PROTOCOL TO AMEND THE 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 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 singularly as "Member State";

RECALLING the ASEAN Comprehensive Investment Agreement (hereinafter referred to as the "ACIA") signed on 26 February 2009 which aims to create a free and open investment regime in ASEAN in order to achieve the end goal of economic integration under the ASEAN Economic Community (AEC) in accordance with the AEC Blueprint;

RECOGNISING the need to provide clarity to Article 9 (Reservations) and Article 10 (Modification of Commitments) of the ACIA and to adopt an efficient mechanism to effect any changes in each Member State's reservation list following subsequent amendments or modifications; and

NOTING that Article 46 (Amendments) of the ACIA provides that the provisions of the ACIA may be modified through amendments mutually agreed upon in writing by the Member States,

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HAVE AGREED AS FOLLOWS:

Article 1
Amendment to Article 9 (Reservations) of the ACIA

Article 9(4) shall be amended to read as follows:

> "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."

Article 2
Amendments to Article 10 (Modification of Commitments) of the ACIA

1. Article 10(1) shall be amended to read as follows:

> "1. For a period of 12 months *from the date of entry into force of this Agreement*, 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. The following new paragraph shall be inserted after Article 10(4):

> *"5. Any amendment or modification of the commitments and reservations in accordance with this Article shall be subject to the procedures prescribed in Annex 3 (Procedures for Amendment or Modification of Reservations)."*

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Article 3
Amendments to Article 42 (Institutional Arrangements) of the ACIA

Article 42(3) shall be amended as follows:

1. The following new sub-paragraph shall be inserted after sub-paragraph (d):

   "(e) update and endorse the Reservation Lists of this Agreement;"

2. The existing sub-paragraphs (e), (f), (g) and (h) shall be renumbered accordingly.

Article 4
Insertion of Annex 3 to the ACIA

The following shall be inserted as Annex 3:

"ANNEX 3
Procedures for Amendment or Modification of Reservations

1. Any amendment or modification of a Member State's reservations in the Schedule to this Agreement may be made:

   (a) For the reduction or elimination of reservations under Article 9(4);

   (b) For the modification of reservations within 12 months from the date of entry into force of this Agreement under Article 10(1); and

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(c) For the modification or withdrawal of commitments and reservations after the expiration of the period referred to in sub-paragraph (b) above, subject to negotiation and agreement under Article 10(2).

2. The procedures for amendment or modification of reservations under sub-paragraphs 1(a) and 1(b) above shall be as follows:

(a) A Member State intending to amend or modify its reservation (hereinafter referred to as "Modifying Member State") shall submit a Notification to the Coordinating Committee on Investment (CCI) with a copy furnished to the ASEAN Secretariat. The Notification shall include details of the proposal, such as the reservation being amended or modified, in whole or in part, and the exact nature of the proposed changes. The Template for the Notification is attached as Appendix 1;

(b) The Modifying Member State shall append to the Notification a draft Supplementary Note and the draft reservation containing the proposed amendment or modification. The Template for the Supplementary Note is attached as Appendix 2;

(c) Any other Member State may seek clarification on the proposed amendment or modification within 10 days from the date of receipt of the Notification;

(d) The Modifying Member State shall provide additional information or clarification as sought by the other Member States within 5 days from the date of receipt of the request;



(e) The CCI shall inter-sessionally within 30 days from the date of receipt of the Notification or at its next meeting, whichever is earlier, discuss the proposed amendment or modification, and may exchange views on improving the language of the amended or modified reservation, where appropriate, for clarity and specificity;

(f) After the CCI completes its discussion and exchange of views, it shall inter-sessionally within 5 days after the completion of the discussions or at its next meeting, whichever is earlier, submit a report on the proposed amendment or modification and include the Supplementary Note and the draft reservation for the endorsement of the AIA Council through the Secretary-General of ASEAN;

(g) The amendment or modification and any clarification made thereto shall be noted by the CCI and the AIA Council in their next respective meetings;

(h) The amended or modified reservations shall take effect on the date of the receipt by the Secretary-General of ASEAN of the last of the letters of endorsement of the amendment or modification from the other Member States; and

(i) The endorsement by the AIA Council, the Supplementary Note and the amended or modified reservation of the Modifying Member State shall be deposited with the ASEAN Secretariat, who shall promptly furnish certified copies thereof to each Member State.

3. The provisions set forth in paragraph 2 above shall apply, *mutatis mutandis*, to the modification or withdrawal of commitments and reservations under

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sub-paragraph 1(c) with the additional procedures as follows:

(a) Within 30 days from the date of receipt of the Notification for modification or withdrawal, any Member State who considers its interest affected shall communicate in writing to the Modifying Member State its intent to engage in consultations or negotiations with a copy furnished to the ASEAN Secretariat. The ASEAN Secretariat shall also notify the other Member States of such intent;

(b) The Member States concerned shall negotiate with a view to reaching an agreement within 45 days from the date that the communication under sub-paragraph 3(a) was made;

(c) Upon completion of the negotiations, the Member States concerned shall make a joint report on the outcome, which may include provisions for compensatory adjustment. The Modifying Member State shall then submit such report to the CCI;

(d) After the receipt of the joint report under sub-paragraph 3(c), the CCI shall inter-sessionally within 5 days or at its next meeting, whichever is earlier, commence discussion or exchange views on improving the language of the amended or modified reservations, where appropriate, for the purpose of clarity and specificity; and

(e) Thereafter, the procedure shall continue as set out under sub-paragraphs 2(f), 2(g), 2(h) and 2(i) above.

4. The AIA Council may, at the request of a Member State, review the procedures set out in this Annex. The CCI,



as directed by the AIA Council, shall undertake the review and submit its recommendations to the AIA Council. Upon the approval by the AIA Council, the procedures shall be amended."

Article 5
Transitory Provisions

All modifications of reservations made pursuant to Article 10(1) of the ACIA and endorsed by the AIA Council at the AEM-15th AIA Council on 27 August 2012 in Siem Reap, Cambodia, shall be deemed effective from that date.

Article 6
Final Provisions

1. This Protocol shall form an integral part of the ACIA and shall enter into force after all Member States have notified the completion of their internal procedures for the entry into force of this Protocol to, or, where necessary, deposited instruments of ratification or acceptance with, the Secretary-General of ASEAN.

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

3. This Protocol 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 Protocol to Amend the ASEAN Comprehensive Investment Agreement.



Done at Nay Pyi Taw, Myanmar, this Twenty-Sixth Day of August in the Year Two Thousand and Fourteen, 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:

SUN CHANTHOL
Senior Minister, Minister of Commerce
Vice Chairman of the Council for the Development of Cambodia

For the Republic of Indonesia:

MUHAMMAD LUTFI
Minister of Trade

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For the Lao People's Democratic Republic:

KHEMMANI PHOLSENA
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

For the Republic of the Philippines:

GREGORY L. DOMINGO
Secretary of Trade and Industry

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For the Republic of Singapore:

LIM HNG KIANG
Minister for Trade and Industry

For the Kingdom of Thailand:

CHUTIMA BUNYAPRAPHASARA
Permanent Secretary
Acting for the Minister of Commerce

For the Socialist Republic of Viet Nam:

VU HUY HOANG
Minister of Industry and Trade

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Appendix 1
Template for Notification

NOTIFICATION TO AMEND OR MODIFY THE ACIA RESERVATION LIST
Modifying Member State:
Date of Notification:
Reservation Number to be Modified:
Sector and/or Subsector to be Modified:
Type or Nature of Modification:
Rationale for Modification:
Source of Measure (copy may be provided):

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Appendix 2
Supplementary Note

Country xxxx/RL no: xx /Rev. xx

Date/Month/Year: [xx/xx/xxxx]

COUNTRY: XXXX

Schedule of ACIA

Supplement 1

(This is authentic in English only)

This text replaces ACIA Reservation List No. X, XX and XXX of Country XXXX

(Description of the Amendment or Modification)