

## ASEAN – HONG KONG, CHINA FREE TRADE AGREEMENT

### Horizontal Commitments<sup>1</sup> of ASEAN Member States (AMS) on Services

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

AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
<b>Brunei Darussalam</b>	ALL SECTORS INCLUDED IN THIS SCHEDULE	<p>3) Unbound for measures concerning foreign equity or interest in companies established or wishing to establish a commercial presence unless otherwise specified in the specific commitments.</p> <p>4) Unbound except for measures concerning the</p>	<p>3) With respect to existing commercial presence:</p> <ul style="list-style-type: none"> <li>- One of the 2 directors or where there are more than 2 directors at least 2 of them shall be ordinarily resident in Brunei Darussalam.</li> <li>- All companies incorporated outside Brunei Darussalam which establish or have established a place of business in Brunei Darussalam must have one or more locally resident agents to accept service of process and any service of process or any notices required to be served on the company.</li> </ul> <p>4) Unbound except for measures concerning the</p>

<sup>1</sup> As extracted from the Schedules of Specific Commitments of ASEAN Member States. The full schedules can be found in Trade and Industry Department's website at [http://www.tid.gov.hk/english/ita/fta/hkasean/text\\_agreement.html](http://www.tid.gov.hk/english/ita/fta/hkasean/text_agreement.html).

<sup>2</sup> See explanatory note at Annex.

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

AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
		<p>entry and temporary presence of intra-corporate transferees at the level of managers, executives and specialists. Intra-corporate transferees refer to managers, executives and specialists, as defined below, who are employees of firms that provide services within Brunei Darussalam through a branch, subsidiary, or affiliate established in Brunei Darussalam and who have been in the prior employ of their firms outside Brunei Darussalam for a period of not less than one year immediately preceding the date of their application for admission and who are one of the following:</p> <p>(a) Managers - persons within an organisation who primarily direct the organisation, or a department or sub-division of the organisation, supervise and control the work of other supervisory, professional or managerial employees, have the authority to hire and fire or commend hiring, firing or other personnel actions (such as</p>	<p>categories of natural persons referred to in the market access column.</p>

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

AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
		<p>promotion or leave authorisation), and exercise discretionary authority over day-to-day operations. Does not include first-line supervisors, unless the employees supervised are professionals, nor does it include employees who primarily perform tasks necessary for the provision of the service.</p> <p>(b) Executives - persons within the organisation who primarily direct the management of the organisation, exercise wide latitude in decision-making and receive only general supervision or direction from higher-level executives, the board of directors, or stockholders of the business. Executives would not directly perform tasks related to the actual provision of the service or services of the organisation.</p> <p>(c) Specialists - persons within an organisation who possess knowledge at an advanced</p>	

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

AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
		<p>level of expertise and who possess proprietary knowledge of the organisation's service, research equipment, techniques, or management. (Specialists may include, but are not limited to, members of licensed professions).</p> <p>Entry for these intra- corporate transferees is limited to a three year period that may be extended for up to two additional years for a total term not to exceed five years.</p>	

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

AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
Cambodia	Subsidies		3), 4) Unbound for subsidies, including for research and development
	Tax measures		1), 2), 3) None with respect to taxes
	Land		3) Non-Cambodian natural and juridical persons may lease but not own land
	Acquired rights	The conditions of ownership, management, operation, juridical form and scope of activities as set out in a license or other form of approval establishing or authorizing the operation or supply of services by an existing foreign service supplier, will not be made more restrictive than those in existence as of the date of Cambodia's accession to the WTO	
	Investment incentives	3) Investors, seeking incentives under the provisions of the Law on Investment, shall have the obligation to provide adequate and consistent training to Cambodian staff, including for promotion to senior positions	3) None
	Presence of natural persons	4) Unbound except for measures concerning the entry and temporary stay of a natural person who falls in one of the following categories:  <u>Business visitors</u>	4) Unbound, except for measures affecting the categories referred to under market access

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

AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
		<p>A natural person who:</p> <ul style="list-style-type: none"> <li>- enters Cambodia for the purposes of participating in business meetings, establishing business contacts including negotiations for the sale of services and/or other similar activities;</li> <li>- stays in Cambodia without receiving income from within Cambodian sources;</li> <li>- does not engage in making direct sales to the general public or supplying services</li> </ul> <p>Entry visa for business visitors shall be valid for a period of 90 days for an initial stay of 30 days, which may be extended.</p> <p><u>Persons responsible for setting up of a commercial establishment:</u></p> <p>Persons working in an executive or managerial</p>	

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

AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
		<p>position, receiving remuneration from an entity as defined below, who are responsible for the setting up, in Cambodia, of a commercial presence of a service provider of a Party, that will support employment of persons described in a, b, and c below.</p> <p>The subject persons are not subject to a maximum duration of stay.</p> <p><u>Intra-Corporate Transferees</u></p> <p>Natural persons who have been employed by a juridical person of another Party for a period of not less than 1 year and who seek temporary entry to provide services through a branch, subsidiary and affiliate in Cambodia and who are:</p> <p>a) <u>Executives</u>: without requiring compliance with labour market tests, persons within an organization who primarily direct the management of the organization, exercise wide latitude in decision- making, and receive only general supervision or direction from</p>	

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

AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
		<p>higher-level executives, the board of directors, or shareholders of the business. Executives would not directly perform tasks related to the actual supply of a service or services of the organization.</p> <p>b) <u>Managers</u>: without requiring compliance with labour market tests, natural persons employed by a juridical entity and who possess knowledge at an advanced level of expertise or proprietary knowledge of a juridical entity product, service, research, equipment, techniques, or management, and who primarily direct the organization or a department of the organization; supervise and control the work of other supervisory, professional or managerial employees; have the authority to hire and fire or recommend hiring, firing or other personnel actions; and exercise discretionary authority over day-to-day operations. They do not include first-line supervisors, unless the employees supervised are professionals, nor do they include</p>	

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

AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
		<p>employees who primarily perform tasks necessary for the supply of the service.</p> <p>c) Specialists: Natural persons, within an organization who possess knowledge at an advanced level of continued expertise and who possess proprietary knowledge of the organization's services, research equipment, techniques, or management.</p> <p>Temporary residency and work permit is required for the natural persons in the categories defined under intra-corporate transferees. Such permits are issued for two years and may be renewed annually up to maximum of total five years.</p>	

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

AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
Indonesia	ALL SECTORS INCLUDED IN THIS SCHEDULE	<p>3) Commercial Presence of the foreign service provider(s) may be in the form of joint venture and/or representative office, unless mentioned otherwise.</p> <p>Joint venture should meet the following requirements:</p> <p>(i) should be in the form of Limited Liability Enterprise (Perseroan Terbatas/PT),</p> <p>(ii) not more than 49% of the capital share of the Limited Liability Enterprise (Perseroan Terbatas/PT), may be owned by foreign partner(s).</p> <p>4) Subject to Indonesian Labour and Immigration Laws and Regulations, only directors, managers and technical experts/advisors,</p>	<p>3) The Income Tax Law provides that non-resident taxpayers will be subject to withholding tax as stipulated in Indonesian tax laws and regulations if they derive the following income from Indonesian source</p> <p>(a) interest</p> <p>(b) royalties</p> <p>(c) dividend</p> <p>(d) fee from service performed in Indonesia</p> <p>Land Acquisition</p> <p>Undang-Undang Pokok Agraria (Land Law) No. 5 of 1960 stipulates that no foreigners (juridical and natural persons) are allowed to own land.</p> <p>However, a joint venture enterprise could hold the right for land use (Hak Guna Usaha) and building rights (Hak Guna Bangunan), and they may rent/lease land and property.</p> <p>4) Expatriate Charges</p> <p>Any foreign natural persons supplying services are</p>

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

AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
		<p>unless mentioned otherwise, are allowed to stay for two years and could be extended for a maximum two times subject to two years extension each time. Manager and technical experts (intra corporate transfer) are allowed based on an economic needs test.</p> <p>The entry and temporary stay of business visitor(s) is (are) permitted for a period of 60 days and could be extended maximum for 120 days.</p>	<p>subject to charges levied by Governments</p> <p>Labor Laws and Regulations</p> <p>Any expatriate employed by a joint venture enterprise, representatives office, and/or other types of juridical person and/or an individual services provider must hold a valid working permit issued by the Ministry of Manpower.</p> <p>Any juridical and natural persons shall meet professional qualification requirements.</p>
	<p><b>Definitions:</b></p> <p><b>"Director":</b> One or a group of persons entrusted by the shareholders of a services providing entity with the final overall control and direction of the enterprise, and legally responsible to act on behalf of the enterprises inside and/or outside of the court.</p> <p><b>"Manager":</b> Senior employee of a service supplier who primarily directs the management of the organization, receiving general supervision or direction principally from the board of directors of the business, including directing the service supplier or a department or sub-division thereof, supervising or controlling the work of other supervisory, professional or managerial employee.</p> <p><b>"Technical Expert/Advisor":</b> Person employed by a service supplier who possesses a standard of high or common (i) qualifications referring to a type of work or trade requiring specific technical knowledge or (ii) knowledge essential or proprietary to the service, research</p>		

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

AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
	<p>equipment, techniques or management.</p> <p><b>"Joint Operator"</b>: A joint operation is an undertaking between one or several foreign and Indonesian enterprises of temporary nature, to handle one or several project/businesses without establishing a new statutory body according to Indonesian laws.</p> <p><b>"Joint venture Enterprise"</b>: A joint venture enterprise is a legal entity organized under Indonesian law and having its domicile in Indonesia, in the form of cooperation between foreign capital and Indonesian (national) capital.</p> <p><b>"Contract Management"</b>: Contract management is a contract organized under Indonesian law in the form of cooperation on management of temporary nature between Indonesian (national) capital and foreign capital.</p> <p><b>Business visitor(s)</b> is (are) natural person staying in Indonesia for the purpose of participating in business meeting, business contacts including negotiations for the sales of services and/or other similar activities including those who prepare for the establishment of a commercial presence in Indonesia, without acquiring remuneration and/or any other direct income from within Indonesia, and are not engaged in making direct sales or supplying services to general public.</p>		

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

AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
Lao PDR	Land ownership		3), 4) Non-Lao PDR natural and juridical persons are not allowed to own land but may own premises and lease land up to 75 years.
	Subsidies and investment incentives		1), 2), 3), 4) Unbound with respect to subsidies, investment incentives and other state support measures, eligibility for which may be limited to particular regions, categories of persons, or enterprises.
	Commercial presence	3) To establish a commercial presence, a services provider must be incorporated in specific legal form in accordance with laws and regulations of Lao PDR.	3) Foreign investors shall provide adequate training opportunities to Lao PDR nationals.  3) Tax measures, generally pertaining to small and medium enterprises may result in a difference of treatment in favour of Lao PDR services and service suppliers.
	Movement of natural persons providing services	4) Unbound, except for measures affecting the temporary entry and stay of natural persons who are qualified under one of the following categories, and in all cases, the total number of foreign natural persons in the following categories shall not exceed 20% of the total staff:	

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

AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
		<p>A. <u>Business visitors</u>: Natural persons who:</p> <ul style="list-style-type: none"> <li>- Enter Lao PDR to be engaged in activities related to representing a services supplier for the purpose of negotiating for the sale of the services of that supplier;</li> <li>- Stay in Lao PDR without receiving remuneration from sources within Lao PDR; and</li> <li>- Do not engage in making direct sales to the general public or supplying services.</li> </ul> <p>The temporary stay of business visitors is subject to a maximum duration of stay of 90 days.</p> <p>B. <u>Intra-Corporate Transferees</u>:</p> <p>Natural persons who have been employed by a juridical person of another Party outside Lao PDR for a period of not less than 1 year</p>	

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

AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
		<p>immediately preceding the request for transfer to Lao PDR, who seek temporary entry to provide services through commercial establishment of that juridical person in Lao PDR, who cannot be substituted by Lao PDR nationals, and who fall within one of the following categories:</p> <p>(a) <u>Executives</u>: Natural persons within an organization who primarily direct the management of the organization, exercise wide latitude in decision-making, and receive only general supervision or direction from higher-level executives, the board of directors, or shareholders of the business. Executives would not directly perform tasks related to the actual supply of a service or services of the organization; and</p> <p>(b) <u>Managers</u>: Natural persons who possess knowledge at an advanced level of expertise or proprietary knowledge of a</p>	

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

AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
		<p>juridical entity's products, services, research, equipment, techniques, or management, and who primarily direct the organization or a department of the organization; supervise and control the work of other supervisory, professional or managerial employees have the authority to hire and fire or recommend hiring, firing or other personnel actions; and exercise discretionary authority over day-to-day operations. They do not include first-line supervisors, unless the employees supervised are professionals<sup>1</sup>, nor do they include employees who primarily perform tasks necessary for the supply of the service.</p> <p>(c) <u>Specialists</u>: Natural persons within an organization who possess knowledge at an advanced level of continued expertise and who possess proprietary knowledge of the organization's services, research equipment, techniques, or management</p>	

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

AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
		<p>and where there are shortages of Lao PDR nationals with requisite skills.</p> <p>For the natural persons in the categories defined under intra-corporate transferees, temporary residency and work permit will be issued for 1 year which may be renewed every 6 months for up to 3 years as long as conditions indicated for each category are satisfied.</p> <hr/> <p><sup>1</sup> Natural persons with professional qualifications for performing work within the scope of a particular profession, where these are required by the laws and regulations of Lao PDR.</p>	

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

AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
Malaysia	ALL SECTORS INCLUDED IN THIS SCHEDULE UNLESS OTHERWISE INDICATED	<p>3) <u>Acquisition, Mergers and Take-overs</u></p> <p>The acquisition of assets or interests of Malaysian companies and businesses, mergers or take-overs requires approval and apply to the following:</p> <p>(a) the acquisition of the voting rights of a Malaysian corporation by any single foreign interest or associated group of 15 per cent or more, or an aggregate foreign interest of 30 per cent or more or exceeding RM10 million in value;</p> <p>(b) any proposed acquisition of any assets or interests by any means which will result in ownership or control passing to foreign interest; and</p> <p>(c) control of Malaysian corporations through any form of joint-venture agreement, management agreement,</p>	<p>3) <u>Land, Property and Real Estate</u></p> <p>Approval may be denied if the acquisition, disposal or dealing of land or any interest in land, property and real estate is undertaken for speculative or non-productive purpose or for purposes which may conflict with the interest of the State.</p> <p><u>Incentives/Preferences</u> Incentives are limited to eligible Malaysian-owned corporations engaged in services sectors promoted by the Government.</p> <p>Any measure and special preference granted to Bumiputera, Bumiputera status companies, trust companies and institutions set up to meet the objectives of the New Economic Policy (NEP) and the National Development Policy (NDP) shall be unbound.</p> <p>Corporations in which the Government has an interest shall, in acquiring services, give first consideration to services suppliers in which the Government has an interest. This requirement</p>

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

AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
		<p>technical assistance agreement or other arrangements.</p> <p>Approval is normally granted. However it may be denied in circumstances where the proposed investment conflicts with the interest of the State.</p> <p>4) Unbound except for measures affecting the entry and temporary stay of natural persons defined below or indicated in sectoral commitments</p> <p>1. <u>Intra-corporate Transferees</u></p> <p>(a) senior managers being persons within an organisation having proprietary information of the organisation and who exercise wide latitude in decision making relating to the establishment, control and operation of the organisation being directly</p>	<p>does not prevent the acquisition of services from other services suppliers where their services are competitive in terms of price, quality and delivery.</p> <p>4) Unbound except for the categories of natural persons referred to under market access</p>

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

AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
		<p>responsible to the CEO and receive only general supervision or direction from the board of directors or partners of the organisation; and</p> <p>(b) two specialists or experts per organisation being persons within the organisation who possess knowledge at an advanced level of continued expertise and who possess proprietary knowledge of the organisation's new service products and technology, research equipment and techniques or management.</p> <p>Additional specialists or experts may be allowed subject to market test and the training of Malaysians through an acceptable training programme in the relevant services sector or sub sector. Provided that such persons are employees of the foreign services</p>	

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

AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
		<p>supplier for a period of not less than one year immediately preceding the date of application for a work permit and he is to serve in at least a similar capacity.</p> <p>2. <u>Others</u></p> <p>(a) specialists or experts being persons who possess knowledge at an advanced level of continued expertise and who possess proprietary knowledge of the organisation's products and services subject to market test and the employment of Malaysians as counterparts and/or training of Malaysians through acceptable training programmes in the relevant services sector or sub sector</p> <p>(b) professionals being persons who possess necessary academic</p>	

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

AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
		<p>credentials, professional qualifications, experience and/or expertise which have been duly recognised by the professional bodies in Malaysia and registered with those respective professional bodies; and</p> <p>(c) business visitors being persons not based within Malaysia, receiving no remuneration from any source within Malaysia, who has been employed for at least one year by a foreign services supplier, whose entry and temporary stay is for the purposes of negotiating for the sale of services or entering into agreements to sell services for that service supplier and who will not engage in direct sales to the general public.</p> <p>3. Entry and stay of natural persons defined in categories 1 (a) and (b) and 2 (a) and (b)</p>	

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

AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
		shall not exceed a total of five years. For category 2 (c), the period of stay shall not exceed a total of 90 days.	

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

AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment							
Myanmar	All Sectors; Except for Hong Kong, China which does not have nationals, for a services supplier of another Party who is natural person of that Party but is not national of that Party in mode 1,2,3,4: unbound									
	All Sectors	<p>3) (a) Commercial presence of foreign service suppliers and/or providers are permitted in accordance with Myanmar Companies Act 1914, Partnership Act 1932, The Special Companies Act 1950 and the laws amending or replacing such acts, the Myanmar Investment Law (2016), its implementing rules and any notification issued under that law.</p> <p>(b) Incorporation of an enterprise, not involving a state enterprise is to be made under the Myanmar Companies Act 1914.</p> <p>If the investment involves a state enterprise, incorporation shall be made under the Myanmar Companies Act 1914, Partnership Act 1932, Special Companies Act 1950, Myanmar Companies Act (Amendment) 1955, and Myanmar Companies Regulations 1957.</p>	<p>3) (a) According to the Notification No. 51/2017, Non-Resident Foreigner will be subject to a withholding tax as follows;</p> <table><thead><tr><th>Class of Income</th><th>Non-resident foreigner</th></tr></thead><tbody><tr><td>- Interest payment for a loan or indebtedness or a transaction of similar nature or Saving</td><td>15%</td></tr><tr><td>- Royalties for the use of licenses, trademarks, patent rights, etc. for the use of licenses, trademarks, patent rights, etc.</td><td>15%</td></tr><tr><td>- Payment by State Organizations, State Enterprises, Development Committees, co-operative societies, foreign companies, foreign enterprises and organizations, local companies and under an existing law for</td><td>2.5%</td></tr></tbody></table>	Class of Income	Non-resident foreigner	- Interest payment for a loan or indebtedness or a transaction of similar nature or Saving	15%	- Royalties for the use of licenses, trademarks, patent rights, etc. for the use of licenses, trademarks, patent rights, etc.	15%	- Payment by State Organizations, State Enterprises, Development Committees, co-operative societies, foreign companies, foreign enterprises and organizations, local companies and under an existing law for
Class of Income	Non-resident foreigner									
- Interest payment for a loan or indebtedness or a transaction of similar nature or Saving	15%									
- Royalties for the use of licenses, trademarks, patent rights, etc. for the use of licenses, trademarks, patent rights, etc.	15%									
- Payment by State Organizations, State Enterprises, Development Committees, co-operative societies, foreign companies, foreign enterprises and organizations, local companies and under an existing law for	2.5%									

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

AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
		<p>(c) Services activities are restricted under section 3 of the State-owned Economic Enterprises Law (1989). However, these activities may be permitted by Cabinet notification according to the section 4 of the said law.</p> <p><u>Tax</u></p> <p>Income Tax exemption for promoted sectors may be granted by Myanmar Investment Commission in accordance with the Myanmar Investment Law (2016) based on zoning system. If it is in zone (1), the income tax exemption for a period of 7 consecutive years including the year of commencement of business, in zone (2), the income tax exemption for a period of 5 consecutive years including the year of commencement of business, and in zone (3), the income tax exemption for a period of 3 consecutive years including the year of commencement of business.</p>	<p>purchase of goods, work performed or supply of services and hiring within the country under a tender, contract, quotation or other modes (other than the services mentioned in above items of this table)</p> <p>According to the 2017 Union Taxation Law, paragraph 23, sub- paragraph (a), in respect of the following kind of taxpayer, before the reliefs under section 6 of the Income Tax Law shall be deducted, 25 per cent of income tax shall be assessed on the total net profit income:</p> <p>(ii) other income except income under the salary heading of non-resident foreigner.</p> <p>And under, paragraph 24, in the case of a non-resident foreigner, the reliefs under section 6 and 6-a of the Income Tax Law shall not be deducted in the case of income under the salary heading, income tax shall be assessed on the total income at the tax rates</p>

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

AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
			<p>under sub-section (c), section 19 of the 2017 Union Taxation Law.</p> <p>The income tax can be changed due to the Union Taxation Law enacted on a yearly basis.</p> <p><u>Tax</u> According to the Sections 3 (k) of the Income Tax Law, it prescribes the resident foreigners as follows:</p> <ul style="list-style-type: none"> <li>- in the case of individual, a foreigner who resides in Myanmar for not less than one hundred and eighty- three days during the income year;</li> <li>- in the case of a company, a company formed under the Myanmar Companies Act or any other existing law wholly or partly with foreigner share- holders;</li> <li>- in the case of an association of persons other than a company, an association formed wholly or partly with foreigners and where the control,</li> </ul>

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

AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
			<p>management and decision making of its affairs is situated and exercised wholly in the Republic of the Union of Myanmar.</p> <p>- In this regards, foreign workers and staff who work at least six months (183 days) in Myanmar and the foreign enterprises formed in Myanmar may be assumed as the resident foreigners.</p> <p>(b) A foreign lawyer may perform service to client in Myanmar but are not allowed to practice in Myanmar courts of law.</p> <p>(c) The commercial presence of foreign services provider shall be subject to the licensing by the government authorities concerned.</p> <p>(d) According to the Farm- Land Law 2012 and the Transfer of Immoveable Property Restriction Law 1987, the Law Amending the Transfer of Immoveable Property Restriction Law (2005), foreign organizations and persons are not allowed to own land in Myanmar. However, land may be acquired on long term lease, depending on individual circumstance.</p>
		4) (a) Subject to the Myanmar Investment Law	4) - Any expatriate engage in joint venture,

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

AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
		<p>(2016), its implementing rules and any notification issued under that law, Myanmar Immigration (Emergency Provisions) Act 1947, The Foreigners Act 1864, The Registration of Foreigners Act 1940, The Registration of Foreigners Rules 1948 and Immigration rules and regulations, management level is allowed to stay up to one year and may be extendable there on subject to the approval of concerned agencies.</p> <p>(b) All foreign enterprises and foreign workers shall abide by</p> <p><u>Business Visa*</u></p> <p>Period of Permission      70 days of Visa</p> <p>Period for Permission of stay Extension</p> <ul style="list-style-type: none"> <li>- up to 3 months      36 US\$</li> <li>- Over 3 months-      90 US\$ up to one year**</li> </ul>	<p>representative offices or other types of judicial person and/ or individual services provider shall receive the approval of the respective authority.</p> <ul style="list-style-type: none"> <li>- Any expatriate entering into Myanmar shall abide by The Myanmar Immigration (Emergency Provisions) Act 1947, The Foreigners Act 1864, The Registration of Foreigners Act 1940, The Registration of Foreigners Rules 1948, The Permanent Residence of a Foreigner Rules and Immigration rules, regulations and procedures of Myanmar</li> <li>- Individual services providers who work with the approval of respective authorities shall register themselves with the Department of labour, the Ministry of Labour, Immigration and Population.</li> <li>- The Department of Labour, under the Ministry of Labour, Immigration and Population performs registration for foreign workers who have been given the permission to stay in work by the Myanmar Investment Commission.</li> </ul>

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

AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
		<p>[**with recommendation of Ministry concerned, Application Form, Passport (original &amp; copy), Stay Form, (2) Recent Photos, FRC, Company Registration Card, Export &amp; Import License]</p> <p>(Remark: In accordance with permission of Visa Confirming Board, Ministry of Labour, Immigration and Population has been obligating)</p> <p>(c) The Department of Labour, under the Ministry of Labour, Immigration and Population performs registration for foreign workers who have been given the permission to stay in work by the Myanmar Investment Commission.</p>	<ul style="list-style-type: none"> <li>- Regarding the recognition of the educational certificates and technical standard certificate, Myanmar only determines equivalent factor depend on syllabus, contents, volume, time frame. Myanmar needs syllabus, contents, volume, time frame in English of respective parties and non-parties.</li> </ul>

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

### Myanmar

#### \*Types of visa and Regulation for stay extension

No	Type of visa	Period for Permission of visa	Period for Permission of stay Extension	Documents to be Needed	Ministry/board for stay extension permitted	Remark
1	Business Visa	70 days	<ul style="list-style-type: none"> <li>- Up to 3 months</li> <li>- Over 3 months</li> <li>- Up to one year</li> </ul>	<ul style="list-style-type: none"> <li>- Recommendation of Ministry concerned</li> <li>- Permission of Ministry of Labour, Immigration and Population</li> <li>- Validated company registration certificate, application Form</li> <li>- Passport (original &amp; copy)</li> <li>- (2) Recent Photos</li> </ul>	Visa confirming Board	In accordance with permission of Visa Confirming Board, Ministry of Labour, Immigration and Population has been obligating

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

No	Type of visa	Period for Permission of visa	Period for Permission of stay Extension	Documents to be Needed	Ministry/board for stay extension permitted	Remark
2	Education Visa	70 days	<ul style="list-style-type: none"> <li>- Up to 3 months</li> <li>- Over 3 months</li> <li>- Up to one year</li> </ul>	<ul style="list-style-type: none"> <li>- Permission of Ministry of Labour, Immigration and Population</li> <li>- Recommendation of Ministry of Education</li> <li>- Application form to extend stay permit of related school (or) university</li> <li>- Passport (original &amp; copy)</li> <li>- (2) Recent Photos</li> </ul>	Visa confirming Board	In accordance with permission of Visa Confirming Board, Ministry of Labour, Immigration and Population has been obligating

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

No	Type of visa	Period for Permission of visa	Period for Permission of stay Extension	Documents to be Needed	Ministry/board for stay extension permitted	Remark
3	Crew Visa	28 days	<ul style="list-style-type: none"> <li>- Up to 3 months</li> <li>- Over 3 months</li> <li>- Up to one year</li> </ul>	<ul style="list-style-type: none"> <li>- Permission of Ministry of Labour, Immigration and Population</li> <li>- Recommendation of relevant Ministries</li> <li>- Application form to extend stay permit of current company (or) airline</li> <li>- Passport (original &amp; copy)</li> <li>- (2) Recent Photos</li> </ul>	Visa confirming Board	In accordance with permission of Visa Confirming Board, Ministry of Immigration and Population has been obligating

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

ASEAN AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
<b>The Philippines</b>	All Sectors included in this Schedule	<p>3) In Activities Expressly Reserved by Law to Citizens of the Philippines (i.e., foreign equity is limited to a minority share):</p> <p>The participation of foreign investors in the governing body of any corporation engaged in activities expressly reserved to citizens of the Philippines by law shall be limited to the proportionate share of foreign capital of such entities.</p> <p>All executive and managing officers must be citizens of the Philippines.</p> <p><u>Acquisition of Land</u></p> <p>All lands of the public domain are owned by the State. Only citizens of the Philippines or corporations or associations at least 60 per cent of whose capital is owned by such citizens may own land other than public lands and acquire public lands through lease</p>	<p>3) <u>Access to Domestic Credit</u></p> <p>A foreign firm, engaged in nonmanufacturing activities availing itself of peso borrowings, shall observe, at the time of the borrowing, the prescribed 50:50 debt- to-equity ratio. Foreign firms covered are:</p> <p>a. Partnerships, more than 40 per cent of whose capital is owned by non-Filipino citizens; and</p> <p>b. Corporations, more than 40 per cent of whose total subscribed capital stock is owned by non-Filipino citizens.</p> <p>This requirement does not apply to banks and non-bank financial intermediaries.</p>

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

ASEAN AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
		<p>Foreign investors may lease only private lands.</p> <p>4) <u>Entry and Temporary Stay of Natural Persons Supplying Services</u></p> <p>In activities expressly reserved by law to citizens of the Philippines where foreign equity participation is limited to a maximum of 40 percent, all executives and managers must be citizens of the Philippines.</p> <p>Pursuant to Article 40 of the Labor Code, as amended, and its implementing rules and regulations, non-resident foreign nationals may be admitted to the Philippines after a determination of the non-availability of a person in the Philippines who is competent, able and willing at the time of application, to perform the services for which the foreign national is desired.</p> <p>1), 2), 3), 4) All measures taken by local government units are unbound</p>	<p>4) Pursuant to Section 14, Article XII of the Philippine Constitution, the practice of profession in the Philippines shall be limited to citizens of the Philippines, save in cases prescribed by law. If the position of the natural person constitutes the practice of a regulated profession under the laws, rules and regulations of the Philippines, the natural person must secure a special permit to practice the regulated profession from the Professional Regulation Commission (PRC) pursuant to Section 7(j) of Republic Act No. 8981. The natural person shall likewise comply with the requirements relative to practice of profession by a foreign national as provided for in the appropriate professional regulatory law.</p> <p>Pursuant to the Constitution and other relevant laws, in activities expressly reserved to citizens of the Philippines or corporation or association where foreign equity participation is limited to a maximum</p>

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

ASEAN AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
		1), 2), 3), 4) All measures relating to taxation are unbound	<p>of 40 percent, all executive and managing officers must be citizens of the Philippines. A non-Filipino citizen as officer or assigned to do technical functions shall have two (2) Filipino understudies.</p> <p>1), 2), 3), 4) All measures relating to taxation are unbound</p>

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

ASEAN AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
Singapore	ALL SECTORS INCLUDED IN THIS SCHEDULE	4) Presence of natural persons unbound.	<p>4) Unbound</p> <p>3) Commercial presence, right of establishment and movement of juridical persons are subject to compliance with the following provisions:</p> <p>A foreigner who wishes to register a business firm must have a local manager who should be a Singapore citizen or a Singapore Permanent Resident or a Singapore Employment Pass holder. (However, a foreigner who is a Singapore Permanent Resident or a Singapore Employment Pass holder can register a business without appointing a local manager.)</p> <ul style="list-style-type: none"> <li>- At least one director of the company must be locally resident</li> <li>- - All branches of foreign companies registered in Singapore must have at least 2 locally resident agents. (To qualify as locally resident, a person should be either a Singapore citizen or Singapore Permanent Resident or Singapore Employment Pass holder.)</li> </ul>

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

ASEAN AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
		1), 2), 3), 4) Specific commitments in market access in any sector or subsector, through any mode of delivery, shall not be construed to override the limitations established in the financial services sector	

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

ASEAN AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
Thailand	ALL SECTORS INCLUDED IN THIS SCHEDULE	<p>3) Only a limited liability company, or a type of legal entity as specified in this schedule, incorporated and registered in Thailand pursuant to Thai laws and regulations is permitted. Commercial presence must meet one of the following categories as indicated in the sector-specific commitments:</p> <p>3.1 Foreign equity participation must not exceed 49 per cent or unless otherwise specified in the sector-specific commitments, of the registered capital; and the number of foreign shareholders must be less than half of the total number of shareholders.</p> <p>3.2 Foreign equity participation must not exceed 70 per cent of the registered capital or unless otherwise specified in the sector-specific commitments, owned, or controlled by foreigner(s) must meet the following conditions:</p>	<p>3) For a limited liability company, or a type of legal entity which is owned or controlled by foreigner(s) must meet the requirements as stipulated by laws and regulations regarding foreign investment.</p> <p>For 3.1, legal entity incorporated pursuant to Thai laws and regulations with foreign equity participation not exceeding 49 per cent of the registered capital: None</p> <p>For 3.2, a limited liability company or legal entity of another Party must apply for a certificate of business operation as stipulated by the Section XI of the Foreign Business Act B.E. 2542 and the Ministerial Regulation Prescribing Rules and Procedures Pertaining to the Application for a Foreign Business certificate B.E. 2546.</p> <p>Unbound for the measures pertaining to subsidies or privileges, minimum capital requirements, acquisition and usage of land, taxation measures, and nationality requirement.</p>

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

ASEAN AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
		<p>a. Shall operate through joint-venture with juridical person of Thai national;</p> <p>b. prior to obtaining a license or certificate, legal entity which is owned or controlled by foreigner(s) must meet the criteria required by relevant authorities;</p> <p>c. a minimum capital requirement rate referred to applicable laws and regulations of Thailand shall be applied to limited liability company or the legal entity of another party;</p> <p>d. a board of directors including administrative and executive position or alike in a limited liability company or the legal entity must be of Thai national and have a domicile in Thailand; and</p> <p>e. a person or representative of the</p>	<p>Other than additionally indicated in the specific commitments, the criteria and requirements stipulated by the Article XIV and XIV bis of the GATS, and Section V of the Foreign Business Act B.E. 2542 and as stipulated by any other law or regulation regarding foreign investment shall be applied.</p>

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

ASEAN AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
		<p>limited liability company or the legal entity who apply for a license must be of Thai national; and</p> <p>Commercial presence in sectors or subsectors in this schedule must also meet additional conditions (if any) indicated in the sector-specific commitments.</p> <p>4) Other than additionally indicated or otherwise specified in the specific commitments, temporary movement of natural persons is unbound except in the following categories:</p> <p><b>a. Short-term Business Visitor:</b></p> <p>A natural person seeking to enter or stay in Thailand temporarily, whose remuneration and financial support for the duration of the visit is derived from outside Thailand</p> <p>(i) as a representative of a goods</p>	<p>4) Unbound, except as provided in the MA column</p>

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

ASEAN AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
		<p>seller/service supplier, for the purpose of negotiating the sale of goods or supply of services or entering into agreements to sell goods or supply services for that goods seller/service supplier, where such negotiations do not involve direct sale of goods or supply of services to the general public;</p> <p>(ii) as an employee of a juridical person as defined in subparagraph (d) (juridical person) of Article 1 (Definitions) of Chapter 8 (Trade in Services) only for the purpose of establishing an investment or setting up a commercial presence, for the juridical person in the Area of another Party;</p> <p>(iii) for the purpose of participating in business negotiations or meetings; or</p> <p>(iv) for the purpose of establishing an investment or setting up a commercial</p>	

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

ASEAN AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
		<p>presence in Thailand.</p> <p><u>Duration of stay:</u> Entry and temporary stay for a period not exceeding ninety (90) days shall be granted, when applied for, to a short-term business visitor</p> <p><b>b. Intra-corporate Transferee:</b></p> <p>A natural person who is an employee of a juridical person established in the Area of a Party, who is transferred temporarily for the supply of a service through commercial presence (either through a representative office, branch, subsidiary or affiliate) in the Area of another Party, and who has been an employee of the juridical person for a period as may be specified in the Schedule of Commitments, and who is:</p> <p>i) an <b>Executive</b>: a natural person within the organisation who primarily directs the</p>	

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

ASEAN AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
		<p>management of the organisation and exercises wide latitude in decision making and receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the business; an executive would not directly perform tasks related to the actual provision of the service or services of the organisation;</p> <p>(ii) a <b>Manager</b>: a natural person within the organisation who primarily directs the organisation/department/ subdivision and exercises supervisory and control functions over other supervisory, managerial or professional staff; does not include first line supervisors unless employees supervised are professionals; does not include employees who primarily perform tasks necessary for the provision of the service; or</p> <p>(iii) a <b>Specialist</b>: a natural person within the</p>	

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

ASEAN AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
		<p>organisation who possesses knowledge at an advanced level of expertise essential to the establishment/provision of the service and/or possesses proprietary knowledge of the organisation's service, research equipment, techniques or management; may include, but is not limited to, members of a licensed profession.</p> <p><u>Duration of stay:</u></p> <ol style="list-style-type: none"> <li>1. Entry and temporary stay for an initial period not exceeding one (1) year from the arrival date shall be granted, when applied for, to an intra-corporate transferee who has been employed by a juridical person concerned outside Thailand for a period of not less than one (1) year immediately preceding the date of his application for admission.</li> <li>2. Such temporary stay may be extended for a further three (3) terms of not more than</li> </ol>	

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

ASEAN AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
		<p>one (1) year each.</p> <p>4) Temporary movement of natural persons shall not include any type or category of foreign natural persons prohibited or not allowed by The Working of Aliens Act B.E. 2551 or by any other relevant law or regulation.</p> <p>A natural person shall meet criteria<sup>1</sup> stipulated by Ministry of Labour and relevant authorities in obtaining a license or permission in any sector or subsector where it is required by specific laws or regulations.</p> <p>3), 4) A natural person or juridical person of another Party that acquires or gains ownership of land, shall be deemed ineligible to exercise rights and privileges under this agreement.</p> <p>A natural person or a juridical person who receives other special privileges or incentives from Thai authorities to supply services may not claim benefits</p>	<p>3), 4) A natural person or juridical person of another Party are not allowed to purchase or own land in Thailand.</p> <p>The Land Code of Thailand B.E. 2497 shall be applied to acquisition and usage of land of a natural person limited liability company, or a type of legal entity as specified in this schedule.</p>

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

ASEAN AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
		<p>under this agreement.</p> <hr/> <p><sup>1</sup>The criteria may be included but not limited to: size of fully paid-up capital, employment creation, extent of foreign investment, export promotion, transfer of technology, and special of management.</p>	

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

ASEAN AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
<b>Viet Nam</b>	ALL SECTORS INCLUDED IN THIS SCHEDULE	<p>3) None, except:</p> <p>Unless otherwise specified in each specific sector or sub-sector of this Schedule, foreign enterprises are allowed to establish commercial presence in Viet Nam in the form of business co-operation contract<sup>1</sup>, joint venture enterprise, 100% foreign- invested enterprise.</p> <p>Representative offices of foreign service suppliers are permitted to be established in Viet Nam, but they shall not engage in any direct profit-making activities<sup>2</sup>.</p> <p>Unless otherwise indicated in each specific sector or sub-sector of this Schedule, the establishment of branches is unbound.</p> <p>The conditions of ownership, operation and juridical form and scope of activities as set out in the respective licenses or other form of approval establishing or authorizing the</p>	<p>3) None, except:</p> <p>Eligibility for subsidies may be limited to Vietnamese service suppliers, i.e. to juridical persons established within the territory of Viet Nam, or a part thereof. The granting of one-time subsidization to promote and facilitate the process of equitisation is not in breach of this commitment. Unbound for subsidies for Research and Development. Unbound for subsidies in the Health, Education and Audio-visual sectors. Unbound for subsidies aimed at promoting the welfare and employment of ethnic minorities.</p>

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

ASEAN AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
		<p>operation or supply of services by an existing foreign service supplier shall not be made more restrictive than they exist as of the date of entry into force of this Agreement.</p> <p>Foreign-invested enterprises shall be permitted by competent authorities of Viet Nam to lease the land to carry out their investment projects. The land leasing period shall correspond to the time of operation of those enterprises and shall be stipulated in their investment licenses and shall be extended whenever the time of operation of those enterprises is extended by competent authorities.</p> <p>Foreign service suppliers are permitted to make capital contribution in the form of buying shares of Viet Nam's enterprises. In case of capital contribution in the form of buying shares of joint-stock commercial banks and for the sectors not committed in this Schedule, the total equity held by foreign investors in each</p>	

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

ASEAN AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
		<p>enterprise may not exceed 30% of the enterprise's chartered capital unless otherwise provided by Viet Nam's laws or authorized by Viet Nam's competent authority.</p> <p>For the other sectors and sub-sectors committed in this Schedule, the level of equity held by foreign investors in acquisition of Vietnamese enterprises shall be corresponding to the limitations on foreign capital participation set forth therein, if any, including the limitations in the form of transitional periods, where applicable.</p> <p>4) Unbound, except measures relating to entry and temporary stay of natural persons who fall in one of the following categories:</p> <p>(a) <u>Intra-corporate transferees</u></p> <p>Managers, executives and specialists, as defined hereunder, of a foreign enterprise which has established a commercial</p>	<p>4) Unbound, except as indicated in market access column.</p>

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

ASEAN AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
		<p>presence in the territory of Viet Nam, temporarily moving as intra- corporate transferees to that commercial presence and who have been previously employed by the foreign enterprise for at least one year, shall be granted entry and a stay permit for an initial period of three years which may be extended subject to the term of operation of those entities in Viet Nam. At least 20% of the total number of managers, executives and specialists shall be Vietnamese nationals. However, a minimum of 3 non-Vietnamese managers, executives and specialists shall be permitted per enterprise.</p> <p>Managers and executives are those who primarily direct the management of the foreign enterprises which have established commercial presence in Viet Nam, receiving only general supervision or direction from the board of directors or stockholders of the business or their</p>	

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

ASEAN AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
		<p>equivalent, including directing the establishment or a department or subdivision of the establishment, supervising and controlling the work of other supervisory, professional or managerial employees, having the authority personally to hire and fire or recommend hiring, firing or other personnel actions, and who do not directly perform tasks concerning the actual supply of the services of the establishment.</p> <p>Specialists are natural persons working within an organization who possess knowledge at an advanced level of expertise and with knowledge of the organization's services, research equipment, techniques or management. In assessing such knowledge, account will be taken not only of knowledge specific to the commercial presence, but also of whether the person has a high level of</p>	

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

ASEAN AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
		<p>skills or qualification referring to a type of work or trade requiring specific technical knowledge. Specialists may include, but are not limited to, members of licensed professions.</p> <p>(b) <u>Other personnel</u></p> <p>Managers, executives and specialists, as defined in (a) above, who cannot be substituted by Vietnamese and who are employed outside Viet Nam's territory by a foreign enterprise which has established a commercial presence in the territory of Viet Nam with a view to participating in the foreign enterprise's activities in Viet Nam, shall be granted entry and a stay permit in conformity with the term of the concerned employment contract or for an initial period of three years whichever is shorter, which may be extended subject to the employment contract between them and the</p>	

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

ASEAN AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
		<p>commercial presence.</p> <p>(c) <u>Service sales persons</u></p> <p>Persons not based in the territory of Viet Nam and receiving no remuneration from a source located within Viet Nam, and who are engaged in activities related to representing a service provider for the purpose of negotiating for the sale of the services of that provider where:(i) such sales are not directly made to the general public; and (ii) the salesperson is not directly engaged in supplying the service. The stay of these salespersons is limited to a 90-day period.</p> <p>(d) <u>Persons responsible for setting up a commercial presence</u></p> <p>Managers and executives (as defined in (a) above) within a juridical person, who are responsible for the setting up, in Viet Nam,</p>	

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

ASEAN AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
		<p>of a commercial presence of a service provider of a Party when (i) these people are not engaged in making direct sales or supplying services; and (ii) the service provider has its principal place of business in the Area of a Party other than Viet Nam and has no other commercial presence in Viet Nam. The stay of these persons is limited to a 90-day period.</p> <p>(e) <u>Contractual service suppliers (CSS)</u></p> <p>Natural persons who are employees of a foreign enterprise having no commercial presence in Viet Nam may enter and stay in Viet Nam for a period of 90 days or for the duration of the contract, whichever is less provided that the following conditions and requirements shall be applied:</p> <ul style="list-style-type: none"> <li>- The foreign enterprise has obtained a service contract from a Vietnamese enterprise engaged in business</li> </ul>	

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

ASEAN AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
		<p>operation in Viet Nam. The competent authority of Viet Nam must be able to establish the necessary procedures to guarantee the bona fide character of the contract.</p> <ul style="list-style-type: none"> <li>- These persons must possess: (a) a university degree or a technical qualification document demonstrating knowledge of an equivalent level; (b) professional qualifications where this is required to exercise an activity in the sector concerned pursuant to the laws and regulations of Viet Nam; and (c) at least 5 years of professional experience in the sector.</li> <li>- The number of these persons covered by the service contract shall not be larger than necessary to fulfil the contract, as it may be decided by the</li> </ul>	

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

ASEAN AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
		<p>laws and regulations and requirement of Viet Nam.</p> <p>- These persons should have been employed by the foreign enterprise having no commercial presence in Viet Nam for a period of no less than 2 years and have met the requirements prescribed for "specialist" above.</p> <p>The entry of these persons is allowed for computer and related services (CPC 841-845, 849) and engineering services (CPC 8672).</p> <hr/> <p><sup>1</sup> Business co-operation contract (BCC) is a document which is signed by two or more parties (of which at least one party must be Vietnamese legal entity and one party must be foreign legal entity) and which stipulates the responsibilities of, and the sharing of business results between, the parties for the purpose of conducting investment and business in Viet Nam without creating a legal entity.</p>	

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

ASEAN AMS	Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment
		<sup>2</sup> Representative office is a subordinate unit of foreign enterprises, established under the Vietnamese law in order to seek, promote trade and tourism opportunities but is not allowed to engage in any direct profit-making activities.	

- End -

## EXPLANATIONS OF THE FOUR MODES OF SUPPLY FOR TRADE IN SERVICES

### ***Cross Border Supply (Mode 1)***

The cross border mode of supply refers to the supply of service from the area of an FTA party into the area of the other FTA party. If Party A of an FTA makes commitment in respect of Mode 1, a service supplier of the other Party of the FTA (i.e. Party B) can supply the service within the area of Party B to service consumers in the area of Party A, without being physically present in the area of Party A. An example is the supply of consultancy service through telecommunications, fax or mail etc.

### ***Consumption Abroad (Mode 2)***

The consumption abroad mode of supply refers to the supply of service in the area of an FTA party to the service consumer of the other FTA party. If Party A of an FTA makes commitment in respect of Mode 2, a service supplier of Party B can, within the area of Party B, provide the service to consumers of Party A who are present in the area of Party B. An example is the supply of hotel services.

### ***Commercial Presence (Mode 3)***

The commercial presence mode of supply refers to the supply of service by a service supplier of an FTA party, through commercial presence in the area of the other FTA party. If Party A of an FTA makes commitment in respect of Mode 3, a service supplier of Party B can provide the service within the area of Party A through commercial presence in the area of Party A. This covers the presence of juridical persons (e.g. corporations, joint ventures, partnership, sole proprietorship, trust, association) as well as representative offices, branches etc.

### ***Movement of Natural Person (Mode 4)***

The movement of natural person mode of supply refers to the supply of service by a service supplier of an FTA party, through the presence of their natural persons in the area of the other FTA party. If Party A of an FTA makes commitment in respect of Mode 4, a service supplier of Party B can provide the service within the area of Party A through the presence of natural persons of Party B. This covers natural persons who are themselves service suppliers, as well as natural persons who are employees of service suppliers (e.g. accountants of accounting firms).