

2012 AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDONESIA AND THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS (ASEAN) ON HOSTING AND GRANTING PRIVILEGES AND IMMUNITIES TO THE ASEAN SECRETARIAT

Adopted in Phnom Penh, Cambodia on 2 April 2012

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Adopted in Phnom Penh, Cambodia on 2 April 2012

THE Government of the Republic of Indonesia and the Association of Southeast Asian Nations, hereinafter referred to individually as "the Party", and collectively as "the Parties";

REAFFIRMING the commitment to the sovereignty, unity, independence, territorial integrity and the importance of principles of good neighbourliness and non-interference in the internal affairs of one another in accordance with the Treaty of Amity and Cooperation in Southeast Asia of 1976;

NOTING the Agreement on the Establishment of the ASEAN Secretariat concluded in 1976 and its Protocols of 1983, 1985, 1989, 1992 and 1997;

NOTING also the Agreement between the Government of the Republic of Indonesia and ASEAN Relating to the Privileges and Immunities of the ASEAN Secretariat of 1979 implementing Article 11 of the Agreement on the Establishment of the ASEAN Secretariat of 1976 and the Agreement on the Use and Maintenance of the Premises of the ASEAN Secretariat of 1981;

REFERRING to the ASEAN Charter signed on 20 November 2007, which entered into force on 15 December 2008 serving as a legal and institutional framework, as well as an inspiration for ASEAN in the years ahead;

NOTING also the Agreement on the Privileges and Immunities of ASEAN signed on 25 October 2009;

RECOGNISING the need to accommodate the development and expansion of the ASEAN Secretariat through a more comprehensive arrangement to provide greater efficiency in the coordination of ASEAN organs and for more effective and efficient services to support community building in ASEAN; and

NOTING that the Government of the Republic of Indonesia has maintained its commitment to facilitate the functioning of the ASEAN Secretariat.

HAVE AGREED AS FOLLOWS:

CHAPTER I DEFINITIONS AND JURIDICAL CAPACITY

ARTICLE 1: DEFINITIONS

For the purpose of this Agreement, the following expressions shall have the meaning hereunder assigned to them:

- (1) "Appropriate Indonesian Authorities" means the officials of the Ministry of Foreign Affairs of the Host Country or such other authorities which the Ministry of Foreign Affairs deems appropriate;

- (2) "Archives of ASEAN" means the records and correspondences, documents, manuscripts, data media, still and moving pictures, films and sound recordings belonging to or held by ASEAN;
- (3) "ASEAN" means the Association of Southeast Asian Nations;
- (4) "Deputy Secretaries-General" means the Deputy Secretaries-General of ASEAN;
- (5) "Directors" means heads of directorates of the ASEAN Secretariat;
- (6) "Experts" means persons other than the staff members of the Secretariat appointed to carry out specific tasks for the Secretariat or on its behalf and at its expense for a specific period of time;
- (7) "Heads of Divisions" means heads of divisions of the ASEAN Secretariat;
- (8) "Host Country" means the Republic of Indonesia;
- (9) "Laws and regulations of the Host Country" means legislative acts, decrees, regulations, orders and other instruments issued by or under the authority of the Government of the Host Country or Appropriate Indonesian Authorities;
- (10) "Members of the family" means husband or wife, and dependent child or children under 21 years old who are notified from time to time to the Appropriate Indonesian Authorities;
- (11) "Member States" means Member States of ASEAN which comprise Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Republic of the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam;
- (12) "Premises" means the building or parts of the building and the land ancillary thereto, irrespective of ownership, used as the Secretariat for ASEAN, and the residence of the Secretary-General of ASEAN;
- (13) "Property" means all property whether movable or immovable, including funds, assets and income within the Host Country, which belongs to or is assigned to ASEAN;
- (14) "Public Services" shall include, but not limited to postal, telecommunication, electricity, water, sewage, waste collection and disposal, cleaning of public street adjoining the Premises;
- (15) "Staff of the Secretariat" means staff employed directly by the Secretariat, through open recruitment or secondment from Member States whose names are communicated from time to time to the Host Country including those who hold the position of Director and Head of Division;
- (16) "Secretariat" means the permanent Secretariat for ASEAN duly established under the Agreement on the Establishment of the ASEAN Secretariat signed on 24 February 1976. The location of the Secretariat is at Jalan Sisingamangaraja No. 70A, Kebayoran Baru, Jakarta 12110 as shown in Annex 1, which may be placed at any other location as agreed by the Parties; and
- (17) "Secretary-General" means the Secretary-General of ASEAN.

ARTICLE 2: JURIDICAL CAPACITY OF ASEAN

- (1) ASEAN shall have the juridical capacity under Indonesian laws to:
 - (i) enter into contracts;
 - (ii) acquire and dispose of movable and immovable properties in accordance with the laws and regulations of Indonesia; and
 - (iii) institute and defend itself in legal proceedings.
- (2) For the purpose of exercising the capacity set out in Paragraph 1 of this Article, the Secretary-General, Deputy Secretaries-General or any member of the Staff of the Secretariat, authorised by the Secretary-General, in accordance with ASEAN rules and regulations, shall represent ASEAN.

CHAPTER II PREMISES AND RESPONSIBILITIES OF THE PARTIES

ARTICLE 3: THE PREMISES

- (1) The Host Country, as the owner of the Premises, shall continue to provide, without any rent or charge, the Premises located at Jalan Sisingamangaraja 70A, Kebayoran Baru, Jakarta 12110 or at other locations for the functioning of the Secretariat.
- (2) For the purpose of exercising its sovereignty and for upholding its national interest, the Host Country may terminate the allocation of Premises for the Secretariat, in which case a new allocation of Premises shall be granted expediently, so that the functioning of the Secretariat is not disrupted.

ARTICLE 4: PUBLIC SERVICES AND DIVISION OF RESPONSIBILITIES CONCERNING INSTALLATION AND MAINTENANCE OF THE PREMISES

- (1) The Host Country shall exercise, to the extent requested by the Secretary-General, the powers, which they possess to ensure that the Premises shall be supplied on equitable terms with all the necessary Public Services.
- (2) In case of any interruption of Public Services, the Appropriate Indonesian Authorities shall consider the needs of the Secretariat as being of equal importance to those of key government agencies of the Host Country, and shall take the necessary steps to ensure that the functioning of the Secretariat is not disrupted.
- (3) In cases where the Public Services referred to in Paragraph 1 of this Article are made available to ASEAN by the Host Country, or where the prices thereof are under its control, the rates for such services shall not exceed the best comparable rates accorded to diplomatic missions or international organisations.
- (4) ASEAN shall be responsible for charges arising out of maintenance and repairs due to wear and tear in the Premises, and on public services as mentioned in Paragraph 1 of this Article.
- (5) The Host Country shall be responsible for all repairs resulting from *force majeure*, structural defects or deterioration, and for the replacement, within a reasonable period, of any building or parts thereof which may be totally or partially destroyed.

ARTICLE 5: PROTECTION OF THE PREMISES

- (1) The Appropriate Indonesian Authorities shall take actions that are deemed necessary to ensure that ASEAN shall not be dispossessed of its Premises, except in the event that ASEAN ceases to use the Premises.
- (2) The Appropriate Indonesian Authorities shall exercise due diligence to ensure that the tranquility of the Premises is not disturbed by unauthorised entry of person(s) or group of persons from outside or by any disturbance within its vicinity and shall provide within and outside the boundaries of the Premises such police protection as is required.
- (3) If so requested by the Secretary-General, the Appropriate Indonesian Authorities shall provide sufficient police protection for the preservation of law and order in the Premises and for the removal therefrom of person(s) or group of persons as requested under the authority of the Secretary-General.

ARTICLE 6: RESPONSIBILITIES OF ASEAN

ASEAN shall be responsible for:

- (1) subject to Paragraphs 4 and 5 of Article 4 of this Agreement, the maintenance of the building, landscape, parking facilities, fencing and the remodelling thereof to the Premises;
- (2) the cost of janitorial services, security services, electricity, telephone and water charges, and all other charges for public services;
- (3) the cost of maintenance and replacement, if necessary, of office equipment, minor repairs of recurring nature, the upkeep through the provision of services and general maintenance of the Premises in a proper and suitable condition;
- (4) allowing duly authorised representatives of public services bodies to inspect, repair, maintain, reconstruct, and relocate utilities, conduits, mains and sewers within the Premises and its facilities; and
- (5) Providing insurance for property within the Premises against man-made and natural disasters, emergencies and accidents.

ARTICLE 7: ACCESS, TRANSIT AND RESIDENCE

- (1) The Host Country shall facilitate travel and entry into and the transit to and from the Premises to the following persons:
 - (i) Representatives of Governments International and Regional Organisations; and
 - (ii) Secretary-General, Deputy Secretaries-General, Staff of the Secretariat and Members of the family;
 - (iii) Other persons including Experts invited by the Secretariat on official duties; and
 - (iv) Representatives of press, radio, film or other information agencies, who have been accredited to the Secretariat.

- (2) The Host Country shall grant visas and residential permits for the persons mentioned in Paragraph 1 of this Article in a timely manner, subject to prevailing laws and regulations of the Host Country.

ARTICLE 8: OFFICIAL COMMUNICATION

- (1) ASEAN, including the Secretariat shall enjoy, for all its official communication, treatment no less favourable than that accorded by the Host Country to representative offices of international organisations in the Host Country.
- (2) All forms of official correspondence and other official communication of ASEAN, including the Secretariat, shall be inviolable.
- (3) ASEAN, including the Secretariat shall have the right to dispatch and receive official communication either by courier or in sealed bags, all of which shall be inviolable and shall have the same privileges and immunities as diplomatic courier and bags.

ARTICLE 9: FREEDOM OF ACTION OF THE SECRETARIAT

- (1) The Host Country shall grant to the Secretariat, as well as to the Staff of the Secretariat and other institutions in their relation with the Secretariat, the freedom to hold activities in conformity with ASEAN's purposes and principles in the territory of the Host Country.
- (2) The Host Country shall facilitate access to the Secretariat for any person, irrespective of nationality, who performs any function for the Secretariat, subject to the prevailing laws and regulations of the Host Country.
- (3) The Secretariat shall have the power to make rules and regulations operative within the Premises for the full and independent exercise of its activities and performance of its functions.

ARTICLE 10: INVIOABILITY OF THE PREMISES AND THE ARCHIVES

- (1) The Premises shall be inviolable and shall be under the control and authority of the Secretary-General as provided for in this Agreement. The Property of ASEAN shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.
- (2) Without prejudice to the provisions of Article 9 of this Agreement, the Secretariat shall not permit the Premises to be used as a refuge for avoiding arrest or performing any act in violation of the laws and regulations of the Host Country, or in any other manner incompatible with the purposes and principles of ASEAN, as laid down in the ASEAN Charter and other applicable ASEAN instruments.
- (3) Archives of ASEAN shall be inviolable.
- (4) Officials of the Host Country, whether administration, judicial, military or police performing official duties, shall not enter the Premises except with the consent of the Secretary-General. The Host Country reserves the right to enter the Premises without prior consent in the event of natural calamities and emergencies.

ARTICLE 11: EXEMPTION FROM TAXATION OF ASEAN AND ITS PROPERTY

- (1) ASEAN and its Property shall be exempted from:
- (i) any form of direct taxation. It is understood, however, that the Secretariat will not claim exemption from taxes which are, in fact, no more than charges for public utility services;
 - (ii) customs duties, prohibitions and restrictions, and other levies on imports and exports in respect of articles imported or exported by the Secretariat for its official use. It is understood, however, that articles imported under such exemptions shall not be sold by the Secretariat within the territory of the Host Country, except under conditions agreed upon with the Host Country and in accordance with its laws and regulations; and
 - (iii) customs duties, prohibitions and restrictions, and other levies on imports and exports in respect of its publications.
- (2) The Secretariat shall, for the purpose of importation, inform the Host Country of the details of its imports.
- (3) While the Secretariat shall not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the Secretariat is making important purchases for official use of the property on which such duties and taxes have been charged or are chargeable, the Host Country shall, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.
- (4) The exemption from taxation and duties referred to in this Article shall not apply to such taxes and dues payable under the laws and regulations of the Host Country by persons contracted by ASEAN.

ARTICLE 12: FREE DISPOSAL OF FUNDS

- (1) Without being restricted by any financial controls, regulations or moratoria of any kind, the Secretariat acting on behalf of ASEAN:
- (i) may hold funds, gold or currency of any kind and operate accounts in any currency; and
 - (ii) shall be free to transfer its funds, gold, securities or currency from one country to another or within the territory of the Host Country and to convert any currency held by it into any other currency.
- (2) Notwithstanding the above, the Secretariat shall comply with the laws and regulations of the Host Country relating to the reporting of funds and foreign exchange movement.

CHAPTER III

SECRETARY-GENERAL, DEPUTY SECRETARIES-GENERAL, STAFF OF THE SECRETARIAT AND EXPERTS

ARTICLE 13: COMPOSITION

- (1) The Secretariat shall comprise the Secretary-General, Deputy Secretaries-General and Staff of the Secretariat.
- (2) With regard to the granting of privileges and immunities, this Agreement shall prevail over the composition of the Secretariat as set out in the Agreement on the Establishment of the ASEAN Secretariat of 1976 and its Protocols of 1983, 1985, 1989, 1992 and 1997.
- (3) Pursuant to Article 4 of the Agreement on the Privileges and Immunities of ASEAN, the Secretary-General, subject to the decision of the Committee of Permanent Representatives to ASEAN, shall specify the categories of Staff of the Secretariat to which the provisions of Article 14 below apply. These categories and the names of the persons included in them shall be communicated to the Host Country from time to time.

ARTICLE 14: PRIVILEGES AND IMMUNITIES OF THE SECRETARY-GENERAL, THE DEPUTY SECRETARIES-GENERAL AND THE STAFF OF THE SECRETARIAT

- (1) The Secretary-General, the Deputy Secretaries-General and Staff of the Secretariat referred to in Paragraph 3 of Article 13, to the extent that they are not Indonesian nationals within and with respect to the territory of the Host Country, shall, while in the performance of and for the independent exercises of their respective duties, functions and responsibilities, be granted privileges and immunities as stipulated in the Vienna Convention on Diplomatic Relations 1961 and:
 - (i) be immune from legal process in respect of words spoken or written and all acts performed by him or her while in his or her official capacity;
 - (ii) be exempt from taxation on the salary and emoluments paid to him or her by ASEAN through the Secretariat;
 - (iii) be immune, together with his or her members of the family, from immigration restrictions and alien registration;
 - (iv) be accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable rank of diplomatic missions;
 - (v) be given, together with his wife or her husband, relatives and children, the same repatriation facilities, in times of international crisis as diplomatic envoys;
 - (vi) be immune from personal arrest or detention;
 - (vii) be immune from seizure of personal baggage;
 - (viii) be immune from seizure of official baggage;
 - (ix) have the freedom to maintain, within the territory of the Host Country, or elsewhere, foreign securities, and other movable and immovable property, and while employed

by the Secretariat, and at the time of termination of such employment, the right to take out of the Host Country, funds in any foreign currency without restriction or limitation, provided that the said officials can show good cause for their lawful possession of such funds.

- (x) have the right to import free of duty and other levies, prohibition and restriction on imports, furniture and personal effects, including one motor vehicle, within six months after first taking up post in the Host Country. The same regulations shall apply in the case of importation transfer and replacements of automobiles as are in force for the resident members of diplomatic missions of comparable rank.
 - (xi) be immune from national service obligations.
- (2) The Director, Head of Division, who are not of Indonesian nationality, shall enjoy privileges and immunities as accorded to the Secretary-General in accordance with Paragraph 1 of this Article.
- (3) The Staff of the Secretariat who are not of Indonesian nationality and do not fall under the categories referred to in Paragraph 3 of Article 13 shall enjoy:
- (i) immunity from legal process in respect of words spoken or written and all acts performed by him or her while in his or her official capacity;
 - (ii) exemption from taxation on the salary and emoluments paid to him or her by the Secretariat;
 - (iii) immunity from seizure of official baggage;
 - (iv) have the freedom to maintain, within the territory of the Host Country, or elsewhere, foreign securities, and other movable and immovable property, and while employed by the Secretariat, and at the time of termination of such employment, the right to take out of the Host Country, funds in any foreign currency without restriction or limitation, provided that the said officials can show good cause for their lawful possession of such funds; and
 - (v) have the right to import free of duty and other levies, prohibition and restriction on imports, furniture and personal effects, including one motor vehicle, within six months after first taking up post in the Host Country. The same regulations shall apply in the case of importation transfer and replacements of automobiles as are in force for the resident members of diplomatic missions of comparable rank.
- (4) Indonesian nationals who are appointed as Secretary-General, Deputy Secretary-General, Director, Head of Division and Staff of the Secretariat shall enjoy, within and with respect to the territory of the Host Country:
- (i) immunity from legal process in respect of acts including words spoken or written, performed by them while in their official capacity and in the discharge of their duties; and
 - (ii) immunity from seizure of their official baggage.

- (5) Members of the family of the Secretary-General, Deputy Secretaries-General, referred to in Paragraph 1 of this Article, shall enjoy privileges and immunities as stipulated in the Vienna Convention on Diplomatic Relations 1961 and in Paragraph 1 (v), (vi) and (vii) of this Article.
- (6) The Secretariat shall notify the Host Country biannually on matters concerning the employment of its Staff, including the list of names, addresses and nationalities of all its employees.
- (7) Appropriate Indonesian Authorities shall provide the Secretary-General, Deputy Secretaries-General and the Staff of the Secretariat with identity cards.

ARTICLE 15: EXPERTS ON MISSIONS FOR ASEAN

- (1) Experts, except Indonesian nationals, on missions for ASEAN, shall be accorded such privileges and immunities as are necessary for the proper exercise of their functions during the period of their missions, as follows:
 - (i) inviolability for all papers, documents and records in any form;
 - (ii) for the purpose of communicating with the Secretariat, the right to receive papers and correspondence by courier or in sealed bags;
 - (iii) immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys; and
 - (iv) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions.
- (2) Experts on missions for ASEAN for at least one year are entitled to bring their members of the family, in accordance with the laws and regulations of the Host Country.

ARTICLE 16: WAIVER OF IMMUNITIES

- (1) The privileges and immunities under this Agreement are granted in the interest of ASEAN or the Secretariat and not for the personal benefit of the individuals themselves.
- (2) The Secretary-General shall have the right and the duty to waive the immunity of any member of the Staff of the Secretariat in any case where, in his or her opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of ASEAN. The immunity of the Secretary-General of ASEAN may be waived by the ASEAN Summit, or by whomsoever authorised by the ASEAN Summit.
- (3) The Secretary-General shall have the right and the duty to waive the immunity of Experts on missions for ASEAN in any case, where, in his or her opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of ASEAN.
- (4) The Secretary-General shall cooperate at all times with Appropriate Indonesian Authorities to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges and immunities and facilities provided under this Agreement.

ARTICLE 17: RESPECT FOR THE LAWS AND REGULATIONS OF THE HOST COUNTRY

- (1) Without prejudice to their privileges and immunities provided for in this Agreement, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the Host Country. They also have a duty not to interfere in the internal affairs of the Host Country.
- (2) The Premises shall not be used in any manner incompatible with the exercise of the Secretariat functions.

**CHAPTER IV
GENERAL AND FINAL PROVISIONS**

ARTICLE 18: SECURITY OF THE HOST COUNTRY

- (1) Nothing in this Agreement shall affect the right of the Host Country to apply appropriate safeguard in the interests of its security. If any such measure is considered necessary, the Host Country shall contact the Secretariat to decide jointly on the appropriate measures to protect the interest of the Secretariat.
- (2) The Secretariat shall cooperate with the Appropriate Indonesian Authorities to ensure that the activities of the Secretariat will not prejudice the security of the Host Country.

ARTICLE 19: SUPPLEMENTARY ARRANGEMENTS

ASEAN and the Host Country may enter into such arrangements as may be necessary to give effect to this Agreement.

ARTICLE 20: SETTLEMENT OF DISPUTES

Any dispute concerning the interpretation or application of this Agreement shall be settled amicably by the Parties through consultation or negotiation.

ARTICLE 21: AMENDMENTS

This Agreement may be amended in writing subject to the mutual consent of the Parties. The amendments to this Agreement shall enter into force on the date of notification by the Host Country of the completion of its internal requirements for the entry into force of the amendment.

ARTICLE 22: ENTRY INTO FORCE AND TERMINATION

- (1) This Agreement shall enter into force on the date of written notification to the Secretary-General by the Host Country of the completion of its internal requirements for the entry into force of this Agreement.
- (2) Either Party may terminate this Agreement by giving a notice in writing of not less than six (6) months to the other Party of its intention to terminate this Agreement.

ARTICLE 23: FINAL PROVISIONS

- (1) The Agreement between the Government of the Republic of Indonesia and ASEAN Relating to the Privileges and Immunities of the ASEAN Secretariat of 1979 and the Agreement on the Use and Maintenance of the Premises of the ASEAN Secretariat of 1981 shall be terminated with immediate effect upon the entry into force of this Agreement.
- (2) Wherever this Agreement imposes obligations on Appropriate Indonesian Authorities, the responsibility for the fulfillment of such obligations shall rest with the Host Country.

IN WITNESS WHEREOF the undersigned, being the authorised representatives of the Parties have signed this Agreement.

DONE at Phnom Penh, Cambodia, on the Second of April in the Year Two Thousand and Twelve, in two original copies in both Indonesian and English languages, all texts being equally authentic. In case of divergence in the interpretation, the English text shall prevail.

For the Association of Southeast Asian Nations:

DR. SURIN PITSUWAN

Secretary-General of ASEAN

For the Government of the Republic of Indonesia:

DR. R. M. MARTY M. NATALEGAWA

Minister for Foreign Affairs