

CHAPTER I **DEFINITIONS AND SCOPE**

Article 1 **Definitions**

For the purposes of this Agreement:

- (a) **AEM** means the Economic Ministers of the ASEAN Member Countries;
- (b) **aircraft repair and maintenance services** means such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance;
- (c) **ASEAN** means the Association of Southeast Asian Nations comprising Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the 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;
- (d) **ASEAN-Korea FTA** means the ASEAN-Korea Free Trade Area established by the Framework Agreement and other relevant agreements stipulated in paragraph 1 of Article 1.4 of the Framework Agreement;
- (e) **ASEAN Member Countries** means Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the 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 collectively;
- (f) **ASEAN Member Country** means Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand or the Socialist Republic of Viet Nam individually;
- (g) **commercial presence** means any type of business or professional establishment, including through:

- (i) the constitution, acquisition or maintenance of a juridical person; or
 - (ii) the creation or maintenance of a branch or a representative office,
- within the territory of a Party for the purpose of supplying a service;
- (h) **computer reservation system (CRS) services** means services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;
- (i) **direct taxes** comprise all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation;
- (j) **Framework Agreement** means the Framework Agreement on Comprehensive Economic Cooperation among the Governments of the Member Countries of the Association of Southeast Asian Nations and the Republic of Korea;
- (k) **GATS** means the General Agreement on Trade in Services, contained in Annex 1B to the WTO Agreement;
- (l) **Implementing Committee** means the Implementing Committee established under Article 5.3 of the Framework Agreement;
- (m) **juridical person** means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;
- (n) **juridical person of another Party** means a juridical person which is either:
 - (i) constituted or otherwise organised under the law of that other Party, and is engaged in substantive business operations in the territory of that Party or any other Party; or
 - (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
 - 1. natural persons of that Party; or

2. juridical persons of that other Party identified under subparagraph (i)

(o) a juridical person is:

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

(p) **Korea** means the Republic of Korea;

(q) **measure** means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;

(r) **measures by Parties** means measures taken by:

- (i) central, regional or local governments and authorities; and
- (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

(s) **measures by Parties affecting trade in services** include measures in respect of:

- (i) the purchase, payment or use of a service;
- (ii) the access to and use of, in connection with the supply of a service, services which are required by the Parties to be offered to the public generally;
- (iii) the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of another Party;

(t) **monopoly supplier of a service** means any person, public or private, which in the relevant market of the territory of a Party is authorised or

established formally or in effect by that Party as the sole supplier of that service;

- (u) **natural person of another Party** means a natural person who resides in the territory of that other Party or elsewhere and who under the law of that other Party:
- (i) is a national of that other Party; or
 - (ii) has the right of permanent residence² in that other Party, in the case of a Party which accords substantially the same treatment to its permanent residents as it does to its nationals in respect of measures affecting trade in services, as notified in its acceptance of or accession to this Agreement provided that no Party is obligated to accord to such permanent residents treatment more favourable than would be accorded by that other Party to such permanent residents. Such notification shall include the assurance to assume, with respect to the permanent residents, in accordance with its laws and regulations, the same responsibilities that other Party bears with respect to its nationals;
- (v) **new ASEAN Member Countries** means the Kingdom of Cambodia, the Lao People's Democratic Republic, the Union of Myanmar and the Socialist Republic of Viet Nam;
- (w) **Parties** means the ASEAN Member Countries and Korea collectively;
- (x) **Party** means an ASEAN Member Country or Korea;
- (y) **person** means either a natural person or a juridical person;
- (z) **sector** of a service means,
- (i) with reference to a specific commitment, one or more, or all, subsectors of that service, as specified in a Party's Schedule,
 - (ii) otherwise, the whole of that service sector, including all of its subsectors;
- (aa) **selling and marketing of air transport services** means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions;

² The Parties may make reservations with respect to permanent residence in their Schedule under this Agreement, provided that those reservations do not prejudice the Parties' rights and obligations in the GATS.

- (bb) **services** includes any service in any sector except services supplied in the exercise of governmental authority;
- (cc) **a service supplied in the exercise of governmental authority** means any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers;
- (dd) **service consumer** means any person that receives or uses a service;
- (ee) **service of another Party** means a service which is supplied:
 - (i) from or in the territory of that other Party, or in the case of maritime transport, by a vessel registered under the laws of that other Party, or by a person of that other Party which supplies the service through the operation of a vessel and/or its use in whole or in part; or
 - (ii) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of that other Party;
- (ff) **service supplier** means any person that supplies a service;³
- (gg) **supply of a service** includes the production, distribution, marketing, sale and delivery of a service;
- (hh) **trade in services** is defined as the supply of a service:
 - (i) from the territory of a Party into the territory of any other Party;
 - (ii) in the territory of a Party to the service consumer of any other Party;
 - (iii) by a service supplier of a Party, through commercial presence in the territory of any other Party;
 - (iv) by a service supplier of a Party, through presence of natural persons of a Party in the territory of any other Party;

³ Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under this Agreement. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory where the service is supplied.

- (ii) **traffic rights** means the right for scheduled and non-scheduled services to operate and/or to carry passengers, cargo and mail for remuneration or hire from, to, within, or over the territory of a Party, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged and their conditions, and criteria for designation of airlines, including such criteria as number, ownership, and control;
- (jj) **WTO** means the World Trade Organisation; and
- (kk) **WTO Agreement** means the Marrakesh Agreement Establishing the World Trade Organisation, done at Marrakesh on the 15th day of April 1994 and the other agreements negotiated thereunder.

Article 2 **Scope**

- 1. This Agreement applies to measures by the Parties affecting trade in services.
- 2. This Agreement shall not apply to:
 - (a) a service supplied in the exercise of governmental authority within the territory of each respective Party;
 - (b) measures affecting air traffic rights, however granted; or to measures affecting services directly related to the exercise of air traffic rights, other than measures affecting:
 - (i) aircraft repair and maintenance services;
 - (ii) the selling and marketing of air transport services; and
 - (iii) computer reservation system services;
 - (c) cabotage in maritime transport services; and
 - (d) measures affecting natural persons seeking access to the employment market of a Party and measures regarding citizenship, residence or employment on a permanent basis.
- 3. Article 19, Article 20 and Article 23 of this Agreement shall not apply to laws, regulations or requirements governing the procurement by

governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale.

4. Nothing in this Agreement shall prevent a Party from applying measures to regulate the entry of natural persons of the other Parties into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits⁴ accruing to the other Parties under the terms of a specific commitment.