

# THE ASEAN SECRETARIAT

## Depositary : Role and Function

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The ASEAN Secretariat



# LEGAL SOURCES

- Secretary-General of ASEAN is the Depository of the legal instruments in ASEAN.
  - The ASEAN Charter
  - Provisions of the legal instrument itself
- Type of legal instruments deposited with the SG:
  - ASEAN legal instruments;
  - Legal instruments between ASEAN/ASEAN Member States and External Parties
  - Other types of legal instruments (concurrence of the SG is required)
- LSAD is assigned to discharge the SG's depositary function



# Basic role and function

Guided by ASEAN Practices and 1969 VCLT:

- Keeping custody of the original text of the treaty and of any full powers delivered to the depositary;
- Preparing certified copies of the original text and transmitting them to the parties and to the States parties to the treaty;
- Receiving and keeping custody of any instruments, notifications and communications relating to it;



# Basic role and function

Guided by ASEAN Practices and 1969 VCLT:

- Examining whether the signature or any instrument, notification or communication relating to the treaty is in due and proper form and, if need be, bringing the matter to the attention of the State in question;
- Informing the parties and the States entitled to become parties to the treaty of acts, notifications and communications relating to the treaty; and
- Any other roles entrusted by the Parties.



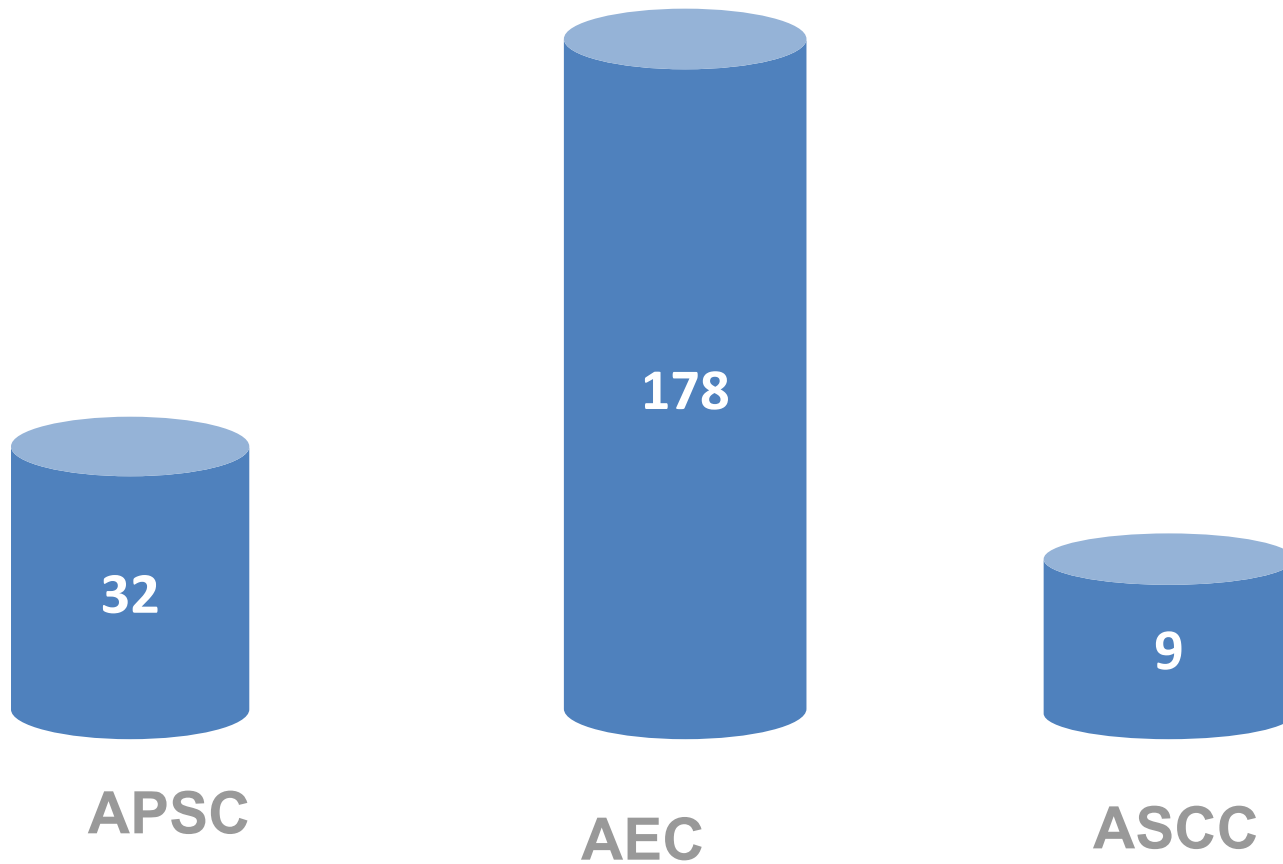
# Procedural aspects

The SG issued Guidance on procedures for depositary of instruments with the SG

- Procedures aim to:
  - Ensure accurate recording
  - Ensure proper coordination within ASEC and between ASEC and States Party
- Legal instruments with simple signature and those that are subject to domestic legal process
- The Role of the Committee of Permanent Representatives to ASEAN



# Brief overview of ASEAN legal instruments



## Challenges and legal issues

- ✓ Competent authority of a state in the notification process (Different relevant authorities of a State or Permanent Mission of a State ?)
- ✓ Original copy versus advance copy of the instrument of ratification, approval, acceptance or notification
- ✓ Date and venue of signature of the instrument (signature by circulation : possible ? practical ? )
- ✓ Basic role of the depositary versus provisions of the legal instrument
- ✓ Entry into force and validity of the legal instrument



## PROTOCOL ON THE LEGAL FRAMEWORK TO IMPLEMENT THE ASEAN SINGLE WINDOW

The Governments of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic (hereinafter referred to as "Lao PDR"), Malaysia, the Republic of the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam, Member States of the Association of South East Asian Nations (hereinafter collectively referred to as "ASEAN" or "Member States" or individually as "Member State");

**DONE** at ..... Ha Noi ..... Viet Nam ..... this  
..... 4<sup>th</sup> Day ..... of September ..... in the Year Two Thousand and  
..... Fifteen ....., in a single original copy in the English  
Language.





1. This Protocol shall enter into force, after all Member States have notified or, where necessary, deposited instruments of ratifications with the Secretary-General of ASEAN upon completion of their internal procedures, which shall not take more than one hundred and eighty (180) days after the signing of this Protocol.

2. The Secretary-General of ASEAN shall promptly notify all Member States of the notifications or deposit of each instrument of ratification referred to in paragraph 1 of this Article.

### **Article 26 Review**

Member States may undertake a general review of this Protocol, with a view to promote the most effective use of this Protocol and furthering its objectives, at times to be mutually agreed upon by Member States.

**IN WITNESS WHEREOF**, the undersigned, being duly authorised thereto by their respective Governments, have signed this Protocol.



## PREAMBLE

Governments of Brunei Darussalam, the Kingdom of Cambodia (Cambodia), the Republic of Indonesia (Indonesia), the Lao People's Democratic Republic (Lao PDR), Malaysia, the Union of Myanmar (Myanmar), the Republic of the Philippines (Philippines), the Republic of Singapore (Singapore), the Kingdom of Thailand (Thailand), the Socialist Republic of Viet Nam (Viet Nam), and, respectively, the Member States of the Association of Southeast Asian Nations, and Australia and New Zealand;

## Article 7 Entry into Force

1. Each Party shall notify each other Party in writing upon completion of its internal requirements<sup>2</sup> necessary for entry into force of this Agreement. This Agreement shall enter into force on 1 July 2009 for any Party that has made such notifications provided that Australia, New Zealand and at least four ASEAN Member States have made such notifications by that date.
2. If this Agreement does not enter into force on 1 July 2009 it shall enter into force, for any Party that has made the notification referred to in Paragraph 1, 60 days after the date by which Australia, New Zealand and at least four ASEAN Member States have made the notifications referred to in Paragraph 1.
3. After the entry into force of this Agreement pursuant to Paragraph 1 or 2, this Agreement shall enter into force for any Party 60 days after the date of its notification referred to in Paragraph 1.

## Article 5 Entry into Force

1. This Protocol shall form an integral part of the Agreement.
2. Each Party shall notify each other Party in writing upon the completion of its internal requirements necessary for the entry into force of this Protocol. This Protocol shall enter into force 30 days after the date on which Australia, New Zealand and at least four (4) ASEAN Member States have made such notifications.
3. Where a Party does not complete its internal procedures necessary for the entry into force of this Protocol by the entry into force date set out in paragraph 2, this Protocol shall enter into force in relation to that Party on the date of its notification to other Parties of completion of such internal procedures.

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## Article 6 Depositary

For the ASEAN Member States, this Protocol shall be deposited with the Secretary-General of ASEAN, who shall then promptly furnish a certified true copy thereof, to each ASEAN Member State.





***Thank You***

