

COMPILATION OF PROVISIONS ON TREATY PRACTICE OF THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS (ASEAN)

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IMPORTANT NOTES

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This document was last amended in December 2012.

1. Charter of the Association of Southeast Asian Nations 2007

Signed by Member States in Singapore on 20 November 2007 during the 13th ASEAN Summit

[Extracts of relevant provisions]

...

Article 2 – Principles

...

2. ASEAN and its Member States shall act in accordance with the following Principles:

...

- (j) upholding the United Nations Charter and international law, including international humanitarian law, subscribed to by ASEAN Member States;

...

Article 3 – Legal Personality of ASEAN

ASEAN, as an inter-governmental organisation, is hereby conferred legal personality.

...

Article 5 – Rights and Obligations

...

2. Member States shall take all necessary measures, including the enactment of appropriate domestic legislation, to effectively implement the provisions of this Charter and to comply with all obligations of membership.

...

Article 8 – ASEAN Coordinating Council

...

2. The ASEAN Coordinating Council shall:

...

- (b) Coordinate the implementation of agreements and decisions of the ASEAN Summit;

...

Article 10 – ASEAN Sectoral Ministerial Bodies

1. ASEAN Sectoral Ministerial Bodies shall:

...

- (b) Implement the agreements and decisions of the ASEAN Summit under their respective purview;

...

Article 11 – Secretary-General of ASEAN and ASEAN Secretariat

2. The Secretary-General shall:

...

- (b) Facilitate and monitor progress in the implementation of ASEAN agreements and decisions, and submit an annual report on the work of ASEAN to the ASEAN Summit;

...

Article 17 – Immunities and Privileges of ASEAN

1. ASEAN shall enjoy in the territories of the Member States such immunities and privileges as are necessary for the fulfillment of its purposes.
2. The immunities and privileges shall be laid down in separate agreements between ASEAN and the host Member State.

Article 18 – Immunities and Privileges of the Secretary-General of ASEAN and Staff of the ASEAN Secretariat

1. the Secretary-General of ASEAN and staff of the ASEAN Secretariat participating in official ASEAN activities or representing ASEAN in the Member States shall enjoy such immunities and privileges as are necessary for the independent exercise of their functions.
2. The immunities and privileges under this Article shall be laid down in a separate ASEAN agreement.

...

Article 41 – Conduct of External Relations

...

7. ASEAN may conclude agreements with countries or sub-regional, regional and international organisations and institutions. The procedures for concluding such agreements shall be prescribed by the ASEAN Coordinating Council in consultation with the ASEAN Community Councils.

...

Article 45 – Relations with the United Nations System and Other International Organisations and Institutions

1. ASEAN may seek an appropriate status with the United Nations system as well as with other sub-regional, regional, international organisations and institutions.
2. The ASEAN Coordinating Council shall decide on the participation of ASEAN in other sub-regional, regional, international organisations and institutions.

...

Notes:

- The full text of the Charter of the Association of Southeast Asian Nations is available on the website of ASEAN at: <http://www.asean.org/asean/asean-charter/asean-charter>

- An unofficial text of the Charter is also provided on the website of CIL at:
<http://cil.nus.edu.sg/2007/2007-charter-of-the-association-of-southeast-asian-nations-signed-on-20-november-2007-in-singapore-by-the-heads-of-stategovernment/>

2. Agreement on the Privileges and Immunities of the Association of Southeast Asian Nations, 2009

Done on 25 October 2009 by the ASEAN Foreign Ministers at the 15th ASEAN Summit

[Extract of relevant provision]

Article 2 Legal Personality

1. As a legal person, ASEAN shall have the following capacities under domestic laws:
 - (a) to enter into contracts;
 - (b) to acquire and dispose of movable and immovable property; and
 - (c) to institute and defend itself in legal proceedings.

In the exercise of these capacities, ASEAN shall be represented by the Secretary-General of ASEAN, Deputy Secretaries-General or any member of the staff of the ASEAN Secretariat authorised by the Secretary-General of ASEAN.

2. In exercising its capacities under international law, including the power to conclude agreements under Article 41 (7) of the ASEAN Charter, ASEAN shall act through its representatives authorised by the Member States.

...

Article 10 Cooperation and Compliance

1. ASEAN, as an intergovernmental organisation, shall, where possible, cooperate at all times with the appropriate authorities of Member States to facilitate the proper administration of justice, secure the observance of laws and regulations and prevent the occurrence of any abuse in connection with the persons entitled to the privileges and immunities under this Agreement.

....

Note:

The full text of the Agreement may be accessed on the website of the ASEAN at:
<http://www.asean.org/resources/item/agreement-on-the-privileges-and-immunities-of-asean-2>

3. Rules of Procedure for Conclusion of International Agreements by ASEAN 2011

Adopted on 16 November 2011 by ASEAN Member States at the 9th meeting of the ASEAN Coordinating Council.

Rule 1 Scope of Application

1. These Rules specify the procedure for the conclusion of international agreements by ASEAN as an intergovernmental organisation in the conduct of external relations as provided in Article 41(7) of the ASEAN Charter.
2. These Rules shall not apply to the conclusion of international agreements concluded by all ASEAN Member States collectively and which create obligations upon individual ASEAN Member States.

Rule 2 Definition

For the purpose of these Rules, “international agreement by ASEAN” (hereinafter referred to as “international agreement”) means any written agreement, regardless of its particular designation, governed by international law which creates rights and obligations for ASEAN as a distinct entity from its Member States.

Rule 3 Authorisation of the Commencement of Negotiation and Appointment of Representative(s)

The proposal to commence a negotiation of an international agreement shall be coordinated with the Committee of Permanent Representatives to ASEAN by the relevant ASEAN Sectoral Ministerial Bodies at the senior officials level. The ASEAN Foreign Ministers Meeting, on its own or through the Committee of Permanent Representatives to ASEAN, shall decide on the proposal and shall appoint the appropriate representative(s) to commence the negotiation on behalf of ASEAN.

Rule 4 ASEAN Common Position

1. ASEAN Member States shall coordinate and develop an ASEAN common position pursuant to Article 41(4) of the ASEAN Charter.
2. Such ASEAN common position shall be formulated by the relevant ASEAN Sectoral Ministerial Bodies at the senior officials level in coordination with

the Committee of Permanent Representatives to ASEAN. In the formulation of an ASEAN common position, the ASEAN Foreign Ministers Meeting may be consulted if and when necessary.

3. The representative(s) as referred to in Rule 3 shall adhere to an ASEAN common position which serves as a basis for negotiation.

Rule 5 Obligation of information and consultation

1. The representative(s) shall ensure that the relevant ASEAN Sectoral Ministerial Bodies at the senior officials level and the Committee of Permanent Representatives to ASEAN are consulted and kept informed of the progress of negotiation.
2. The relevant ASEAN Sectoral Ministerial Bodies at the senior officials level or the Committee of Permanent Representatives to ASEAN may, at any time, request to be consulted or informed of the progress of negotiation from the representative(s).
3. The relevant ASEAN Sectoral Ministerial Bodies at the senior officials level in coordination with the Committee of Permanent Representatives to ASEAN may, at any time, give further instruction to the representative(s).
4. The representative(s) may seek further instruction from the relevant ASEAN Sectoral Ministerial Bodies at the senior officials level.

Rule 6 Initialling of the Draft Text of the International Agreement

When negotiation is completed, the representative(s) may initial the draft text of the international agreement solely for ascertaining the form and content of the negotiated text of such agreement. For the purpose of this Rule, the initialled draft text shall not be deemed as the final text and shall be subject to endorsement pursuant to Rule 7.

Rule 7 Endorsement of the Draft Text of the International Agreement

1. The representative(s) shall submit the draft text of the international agreement to the relevant ASEAN Sectoral Ministerial Bodies at the senior officials level for endorsement. Such endorsement shall be made in consultation with the Committee of Permanent Representatives to ASEAN.

2. The Committee of Permanent Representatives to ASEAN shall submit the endorsed text to the ASEAN Foreign Ministers Meeting for its consideration pursuant to Rule 8. This paragraph shall not apply where the ASEAN Foreign Ministers Meeting acts through the Committee of Permanent Representatives to ASEAN pursuant to Rule 8, paragraph 4.

Rule 8 Signature and Act of Formal Confirmation

1. The consent of ASEAN to be bound by an international agreement shall be expressed by signature or an act of formal confirmation.
2. The consent of ASEAN to be bound may be expressed by signature of the person appointed pursuant to paragraph 5 of this Rule when:
 - a. the international agreement provides that signature shall have that effect; or
 - b. the intention of ASEAN to give that effect to the signature appears from the full powers issued pursuant to Rule 9, or was expressed during the negotiation.
3. The consent of ASEAN to be bound may be expressed by an act of formal confirmation when:
 - a. the international agreement provides for such consent to be expressed by an act of formal confirmation;
 - b. the intention of ASEAN to sign the international agreement subject to an act of formal confirmation appears from the full powers issued pursuant to Rule 9, or was expressed during the negotiation; or
 - c. the person appointed pursuant to paragraph 5 of this Rule has signed the international agreement subject to an act of formal confirmation.
4. The ASEAN Foreign Ministers Meeting, on its own or through the Committee of Permanent Representatives to ASEAN, may decide on the signing of, and/or an act of formal confirmation of an international agreement.
5. The ASEAN Foreign Ministers Meeting, on its own or through the Committee of Permanent Representatives to ASEAN, may appoint the Secretary-General of ASEAN or any other person to sign the international agreement on behalf of ASEAN.

6. Where a decision on formal confirmation has been taken pursuant to paragraph 4 of this Rule, the instrument of formal confirmation shall be issued by the Secretary-General of ASEAN.

Rule 9 Full Powers

Where full powers is required, the Secretary-General of ASEAN shall, upon instruction of the ASEAN Foreign Ministers Meeting on its own or through the Committee of Permanent Representatives to ASEAN, issue full powers for negotiating and/or signing an international agreement.

Rule 10 Procedure for Amendment, Suspension and Termination

The procedure set forth in these Rules shall apply, *mutatis mutandis*, to the amendment, suspension and termination of international agreements to which ASEAN is a party.

Rule 11 Role of the ASEAN Secretariat

The ASEAN Secretariat shall assist the representative(s) and relevant ASEAN organs throughout the process of conclusion of international agreements.

Notes:

- The official text of this document is currently not accessible on the website of ASEAN.
- An unofficial version can be accessed on website of the Ministry of Foreign Affairs of Thailand: <http://www.mfa.go.th/asean/contents/files/asean-article-20120410-211034-686073.pdf>

4. Agreement on the Establishment of the ASEAN Secretariat 1976 (as Amended)

The Agreement was signed by Member States in Bali, Indonesia on 24 February 1976 during the 1st ASEAN Summit. It has been amended several times, most recently in Subang Jaya, Malaysia, on 23 July 1997 during the 30th ASEAN Ministerial Meeting

[Extracts of relevant provisions]

...

Article 3 SECRETARY-GENERAL

...

The Secretary-General shall:

...

(6)(h)

... monitor the implementation of the Agreement on the Common Effective Preferential Tariff (CEPT) Scheme for the ASEAN Free Trade Area (AFTA), serve as a member of, and provide support to the Ministerial-level Council set up to supervise, coordinate and review the implementation of the ASEAN Free Trade Area.

...

(12)

Act as custodian of all ASEAN documents.

...

Notes:

- The official text of this document is currently not accessible on the website of ASEAN.

- An unofficial copy of the full text of the 1976 Agreement (as originally adopted) along with its Amending Protocols can be accessed on the website of CIL at: <http://cil.nus.edu.sg/1976/1976-agreement-on-the-establishment-of-the-asean-secretariat-signed-on-24-february-1976-in-bali-indonesia-by-the-foreign-ministers/>
- The above extracts show the provisions as amended. The amendments have been incorporated into the text by CIL.

5. Online sources of treaty status information

The ASEAN website (www.asean.org) contains treaty information in its Documents and Archives section, under “Resources”.

This information includes:

- Table of ASEAN Treaties/Agreements and Ratification
- ASEAN Documents Series

These documents may be accessed at:

<http://www.asean.org/resources/document-archives>