ASEAN AGREEMENT ON THE MOVEMENT OF NATURAL PERSONS

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

NOTING the mandate of the ASEAN Economic Community Blueprint adopted at the 13th ASEAN Summit held on 20 November 2007 in Singapore that free flow of skilled labour is one of the core elements of an ASEAN single market and production base; which allows for managed mobility or facilitated entry for the movement of natural persons engaged in trade in goods, trade in services and investment, according to the prevailing regulations of the receiving country;

RECALLING the ASEAN Framework Agreement on Services ("AFAS") signed by ASEAN Economic Ministers ("AEM") on 15 December 1995 in Bangkok, Thailand and its subsequent Implementing Protocols, which lays the foundation for elimination of restrictions to trade in services amongst Member States in all modes of supply, including mode 4 (Movement of Natural Persons);

DESIRING for an effective mechanism to further liberalise and facilitate movement of natural persons towards free flow of skilled labour in ASEAN through close cooperation among related ASEAN bodies in the areas, including and not limited

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to trade in goods, trade in services, investment, immigration, and labour;

ALSO DESIRING to eliminate substantially all restrictions in the temporary cross-border movement of natural persons involved in the provision of trade in goods, trade in services and investment within the provisions of this Agreement;

HAVE AGREED as follows:

Article 1
Objectives

The objectives of this Agreement are to:

(a) provide within the scope of this Agreement the rights and obligations additional to those set out in the ASEAN Framework Agreement on Services and its Implementing Protocols in relation to the movement of natural persons between Member States;

(b) facilitate the movement of natural persons engaged in the conduct of trade in goods, trade in services and investment between Member States;

(c) establish streamlined and transparent procedures for applications for immigration formalities for the temporary entry or temporary stay of natural persons to whom this Agreement applies; and

(d) protect the integrity of Member States' borders and protect the domestic labour force and permanent employment in the territories of Member States.

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Article 2
Scope

1. This Agreement shall apply to measures affecting the temporary entry or temporary stay of natural persons of a Member State into the territory of another Member State. Such natural persons may include:

   (a) business visitors;
   (b) intra-corporate transferees;
   (c) contractual service suppliers;

   (d) other categories as may be specified in the Schedules of Commitments for the temporary entry and temporary stay of natural persons of the Member State.

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

3. Nothing contained in this Agreement shall prevent a Member State from applying measures to regulate the entry into, or temporary stay, of natural persons of the other Member State in its territory, including those measures necessary to protect the integrity of its territory and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in a manner so as to nullify or impair the benefits accruing to the other Member State under the terms of a specific commitment.

4. The sole fact of requiring natural persons to meet visa requirements prior to entry into the territory of a Member State shall not be regarded as nullifying or impairing benefits under this Agreement.

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Article 3
Definitions

For the purposes of this Agreement, the following definitions shall apply:

(a) **Business Visitor** means a natural person seeking to enter or stay in the territory of another Member State temporarily, whose remuneration and financial support for the duration of the visit is derived from outside of that other Member State;

(i) as a representative of a goods seller/service supplier, for the purpose of negotiating the sale of goods or supply of services or entering into agreements to sell goods or supply services for that goods seller/service supplier, where such negotiations do not involve direct sale of goods or supply of services to the general public;

(ii) as an employee of a juridical person as defined in subparagraphs e(i), e(ii) and e(iii) of this Article only for the purpose of establishing an investment or setting up a commercial presence, for the juridical person in the territory of another Member State;

(iii) for the purpose of participating in business negotiations or meetings; or

(iv) for the purpose of establishing an investment or setting up a commercial presence in the territory of another Member State;

(b) **Contractual Service Supplier** means a natural person who is an employee of a juridical person

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established in the territory of a Member State which has no commercial presence in the territory of the other Member State where the services will be provided, who:

(i) enters the territory of that other Member State temporarily in order to supply a service pursuant to a contract(s) between his/her employer and service consumer(s)[1] in the territory of the other Member State;

(ii) is either an executive, manager, or specialist as defined in subparagraph e(i), e(ii) and e(iii) of this Article, who receives remuneration from his/her employer;

(iii) must possess the appropriate educational and professional qualifications relevant to the service to be provided; and

(iv) as may be applicable, has been an employee of the juridical person for a period as may be specified in the Schedule of Commitments;

(c) **Granting Member State** means a Member State who receives an application for temporary entry or temporary stay from a natural person of another Member State who is covered by Article 2 (Scope);

(d) **Immigration Formality** means a visa, permit, pass or other documents or electronic authority granting a natural person of one Member State the right to temporarily enter, stay, work, or to

[1] In the case of Indonesia and Thailand, the service consumer(s) have to be juridical person(s).

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establish commercial presence in the territory of the granting Member State;

(e) **Intra–Corporate Transferee (ICT)** means a natural person who is an employee of a juridical person established in the territory of a Member State, who is transferred temporarily for the supply of a service through commercial presence (either through a representative office, branch, subsidiary or affiliate) in the territory of another Member State, and who has been an employee of the juridical person for a period as may be specified in the Schedule of Commitments , and who is:

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

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

(iii) a **Specialist**: a natural person within the organisation who possesses knowledge at

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an advanced level of expertise essential to the establishment/provision of the service and/or possesses proprietary knowledge of the organisation's service, research equipment, techniques or management; may include, but is not limited to, members of a licensed profession;

(f) **Natural Person** means a natural person who is a national of a Member State[2], in accordance with its laws, regulations and national policies; and

(g) **Temporary Entry or Temporary Stay** means entry into or stay by a natural person covered by this Agreement, without the intent to establish permanent residence.

Article 4
Grant of Temporary Entry or Temporary Stay

1. Each Member State shall, in accordance with that Member State's Schedule of Commitments in **ANNEX 1**, grant temporary entry or temporary stay in accordance with this Agreement to natural persons of another Member State provided those natural persons:

   (a) follow prescribed application procedures for the immigration formality sought; and

   (b) meet all relevant eligibility requirements for temporary entry or temporary stay of the granting Member State.

[2] In the case of Brunei Darussalam, **Natural Persons** also refer to those who have the rights of permanent residence in its country in accordance with its laws and regulations.

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2. Any fees imposed in respect of the processing of an immigration formality shall be reasonable and in accordance with domestic law.

3. A Member State may deny temporary entry or temporary stay to natural persons of another Member State who do not comply with paragraphs 1(a) and 1(b) of this Article.

Article 5
Processing of Applications

1. Where an application for an immigration formality is required by a Member State, that Member State shall promptly process complete applications for immigration formalities or extensions received from natural persons of another Member State covered by Article 2 (Scope).

2. Each Member State shall, upon request and within a reasonable period after receiving a complete application for an immigration formality from a natural person of another Member State covered by Article 2 (Scope), notify the applicant of:

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

3. In the case of an incomplete application, at the request of the applicant, the Member State shall notify the applicant of all the additional information that is required to complete the application and provide the applicant with the opportunity to remedy deficiencies in his/her application.

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Article 6
Schedules of Commitments for the Temporary Entry and Temporary Stay of Natural Persons

1. Each Member State shall set out in **ANNEX 1** a schedule containing its commitments for the temporary entry or temporary stay in its territory of natural persons of other Member States covered in Article 2 (Scope). These Schedules shall specify the general conditions and limitations governing those commitments, including the length of stay, for each category of natural persons included in each Member State's Schedule of Commitments.

2. Upon entry into force of this Agreement, the Schedules of Commitments as referred to in paragraph 1 of this Article shall supersede commitments made under the AFAS in relation to mode 4 (Movement of Natural Persons).

Article 7
Further Liberalisation

1. Member States shall enter into discussion to review the Schedules of Commitments under this Agreement with a view to achieving further liberalisation on the movement of natural persons. The initial discussion to review the Schedules of Commitments shall take place one year from entry into force of the Agreement. Subsequent discussions shall take place at intervals to be agreed by Member States.

2. The revisions of the Schedules of Commitments as a result of the discussions referred to in paragraph 1 of this Article shall be incorporated into this Agreement, subject to paragraphs 2, 3, 4 and 5 of Article 15 (Revisions, Modifications and Amendments).

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Article 8
Transparency

Each Member State shall:

(a) publish or otherwise make publicly available explanatory material on all relevant immigration formalities which pertain to or affect the operation of this Agreement;

(b) maintain or establish contact points or other mechanisms to respond to inquiries from interested persons regarding regulations affecting the temporary entry or temporary stay of natural persons;

(c) to the extent possible, allow reasonable time between publication of new regulations affecting the temporary entry or temporary stay of natural persons and their effective date. Such publication may be made electronically available;

(d) no later than six month after entry into force of this Agreement publish, such as on its immigration website, or otherwise make publicly available in its own territory and to persons in the territory of the other Member States, the general requirements for temporary entry or temporary stay under this Agreement, including explanatory material and relevant forms and documents that will enable natural persons of other Member States to become acquainted with those requirements; and

(e) upon modifying or amending any immigration measure that affects the temporary entry or temporary stay of natural persons, ensure that

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the information published or otherwise made available pursuant to subparagraph (d) of this Article is updated as soon as possible within 90 days.

Article 9
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 the movement of natural persons, 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;[3]

(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 services contracts;

(ii) the protection of the privacy of individuals in relation to the processing and dissemination

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

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of personal data and the protection of confidentiality of individual records and accounts;

(iii) safety.

Article 10
Security Exceptions

1. 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:

(i) relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;

(ii) relating to fissionable and fusionable materials or the materials from which they are derived;

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

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

2. The AEM shall be informed to the fullest extent possible of measures taken under paragraphs 1(b) and 1(c) of this Article and of their termination.

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Article 11
Dispute Settlement

1. Member States shall endeavour to settle any differences arising out of the implementation of this Agreement through consultations.

2. A Member State shall not recourse to the ASEAN Protocol on Enhanced Dispute Settlement Mechanism, signed on 29 November 2004 in Vientiane, Lao PDR and amendments thereto, regarding a refusal to grant temporary entry or temporary stay under this Agreement unless:

   (a) the matter involves a pattern of practice on the part of the granting Member State; and
   (b) the natural persons affected have exhausted all available domestic remedies regarding this particular matter.

Article 12
Relation with ASEAN Comprehensive Investment Agreement

1. This Agreement does not apply to measures adopted or maintained by each Member State to the extent that they are covered by the ASEAN Comprehensive Investment Agreement ("ACIA").

2. Notwithstanding paragraph 1 of this Article, this Agreement shall apply, mutatis mutandis, to measures adopted or maintained under Article 22 of the ACIA (Entry, Temporary Stay and Work of Investors and Key Personnel) affecting the movement of natural persons of a Member State in the territory of any one of the other Member States.

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3. For greater certainty, Section B (Investment Dispute Between an Investor and a Member State) of the ACIA shall not apply to this Agreement.

Article 13
Recognition

1. A Member State, by agreement or arrangement with another Member State, may recognise the education or experience obtained, requirements met, licenses or certifications granted in the other Member State for the purposes of the fulfilment, in whole or in part, of its standards or criteria for authorisation, licensing and certification of service suppliers of the other Member State and subject to the requirements of paragraph 3 of this Article.

2. Where a Member State recognises, by agreement or arrangement with a non-Member State or unilaterally whether in favour of another Member State or a non-Member State, the education or experience obtained, requirements met, licenses or certifications granted in the other Member State or non-Member State, the Member State shall afford adequate opportunity for any other Member State to demonstrate that education, experience, licenses, or certifications obtained or requirements met in the territory of that Member State should be recognised.

3. A Member State shall not accord recognition in a manner which would constitute a means of discrimination against another Member State in the application of its standards or criteria for the authorisation, licensing or certification of service suppliers, or a disguised restriction on trade in services. Where appropriate, recognition should be based on multilaterally agreed criteria.

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4. Each Member State shall encourage competent bodies in its territory to enter into cooperation, agreement or arrangement, multilaterally or bilaterally, on recognition of professional:

(a) qualification requirements;
(b) qualification procedures; and
(c) licensing, certification or registration requirements and procedures.

Article 14
Institutional Mechanism

1. The AEM shall be responsible for the implementation of this Agreement.

2. The AEM shall coordinate and oversee the implementation of this Agreement across Member States and across related ASEAN bodies.

3. The ASEAN Coordinating Committee on Services ("CCS") and, for the purposes of this Agreement, other relevant government officials shall assist the AEM in implementing this Agreement.

4. In the fulfilment of its functions, the AEM may establish subsidiary bodies and assign them to perform/undertake/accomplish certain tasks or delegate its responsibilities to any subsidiary bodies.

Article 15
Revisions, Modifications and Amendments

1. Any Member State may request in writing a revision, modification, or amendment of all or any part of this Agreement.

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Article 17
Depositary

This Agreement shall be deposited with the ASEAN Secretary-General, 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 the ASEAN Agreement on Movement of Natural Persons.

DONE at Phnom Penh, Cambodia, this Nineteenth day of November in the Year Two Thousand and Twelve, in a single 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

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For the Republic of Indonesia:

GITA IRAWAN WIRJAWAN
Minister of Trade

For the Lao People's Democratic Republic:

NAM VIYAKETH
Minister of Industry and Commerce

For Malaysia:

MUSTAPA MOHAMED
Minister of International Trade and Industry

For the Republic of the Union of Myanmar:

KAN ZAW
Union Minister for National Planning
and Economic Development

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For the Republic of the Philippines:

GREGORY L. DOMINGO
Secretary of Trade and Industry

For the Republic of Singapore:

LIM HNG KIANG
Minister for Trade and Industry

For the Kingdom of Thailand:

BOONSONG TERIYAPIROM
Minister of Commerce

For the Socialist Republic of Viet Nam:

VU HUY HOANG
Minister of Industry and Trade

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