PHÁI ĐOÀN ĐẠI DIỆN THƯỜNG TRỰC VIỆT NAM TẠI ASEAN

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VIETNAM PERMANENT MISSION TO ASEAN

Address: Jl. Pekalongan No. 9, Menteng
Jakarta Pusat 10310, Indonesia
Tel : (62-21) 31907255, 31907845
Fax : (62-21) 31906642
Email: pdvn.asean@mofa.gov.vn

CÔNG ĐIỆN

Kính gửi: Vụ Luật pháp và Điều ước quốc tế

Phái đoàn Việt Nam tại ASEAN xin gửi Quý Vụ Hiệp định ASEAN về Thương mại điện tử (có xác nhận của Ban Thư ký ASEAN về việc lưu chiểu Hiệp định) được ký vào ngày 22/01/2019 tại Hà Nội để triển khai các thủ tục liên quan.

Xin trân trọng cảm ơn sự hợp tác của Quý Vụ./.

Nơi nhận:
- Như trên;
- Lưu: HC, ASEAN.

KT. Thủ trưởng đơn vị
Tham tán

Nguyễn Việt Kiên

Note No.: 075/2019

The ASEAN Secretariat presents its compliments to the Permanent Missions of ASEAN Member States and has the honour to transmit herewith the Certified True Copy of the ASEAN Agreement on Electronic Commerce, signed on 22 January 2019 in Ha Noi, Viet Nam.

The ASEAN Secretariat would appreciate it if the Permanent Missions could forward the Certified True Copy of the said Agreement to their respective appropriate authority/destination.

The ASEAN Secretariat avails itself of this opportunity to renew to the Permanent Missions the assurances of its highest consideration.

Jakarta, 4 March 2019

ASSOCIATION OF SOUTHEAST ASIAN NATIONS
ASEAN SECRETARIAT
JAKARTA

Permanent Missions of ASEAN Member States
Jakarta

ASSOCIATION
OF SOUTHEAST
ASIAN NATIONS

The ASEAN Secretariat
70 A Jl. Sisingamangaraja
Jakarta 12110
Indonesia

Phone: (62-21) 726 2991
(62-21) 724 3372
Fax: (62-21) 739 8234
(62-21) 724 3504

public@asean.org
www.asean.org

CERTIFYING STATEMENT

ASEAN Agreement on Electronic Commerce

I, THE UNDERSIGNED Deputy Secretary-General of ASEAN for Community and Corporate Affairs, hereby certify that the attached text is **a true and complete copy** of the ASEAN Agreement on Electronic Commerce signed on 22 January 2019 in Ha Noi, Viet Nam.

Jakarta, 4 March 2019

AKP Mochtan
Deputy Secretary-General of ASEAN
Community and Corporate Affairs
Department
The ASEAN Secretariat

ASEAN AGREEMENT ON ELECTRONIC COMMERCE

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

RECOGNISING the role of electronic commerce (e-commerce) in driving economic growth and social development in the ASEAN region;

VALUING the contribution of e-commerce in enhancing connectivity and sectoral cooperation in the ASEAN region as embodied in the ASEAN Economic Community (AEC) Blueprint 2025 as adopted on 22 November 2015;

BUILDING upon Article 5 (Facilitation of the Growth of Electronic Commerce) of the *e-ASEAN Framework Agreement* signed by ASEAN Leaders on 24 November 2000 in Singapore;

ACKNOWLEDGING the important contribution of e-commerce in facilitating cross-border trade and investment, and in significantly lowering the barriers to entry and operating costs for businesses, particularly Micro, Small and Medium Enterprises;

EMPHASISING the importance of coordination and cooperation among Member States to advance the

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development and use of e-commerce in the ASEAN region; and

RECOGNISING the need to facilitate cross-border e-commerce transactions in the ASEAN region to maximise the benefits of regional economic integration,

HAVE AGREED AS FOLLOWS:

ARTICLE 1
DEFINITIONS

For the purposes of this Agreement:

(a) **ATISA** means the *ASEAN Trade in Services Agreement*;

(b) **Computing facilities** means computer servers and storage devices for processing or storing information for commercial use;

(c) **Electronic authentication** means the process of testing an electronic statement or claim in order to establish a level of confidence in the reliability of that statement or claim;

(d) **Electronic signature** has for each Member State the meaning set out in its laws and regulations;

(e) **GATS** means the *General Agreement on Trade in Services*;

(f) **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,

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trust, partnership, joint venture, sole proprietorship or association;

(g) **Juridical person of another Member State** means a juridical person which is either:

(i) constituted or otherwise organised under the law of that other Member State, and is engaged in substantive business operations in the territory of that Member State or any other Member State; or

(ii) in the case of the supply of a service through commercial presence, owned or controlled by:

(1) natural persons of that Member State; or

(2) juridical persons of that other Member State identified under subparagraph (i);

(h) A juridical person is:

(i) **owned** by persons of a Member State if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Member State;

(ii) **controlled** by persons of a Member State if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;

(iii) **affiliated** with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person;

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(i) **Natural person of another Member State** means a natural person who under the law of that Member State:

(i) is a national or citizen of that Member State; or

(ii) has the right of permanent residence in that Member State, where both that Member State and the Member State in which the person supplies services recognise permanent residents and accord substantially the same treatment to their respective permanent residents as they accord to their respective nationals in respect of measures affecting trade in services;

(j) **Personal information** means any information, including data, about an identified or identifiable individual; and

(k) **Trade administration documents** means forms issued or controlled by a Member State which must be completed by or for an importer or exporter in relation to the import or export of goods.

ARTICLE 2
OBJECTIVES

The objectives of this Agreement are to:

(a) facilitate cross-border e-commerce transactions in the ASEAN region;

(b) contribute to creating an environment of trust and confidence in the use of e-commerce in the ASEAN region; and

(c) deepen cooperation among Member States to further develop and intensify the use of e-commerce

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to drive inclusive growth and narrow development gaps in the ASEAN region.

ARTICLE 3
SCOPE

1. This Agreement shall apply to measures adopted or maintained by a Member State that affect e-commerce.

2. This Agreement shall not apply to government procurement.

ARTICLE 4
RELATION TO OTHER AGREEMENTS

1. Nothing in this Agreement shall derogate from the existing rights and obligations of a Member State under any other relevant ASEAN agreements[1] to which it is a party.

2. In the event of any inconsistency between this Agreement and any other relevant ASEAN agreement, that ASEAN agreement shall prevail to the extent of the inconsistency.

ARTICLE 5
PRINCIPLES

1. In the development and promotion of e-commerce, the role of each Member State shall be geared towards providing an enabling legal and regulatory environment, providing a conducive and competitive business environment, and protecting the public interest.

2. The legal and regulatory frameworks in each Member State to support e-commerce shall take into account internationally adopted model laws, conventions, principles or guidelines.

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[1] The ATISA shall be deemed to be a relevant ASEAN agreement under this paragraph regardless of the date of entry into force of the ATISA.

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3. Each Member State shall encourage the use of alternative dispute resolution to facilitate the resolution of claims over e-commerce transactions.

4. Member States shall endeavour to recognise the importance of the principle of technology neutrality and recognise the need for alignment in policy and regulatory approaches among Member States to facilitate cross border e-commerce.

ARTICLE 6
COOPERATION

1. Each Member State shall cooperate in areas including:

   (a) Information and Communication Technology (ICT) infrastructure;

   (b) education and technology competency;

   (c) online consumer protection;

   (d) e-commerce legal and regulatory frameworks;

   (e) electronic transaction security, including protection of online personal information;

   (f) electronic payment and settlement;

   (g) trade facilitation;

   (h) intellectual property rights;

   (i) competition;

   (j) cybersecurity; and

   (k) logistics to facilitate e-commerce.

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2. Each Member State shall undertake the following cooperation initiatives, as appropriate:

(a) sharing of information and experiences, and identifying best practices;

(b) implementing programmes or projects to provide assistance to Member States to enhance their domestic regulatory frameworks in support of e-commerce and to promote broader application of e-commerce; and

(c) establishing cooperation mechanisms among competent authorities to facilitate prompt investigation and resolution of fraudulent incidents related to e-commerce transactions and other matters agreed to by Member States.

ARTICLE 7
FACILITATING CROSS-BORDER E-COMMERCE

1. Paperless Trading

Each Member State shall expand the use of electronic versions of trade administration documents and facilitate the exchange of electronic documents through the use of ICT consistent with the provisions of the *ASEAN Agreement on Customs* signed on 30 March 2012 in Phnom Penh, Cambodia, and other international agreements on paperless trading to which Member States are parties.

2. Electronic Authentication and Electronic Signatures

(a) Except in circumstances otherwise provided for under its laws and regulations, a Member State shall not deny the legal validity of a signature solely on the basis that the signature is in electronic form.

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Note: Cambodia, Lao PDR and Myanmar shall not be obliged to implement subparagraph (a) for a period of five years after the date of entry into force of this Agreement.

(b) Each Member State shall maintain or adopt, as soon as practicable, measures based on international norms for electronic authentication that:

(i) permit participants in electronic transactions to determine the appropriate authentication technologies and implementation models for their electronic transactions;

(ii) do not limit the recognition of authentication technologies and implementation models; and

(iii) permit participants in electronic transactions to have the opportunity to prove that their electronic transactions comply with that Member State's laws and regulations with respect to authentication.

(c) Notwithstanding subparagraph (b), each Member State may require that, for a particular category of electronic transactions, the method of authentication meet certain performance standards or be certified by an authority accredited in accordance with the laws and regulations of that Member State.

(d) Each Member State shall encourage the use of interoperable electronic authentication.

3. Online Consumer Protection

(a) Member States recognise the importance of adopting and maintaining transparent and effective

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consumer protection measures for e-commerce as well as other measures conducive to the development of consumer confidence.

(b) Each Member State shall provide protection for consumers using e-commerce that affords a similar level of protection to that provided for consumers of other forms of commerce under its relevant laws, regulations and policies.

Note: Cambodia, Lao PDR and Myanmar shall not be obliged to implement subparagraph (b) for a period of five years after the date of entry into force of this Agreement.

(c) Member States recognise the importance of cooperation between their respective competent authorities in charge of consumer protection on activities related to e-commerce in order to enhance consumer protection.

4. Cross-border Transfer of Information by Electronic Means

(a) Member States recognise the importance of allowing information to flow across borders through electronic means, provided that such information shall be used for business purposes, and subject to their respective laws and regulations.

(b) Member States agree to facilitate cross-border e-commerce by working towards eliminating or minimising barriers to the flow of information across borders, including personal information, subject to appropriate safeguards to ensure security and confidentiality of information, and when other legitimate public policy objectives so dictate.

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(c) Subparagraphs (a) and (b) shall not apply to financial services and financial service suppliers as defined in the *Annex on Financial Services* of GATS.

5. Online Personal Information Protection

(a) Each Member State shall adopt or maintain measures to protect the personal information of the users of e-commerce.

(b) A Member State shall not be obliged to implement subparagraph (a) before the date on which that Member State enacts laws or regulations to protect the personal information of e-commerce users.

(c) In the development of personal information protection measures, each Member State shall take into account international principles, guidelines and criteria of relevant international bodies.

6. Location of Computing Facilities

(a) Member States recognise that each Member State may have its own regulatory requirements regarding the use of computing facilities, including requirements that seek to ensure the security and confidentiality of communications.

(b) Member States agree not to require, subject to their respective laws and regulations, a juridical person of another Member State and its affiliated companies to locate their computing facilities in their respective territories as a requirement for operating a business in their respective territories.

(c) Subparagraphs (a) and (b) shall not apply to financial services and financial service suppliers as

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defined in the *Annex on Financial Services of* GATS.

ARTICLE 8
CYBERSECURITY

Member States recognise the importance of:

(a) building the capabilities of their national entities responsible for cybersecurity including through the exchange of best practices; and

(b) using existing collaboration mechanisms to cooperate on matters related to cybersecurity.

ARTICLE 9
ELECTRONIC PAYMENT

1. Member States recognise the importance of safe and secure, efficient, and interoperable e-payment systems while taking into account the readiness of each Member State in terms of capacity, infrastructure, and regulation of e-payment systems.

2. Each Member State shall encourage the use of safe and secure, efficient, and interoperable e-payment systems to facilitate e-commerce in accordance with its laws and regulations.

ARTICLE 10
LOGISTICS

1. Member States recognise the importance of efficient cross-border logistics.

2. Each Member State shall endeavour to lower the cost and improve the speed and reliability of supply chains.

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ARTICLE 11
STAKEHOLDER ENGAGEMENT

Each Member State shall regularly engage with relevant stakeholders, including the private sector, academic institutions, international organisations, and other relevant partners, to promote the exchange of information and generate feedback, inputs or proposals on the development of e-commerce.

ARTICLE 12
DOMESTIC REGULATORY FRAMEWORK

Each Member State shall maintain, or adopt as soon as practicable, laws and regulations governing electronic transactions taking into account applicable international conventions or model laws relating to e-commerce.

ARTICLE 13
TRANSPARENCY

1. Each Member State shall publish as promptly as possible or, where that is not practicable, otherwise make publicly available all relevant measures of general application pertaining to or affecting the operation of this Agreement. The form of publication shall include online publication where feasible.

2. Each Member State shall respond as promptly as possible to requests by another Member State for specific information on any of its measures of general application pertaining to or affecting the operation of this Agreement.

ARTICLE 14
EXCEPTIONS

Articles XIV and XIV *bis* of GATS are incorporated into and made part of this Agreement, *mutatis mutandis*.

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ARTICLE 15
DISPUTE SETTLEMENT

1. The *ASEAN Protocol on Enhanced Dispute Settlement Mechanism* signed on 29 November 2004 in Vientiane, Lao PDR, or its successor, shall apply to the settlement of disputes concerning the interpretation or implementation of this Agreement.

2. Paragraph 1 shall not apply to Article 6 (Cooperation).

ARTICLE 16
INSTITUTIONAL ARRANGEMENTS

1. The ASEAN Senior Economic Officials Meeting (SEOM) shall oversee the implementation of this Agreement. SEOM shall task the ASEAN Coordinating Committee on Electronic Commerce (ACCEC) to coordinate, monitor and review the implementation of this Agreement in collaboration with other ASEAN sectoral bodies, with the support of the ASEAN Secretariat.

2. SEOM shall regularly update the ASEAN Economic Ministers Meeting on the status of implementation of this Agreement based on the status reports submitted by ACCEC.

ARTICLE 17
REVIEW

Member States shall undertake a joint review[2] of this Agreement no later than three years from the date of entry into force of this Agreement and every three years thereafter, unless otherwise agreed by Member States. Such review shall include considering the need for additional commitments under this Agreement.

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[2] This review shall include, but not be limited to, paragraphs 4 and 6 of Article 7 (Facilitating Cross-Border E-Commerce), as mutually agreed by Member States.

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ARTICLE 18
AMENDMENTS

The provisions of this Agreement may be amended by mutual agreement of the Member States in writing.

ARTICLE 19
ENTRY INTO FORCE

1. This Agreement shall enter into force upon the deposit of the instruments of ratification, approval or acceptance by the Member States with the Secretary-General of ASEAN.

2. The Secretary-General of ASEAN shall promptly notify the Member States of the deposit referred to in paragraph 1.

3. 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 thereto by their respective Governments, have signed this Agreement.

DONE at Ha Noi, Viet Nam, this Twenty - Second day of January in the Year Two Thousand and Nineteen, in a single original copy in the English language.

For Brunei Darussalam:

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For the Kingdom of Cambodia:



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For the Republic of Indonesia:



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For the Lao People's Democratic Republic:



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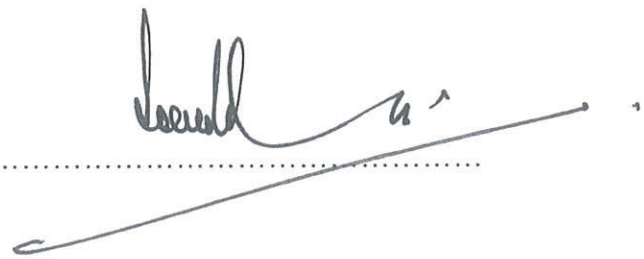
For Malaysia:



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For the Republic of the Union of Myanmar:



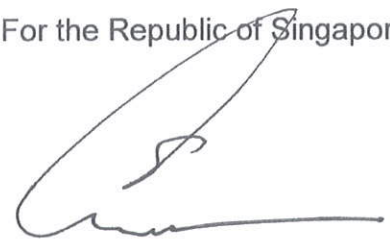
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For the Republic of the Philippines:



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For the Republic of Singapore:



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For the Kingdom of Thailand:



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For the Socialist Republic of Viet Nam:

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