman of the State Peace and Development Council

For the Republic of the Philippines: **JOSE TRINIDAD PARDO**, Secretary of Trade and Industry

For the Republic of Singapore: **LEE YOCK SUAN**, Minister for Trade and Industry

For the Kingdom of Thailand: **SUPACHAI PANITCHPAKDI**, Deputy Prime Minister and Minister of Commerce

For the Socialist Republic of Vietnam: **TRUONG DINH TUYEN**, Minister of Trade

## **SCHEDULE I FRAMEWORK AGREEMENT ON THE ASEAN INVESTMENT AREA (AIA)**

### **CO-OPERATION AND FACILITATION PROGRAMME**

In respect of the Co-operation and Facilitation Programme, Member States shall take-

a. Individual initiative to-

- i. Increase transparency of Member State's investment rules, regulations, policies and procedures through the publication of such information on a regular basis and making such information widely available;
- ii. Simplify and expedite procedures for applications and approvals of investment projects at all levels; and
- iii. Expand the number of bilateral Double Taxation Avoidance Agreements among ASEAN Member States.

b. Collective initiative to-

- i. Establish a Database for ASEAN Supporting Industries and ASEAN Technology Suppliers;
- ii. Establish an ASEAN database to enhance the flow of ASEAN investment data and information on investment opportunities in ASEAN;
- iii. Promote public-private sector linkages through regular dialogues with the ASEAN business community and other international organisations to identify investment impediments within and outside ASEAN and propose ways to improve the ASEAN investment environment;
- iv. Identify target areas for technical co-operation, e.g., development of human resources, infrastructure, supporting industries, small and medium-sized enterprises, information technology, industrial technology, R&D and co-ordinate efforts within ASEAN and other international organisations involved in technical co-operation;
- v. Review and where possible improve the ASEAN Agreement for the Promotion and Protection of Investment, and
- vi. Examine the possibility of an ASEAN Double Taxation Agreement.

## **SCHEDULE II FRAMEWORK AGREEMENT ON THE ASEAN INVESTMENT AREA (AIA)**

### **PROMOTION AND AWARENESS PROGRAMME**

In respect of the Promotion and Awareness Programme, Member States shall-

1. Organise joint investment promotion activities e.g., seminars, workshops, in-bound familiarisation tours for investors from capital exporting countries, joint promotion of specific projects with active business sector participation.
2. Conduct regular consultation among investment agencies of ASEAN on investment promotion matters;
3. Organise investment-related training programmes for officials of investment agencies of ASEAN;
4. Exchange lists of promoted sectors/industries where Member States could encourage investments from other Member States and initiate promotional activities; and
5. Examine possible ways by which the investment agencies of Member States can support the promotion efforts of other Member States.

## **SCHEDULE III FRAMEWORK AGREEMENT ON THE ASEAN INVESTMENT AREA (AIA)**

### **LIBERALISATION PROGRAMME**

In respect of the Liberalisation Programme, Member States shall-

1. Unilaterally reduce and eliminate restrictive investment measures and review their investment regimes regularly towards further liberalisation. In this context, Member States may undertake actions to liberalise, among others:
  - i. rules, regulations and policies relating to investment;
  - ii. rules on licensing conditions;
  - iii. rules relating to access to domestic finance; and
  - iv. rules to facilitate payment, receipts and repatriation of profits by investors.
2. Undertake individual action plans to:
  - i. open up all industries for investment to ASEAN investors by 2010 and to all investors by 2020 in accordance with the provisions of this Agreement; and
  - ii. extend national treatment to all ASEAN investors by 2010 and to all investors by 2020 in accordance with the provisions of this Agreement; and
3. Promote freer flow of capital, skilled labour, professionals and technology among ASEAN Member States.