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PROTOCOL TO IMPLEMENT THE FOURTH PACKAGE OF COMMITMENTS ON AIR TRANSPORT SERVICES UNDER THE ASEAN FRAMEWORK AGREEMENT ON SERVICES

The Governments of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, 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 South East Asian Nations (hereinafter referred to as "ASEAN");

NOTING the ASEAN Framework Agreement on Services signed on 15 December 1995 in Bangkok, Thailand, which seeks to enhance cooperation in services amongst Member States, eliminate substantially restrictions to trade in services amongst Member States and liberalise trade in services by expanding the depth and scope of liberalisation beyond those undertaken by Member States under the General Agreement on Trade in Services (hereinafter referred to as "GATS") of the World Trade Organisation (hereinafter referred to as "WTO");

HAVING carried out two rounds of negotiations and concluded three sets of commitments embodied in the Protocol to Implement the Initial Package of Commitments under the ASEAN Framework Agreement on Services signed on 15 December 1997 in Kuala Lumpur, Malaysia, the Protocol to Implement the Second Package of Commitments under the ASEAN Framework Agreement on Services signed on 16 December 1998 in Ha Noi, Viet Nam, and the Protocol to Implement the Third Package of Commitments under the ASEAN Framework Agreement on Services signed on 31 December 2001;

RECALLING that the Thirty-Third ASEAN Economic Ministers Meeting launched the third round of negotiations beginning 2002 and ending 2004, which covers all services sectors and all modes of supply;

HAVING carried out subsequent negotiations pursuant to Article IV of the ASEAN Framework Agreement on Services and finalised the fourth package of commitments on air transport services;

DESIRING to set out in a schedule, the specific commitments that each Member State shall undertake, for which Member States shall accord preferential treatment to one another on a Most-Favoured Nations basis;

HAVE AGREED AS FOLLOWS:

1. Member States who are WTO Members shall continue to extend their specific commitments under GATS to ASEAN Member States who are non-WTO Members.

2. Member States shall extend to all other Member States preferential treatment in air transport services as set forth in the Schedules of Specific Commitments annexed to this Protocol.

3. The Annex to this Protocol is the Schedules of Specific Commitments.

4. This Protocol and its Annexes shall form an integral part of the ASEAN Framework Agreement on Services.

5. This Protocol shall enter into force upon the deposit of instruments of ratification or acceptance by all signatory governments with the Secretary-General of ASEAN, which shall be done not later than 31 March 2005.

6. This Protocol shall be deposited with the Secretary-General of ASEAN who shall promptly furnish a certified copy thereof to each Member State. The Secretary-General of ASEAN shall also promptly furnish notifications of ratifications or acceptances made pursuant to paragraph 5 to each Member State.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed the Protocol to Implement the Fourth Package of Commitments on Air Transport Services under the ASEAN Framework Agreement on Services.

DONE at Phnom Penh, Cambodia, on the **Twenty-third** day of **November** in the year **Two Thousand and Four,** in a single copy in the English language.

For the Government of Brunei Darussalam

PEHIN DATO HAJI ZAKARIA SULAIMAN
Minister of Communications

For the Government of the Kingdom of Cambodia

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MAO HAVANNALL
Secretary of State
State Secretariat of Civil Aviation

For the Government of the Republic of Indonesia

.....
M. HATTA RAJASA
Minister of Communications

For the Government of the Lao People's Democratic Republic

SOMMAD PHOLSENA
Deputy Minister of Communication, Transport, Post and Construction

For the Government of Malaysia

.....
DATO' SRI CHAN KONG CHOY
Minister of Transport

For the Government of the Union of Myanmar

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MAJ GEN THEIN SWE
Minister of Transport

For the Government of the Republic of the Philippines

ARTURO T. VALDEZ
Undersecretary for Transportation

For the Government of the Republic of Singapore

YEO CHEOW TONG
Minister of Transport

For the Government of the Kingdom of Thailand

NI ORN CHAMNONG
Depu y Minister of Transport

For the Government of the Socialist Republic of Viet Nam

NGUYEN TIEN SAM
Vice Minister of Transport

CAMBODIA - SCHEDULE OF SPECIFIC COMMITMENTS

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or sub sector	Limitations on market access	Limitations on national treatment	Additional commitments
AIR TRANSPORT SERVICES			
Aircraft leasing without crew	(1) None	(1) None	
	(2) None	(2) None	
	(3) None other than that indicated in the horizontal section	(3) As indicated in the horizontal section	
	(4) As indicated in the horizontal section	(4) As indicated in the horizontal section	

MYANMAR - SCHEDULE OF SPECIFIC COMMITMENTS

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or sub sector	Limitations on market access	Limitations on national treatment	Additional commitments
AIR TRANSPORT SERVICES	(1) None	(1) None	
Aircraft repair and maintenance services	(2) None	(2) None	
	(3) (a) Commercial presence of foreign service suppliers and/or providers is permitted in accordance with the Union of Myanmar Foreign Investment Law (1988) and the Myanmar Companies Act (1914). (b) **100%** foreign investment or joint venture with a Myanmar citizen or enterprise with a minimum of 35% equity is permitted under the Union of Myanmar Foreign Investment Law (1988). Minimum foreign capital is USD 300,000 for services. Form of incorporation may be sole proprietorship, partnership or limited company. (c) Incorporation of an enterprise not involving a State enterprise is to be made under the Myanmar Companies Act (1914). Minimum share capital (in cash) requirement for services companies and branches is equivalent of Kyat 300,000 in USD at current official	(3) (a) The Income Tax Law (1974) prescribes that non-residents (foreigners) are subject to a withholding tax as follows: Class of Income — Non-resident Foreigners - Interest — 15% • Royalties for use of licences, trademarks, patent rights, etc. — 20% • Payments to contractors made by government organizations, municipalities, and co-operative societies — 3.5% - Payments for work done to foreign contractors — 3% (b) Foreign organizations and persons are not allowed to own land in Myanmar. However, land may be acquired on long term lease, depending on individual circumstances.	

	rate. (d) If the investment involves a State enterprise, incorporation shall be made under the Special Companies Act (1950) and the Myanmar Companies Act (1914).	
(4)	(a) Subject to the provisions of the Union of Myanmar Foreign Investment Law, Myanmar Labour Laws and Immigration Laws, management, professional and technical experts are allowed to stay up to one year and may be extendable thereon. (b) Only management level is allowed in Myanmar.	(a) Any expatriate engaged in joint ventures, representatives offices or other types of judicial persons and/or individual services provider shall receive the approval of the respective authorities. (b) Any expatriate entering into Myanmar shall abide by the immigrations rules and procedures of Myanmar. (c) Any expatriate in Myanmar shall abide by the laws, rules and regulations of Myanmar and they shall not interfere in the internal affairs of the country. (d) Individual service providers who work with the approval of respective authorities shall register themselves with the Department of Labour.

Sector or sub sector	Limitations on market access	Limitations on national treatment	Additional commitments
AIR TRANSPORT SERVICES	(1) None	(1) None	
Selling and marketing of air transport services	(2) None	(2) None	
	3. (a) Commercial presence of foreign service suppliers and/or providers is permitted in accordance with the Union of Myanmar Foreign Investment Law (1988) and the Myanmar Companies Act (1914). (b) 100% foreign investment or joint venture with a Myanmar citizen or enterprise with a minimum of 35% equity is permitted under the Union of Myanmar Foreign Investment Law (1988). Minimum foreign capital is USD 300,000 for services. Form of incorporation may be sole proprietorship, partnership or limited company. (c) Incorporation of an enterprise not involving a State enterprise is to be made under the Myanmar Companies Act (1914). Minimum share capital (in cash) requirement for services companies and branches is equivalent of Kyat 300,000 in USD at current official rate. (d) If the investment involves a State enterprise, incorporation shall be	(3) (a) The Income Tax Law (1974) prescribes that non-residents (foreigners) are subject to a withholding tax as follows: Class of Income — Non-resident Foreigners - Interest — 15% - Royalties for use of licences, trademarks, patent rights, etc. — 20% - Payments to contractors made by government organizations, municipalities, and co-operative societies — 3.5% - Payments for work done to foreign contractors — 3% (b) Foreign organizations and persons are not allowed to own land in Myanmar. However, land may be acquired on long term lease, depending on individual circumstances.	

	made under the Special Companies Act (1950) and the Myanmar Companies Act (1914).	
4.	(a) Subject to the provisions of the Union of Myanmar Foreign Investment Law, Myanmar Labour Laws and Immigration Laws, management, professional and technical experts are allowed to stay up to one year and may be extendable thereon.	(a) Any expatriate engaged in joint ventures, representatives offices or other types of judicial persons and/or individual services provider shall receive the approval of the respective authorities.
	(b) Only management level is allowed in Myanmar.	(b) Any expatriate entering into Myanmar shall abide by the immigrations rules and procedures of Myanmar.
		(c) Any expatriate in Myanmar shall abide by the laws, rules and regulations of Myanmar and they shall not interfere in the internal affairs of the country.
		(d) Individual service providers who work with the approval of respective authorities shall register themselves with the Department of Labour.

Sector or sub sector	Limitations on market access	Limitations on national treatment	Additional commitments
AIR TRANSPORT SERVICES			
Computer reservation system services	(1) None, except that service providers must use public telecommunication networks under national telecommunication authorities in accordance with prescribed rules and regulations.	(1) Unbound	
	(2) Subject to commercial arrangements with licensed operator(s)	(2) None	
	(3) Unbound	(3) Unbound	
	(4) Unbound	(4) Unbound	

SINGAPORE - SCHEDULE OF SPECIFIC COMMITMENTS

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or sub sector	Limitations on market access	Limitations on national treatment	Additional commitments
AIR TRANSPORT SERVICES			
Aircraft leasing without crew	**(1) None** (2) None (3) None (4) Unbound	**(1) None** (2) None (3) None (4) Unbound	

THAILAND - SCHEDULE OF SPECIFIC COMMITMENTS

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or sub sector	Limitations on market access	Limitations on national treatment	Additional commitments
AIR TRANSPORT SERVICES			
Aircraft leasing without crew	(1) None	(1) None	
	(2) None	(2) None	
	(3) None other than that indicated in the horizontal section	(3) None	
	(4) As indicated in the horizontal section	(4) Unbound	

VIETNAM - SCHEDULE OF SPECIFIC COMMITMENTS

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or sub sector	Limitations on market access	Limitations on national treatment	Additional commitments
AIR TRANSPORT SERVICES			
Aircraft repair and maintenance services	(1) None	(1) None	
	(2) None	(2) None	
	(3) Joint-ventures	(3) As indicated in the horizontal section	
	(4) As indicated in the horizontal section	(4) As indicated in the horizontal section	

Sector or sub sector	Limitations on market access	Limitations on national treatment	Additional commitments
AIR TRANSPORT SERVICES			
Selling and marketing of air transport services	(1) None	(1) None	
	(2) None	(2) None	
	(3) None	(3) As indicated in the horizontal section	
	(4) As indicated in the horizontal section	(4) As indicated in the horizontal section	

Sector or sub sector	Limitations on market access	Limitations on national treatment	Additional commitments
AIR TRANSPORT SERVICES			
Computer reservation system services (CRS)	(1) None (2) None (3) None (4) As indicated in the horizontal section	(1) None (2) None (3) As indicated in the horizontal section (4) As indicated in the horizontal section	

Sector or sub sector	Limitations on market access	Limitations on national treatment	Additional commitments
AIR TRANSPORT SERVICES			
Aircraft leasing without crew	(1) None (2) None (3) None (4) As indicated in the horizontal section	(1) None (2) None (3) As indicated in the horizontal section (4) As indicated in the horizontal section	