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CERTIFYING STATEMENT

Fourth Protocol to Amend the ASEAN Comprehensive Investment Agreement

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 Fourth Protocol to amend the ASEAN Comprehensive Investment Agreement, signed on 15 July 2020 in Ha Noi, Viet Nam.

Jakarta, 27 August 2020

Robert Matheus Michael Tene
Deputy Secretary-General of ASEAN
Community and Corporate Affairs

FOURTH 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 and which entered into force on 29 March 2012, which aims to create a liberal, facilitative, transparent and competitive investment environment in ASEAN by adhering to principles such as to benefit investors and their investments based in ASEAN;

RECOGNISING the need to undertake assessment and review of Member States' existing performance requirements and consider additional commitments under Article 7 (Prohibition of Performance Requirements) of the ACIA as amended by Article 2 paragraph 1 of the Second Protocol to Amend the ACIA;

RECALLING the decision made during the 24th ASEAN Economic Ministers Retreat from 28 February 2018 - 1 March 2018 in Singapore to deepen investment integration among Member States by enhancing the ACIA; and

NOTING that Article 46 (Amendments) of the ACIA provides that the provisions of the ACIA may be modified through

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amendments mutually agreed upon in writing by the Member States,

HAVE AGREED AS FOLLOWS:

Article 1
Amendments to Article 7
(Prohibition of Performance Requirements)

Article 7 shall be replaced in entirety as follows:

'*1. No Member State shall impose or enforce as a condition for admission, establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory of an investor of another Member State any of the following requirements:*

(a) to export a given level or percentage of goods;

(b) to achieve a given level or percentage of domestic content;

(c) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from a person or any other entity in its territory;

(d) to relate the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with the investments of that investor;

(e) to restrict sales of goods in its territory that the investments of that investor

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produce or provide by relating such sales to the volume or value of its exports or foreign exchange earnings; or

(f) to supply exclusively from its territory the goods that such investment produces to a specific regional market or to the world market.

2. No Member State may condition the receipt or continued receipt of an advantage, in connection with admission, establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory of an investor of another Member State, on compliance with any of the following requirements:

(a) to achieve a given level or percentage of domestic content;

(b) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from a person or any other entity in its territory;

(c) to relate the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with investments of that investor; or

(d) to restrict sales of goods in its territory that investments of that investor produce or provide by relating such sales to the volume or value of its exports or foreign exchange earnings.

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3. (a) *For greater certainty, paragraphs 1 and 2 do not apply to any requirement other than the requirements set out in those paragraphs.*

(b) *Nothing in paragraph 2 shall be construed to prevent a Member State from conditioning the receipt or continued receipt of an advantage, in connection with an investment of an investor of a Member State or of a non-Member State in its territory, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.*

(c) *Subparagraphs 2(a) and (b) shall not apply to requirements imposed by an importing Member State relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.*

(d) *For greater certainty, the term "advantage" in paragraph 2 does not include:*

(i) *any taxation measures, except for Articles 13 (Transfers) and 14 (Expropriation and Compensation), as provided under paragraph 4(a) of Article 3 (Scope of Application); or*

(ii) *subsidies or grants provided by a Member State, as provided under paragraph 4(b) of Article 3 (Scope of Application).*

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4. Member States shall undertake assessment and review of their existing performance requirements and consider additional commitments under this Article, as the need arises.

5. Member States shall, through the AIA Council, undertake an annual review of paragraph 1, on the possibility of also prohibiting the requirement that an investor locate its headquarters for a specific region or the world market, in their respective territories, as a condition for admission, establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in their respective territories.'

Article 2
Amendments to Article 9
(Reservations)

Paragraph 1 shall be replaced as follows:

'1. *Articles 5 (National Treatment), 7 (Prohibition of Performance Requirements), and 8 (Senior Management and Board of Directors) shall not apply to:*

(a) any existing measure that is maintained by a Member State at:

(i) the central level of government, as set out by that Member State in its reservation list in the Schedule referred to in paragraph 2;

(ii) the regional level of government, as set out by that Member State in

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its reservation list in the Schedule referred to in paragraph 2; and

(iii) a local level of government;

(b) the continuation or prompt renewal of any reservations referred to in sub-paragraph (a).'

Article 3
Amendments to ACIA Headnote for the List of Reservations

1. Paragraph 1 shall be replaced as follows:

'*1. The Schedule of ASEAN Member States sets out, pursuant to Article 9 (Reservations), Member States' measures that do not conform to the obligations under:*

(a) Article 5 (National Treatment);
(b) Article 7 (Prohibition of Performance Requirements); and
(c) Article 8 (Senior Management and Board of Directors).'

2. Sub-paragraph 2(e) shall be replaced as follows:

'*(e) "Type of Obligation" refers to the obligation(s) of National Treatment, Prohibition of Performance Requirements and/or Senior Management and Board of Directors, as the case may be, which do not apply to the listed measures(s);'*

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3. Sub-paragraph 2(f) shall be replaced as follows:

'*(f) "Description of Measure" shall refer to measures that do not conform to the National Treatment, Prohibition of Performance Requirements, and/or Senior Management and Board of Directors Article(s), for which a reservation is taken; and*'

4. Paragraph 3 shall be replaced as follows:

'*3. Member States' commitments under the GATS shall apply to measures affecting the supply of services under Modes 1, 2 and 4 of services incidental to manufacturing, agriculture, fishery, forestry, mining and quarrying. For this purpose, Member States need not make any reservations on measures that do not conform to Article 5 (National Treatment), Article 7 (Prohibition of Performance Requirements) and Article 8 (Senior Management and Board of Directors) for these sectors until such time when this Agreement is reviewed and additional commitments agreed. In addition, consistent with Article 3 of the Agreement, measures affecting liberalisation of investment in services sectors, other than services incidental to manufacturing, agriculture, fishery, forestry, mining and quarrying sectors (pCPC 881 – 885), do not fall within the scope of this Agreement. Therefore, the reservation lists attached to this Headnote do not include reservations on such measures.*'

5. Paragraph 4 shall be replaced as follows:

'*4. Each Member State reserves the right to make future reservations on measures that do not conform to Article 5 (National Treatment), Article 7 (Prohibition of Performance Requirements) and*

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Article 8 (Senior Management and Board of Directors) on:

(a) new and emerging sectors, sub-sectors, industries, products, or activities; or

(b) existing sectors, sub-sectors, industries, products or activities;

which are unregulated at the time of submission of the reservation lists.'

Article 4
Work Programme

1. Member States shall enter into discussions on the modifications to their reservations in the Schedule to the ACIA, pursuant to Article 2 (Amendments to Article 9 [Reservations]).

2. Member States shall conclude the discussions referred to in Paragraph 1 within five (5) years from the date of entry into force of this Protocol unless Member States otherwise agree.

3. Modifications to Member States' reservations referred to in Paragraph 1 shall take effect on a date agreed to by the Member States. This provision shall prevail over paragraph 2(h) of Annex 3 of the ACIA.

4. Article 1 (Amendments to Article 7 [Prohibition of Performance Requirements]) and Article 2 (Amendments to Article 9 [Reservations]) shall not apply until the date on which Member States' modifications to their reservations take effect in accordance with Paragraph 3.

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Article 5
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 respective 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.

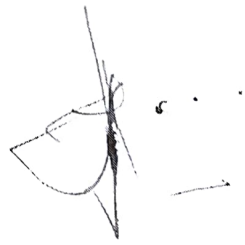
IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Fourth Protocol to Amend the ASEAN Comprehensive Investment Agreement.

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DONE at Ha Noi, Viet Nam, this Fifteenth day of July in the Year Two Thousand and Twenty

in a single original copy in the English Language.

For Brunei Darussalam:



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DATO DR. AMIN LIEW ABDULLAH
Minister at the Prime Minister's Office and
Minister of Finance and Economy II

For the Kingdom of Cambodia:

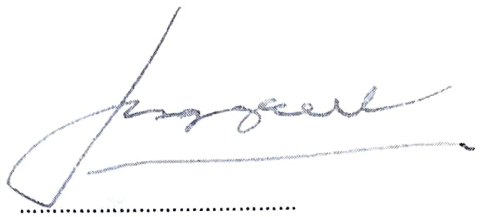


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PAN SORASAK
Minister of Commerce

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DEPUTY SECRETARY GENERAL, THE ASEAN SECRETARIAT

For the Republic of Indonesia:



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ENGGARTIASTO LUKITA
Minister of Trade

For the Lao People's Democratic Republic:



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KHEMMANI PHOLSENA
Minister of Industry and Commerce

For Malaysia:



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DARELL LEIKING
Minister of International Trade and Industry

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For the Republic of the Union of Myanmar:

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THAUNG TUN

Minister for Investment and Foreign Economic Relations

For the Republic of the Philippines:

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RAMON M. LOPEZ

Secretary of Trade and Industry

For the Republic of Singapore:

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CHAN CHUN SING

Minister for Trade and Industry

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DEPUTY SECRETARY GENERAL, THE ASEAN SECRETARIAT

For the Kingdom of Thailand:

.....

CHUTIMA BUNYAPRAPHA SARA

Deputy Minister of Commerce

For the Socialist Republic of Viet Nam:

.....

NGUYEN CHI DUNG

Minister of Planning and Investment

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