

2015 PROTOCOL ON THE LEGAL FRAMEWORK TO IMPLEMENT THE ASEAN SINGLE WINDOW

Signed in Ha Noi, Viet Nam on 4 September 2015

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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");

RECALLING the commitments and agreements that Member States have made to establish the ASEAN Single Window (hereinafter referred to as "ASW"), as well as the National Single Windows (hereinafter referred to as "NSWs" or individually as "NSW"), including the Agreement to Establish and Implement the ASEAN Single Window (hereinafter referred to as "ASW Agreement") signed on 9 December 2005 in Kuala Lumpur, Malaysia and the Protocol to Establish and Implement the ASEAN Single Window (hereinafter referred to as "ASW Protocol") signed on 20 December 2006 in Siem Reap, the Kingdom of Cambodia;

FURTHER RECALLING the importance of a harmonised trade and customs environment to the ASEAN Economic Community as stated in the Vientiane Action Programme;

RECOGNISING the importance of establishing an enabling legal framework based on international standards and best practices for the implementation of the ASW as mandated in Article 6 of the ASW Agreement;

NOTING that Member States have also committed in Article 5 of the ASW Protocol to utilising international standards and best practices reflected in international conventions and agreements;

AFFIRMING that the terms of this Protocol shall be based on the objectives, principles and obligations established by the ASW Agreement and the ASW Protocol;

NOTING the relevant principles and recommendations developed by international bodies such as the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce, the United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) Recommendation 35 and the United Nations Convention on the Use of Electronic Communications in International Contracts for purposes of transactions between the NSWs within the ASW environment,

HAVE AGREED AS FOLLOWS:

PART I

SPHERE OF APPLICATION

ARTICLE 1

SCOPE OF APPLICATION

1. This Protocol shall apply to transactions between NSWs within the ASW environment exclusively among Member States.
2. Nothing in this Protocol shall be construed as creating any obligations for Member States with respect to the domestic operations and transactions of their own NSW, save as prescribed in Article 9 (Information Security and Confidentiality) of this Protocol.
3. Such transactions that are contemplated in this Protocol shall comply with the technical and operational criteria to be agreed by Member States.

ARTICLE 2

RELATIONSHIP TO OTHER AGREEMENTS

1. This Protocol shall supplement and implement the ASW Agreement, and shall be read and interpreted in accordance with the ASW Agreement. In the event of any inconsistency between this Protocol and the ASW Agreement, the provisions of the ASW Agreement shall prevail to the extent of such inconsistency.
2. This Protocol shall not affect the rights and obligations of Member States under any other international agreements to which two or more Member States are party.
3. In the event of any inconsistency between this Protocol and the ASW Protocol, Member States shall immediately consult each other with a view to finding a mutually satisfactory solution.
4. Subject to paragraph 1 of this Article, in the event of any inconsistency between this Protocol and other international agreements in relation to the implementation of the ASW to which two or more Member States are party, Member States shall immediately consult each other with a view to finding a mutually satisfactory solution.

ARTICLE 3

OBJECTIVES

This Protocol aims to provide a legal framework for the operations, interactions, and electronic processing of transactions between NSWs within the ASW environment, taking into account the relevant international standards and best practices recommended by international agreements and conventions concerning trade facilitation and modernisation of customs techniques and practices.

ARTICLE 4

EXCLUSIONS

1. Nothing in this Protocol shall affect and/or limit any agreements or arrangements in relation to mutual assistance in criminal matters and for matters connected therewith to which a Member State is a party.
2. This Protocol shall not cover the enforcement of purely private or proprietary claims among private NSW users within the ASW environment.

3. This Protocol shall not cover electronic NSW transactions between a Member State and a non-Member State.

PART II

GENERAL PROVISIONS

ARTICLE 5

GENERAL DEFINITIONS

For the purposes of this Protocol, unless otherwise specified, the following terms shall be defined as follows:

- a. "ASW" is the secured environment where NSWs of Member States operate and integrate. The ASW constitutes a regional facility to enable a seamless, standardised and harmonised routing and communication of trade and customs-related information and data for customs clearance and release from and to NSWs. Trade and related customs data and information will stay within, and belong to respective Member States;
- b. "confidential information" means data and information that is protected from disclosure under the law of the Member State or that is considered confidential if the data and information convey any of the following:
 - i. trade secret information that may give one entity a competitive advantage over another;
 - ii. financial information including banking and insurance information;
 - iii. proprietary information of any type;
 - iv. personally identifiable information; or
 - v. law enforcement information;
- c. "NSW" is a system, which enables:
 - i. a single submission of data and information;
 - ii. a single and synchronous processing of data and information; and
 - iii. a single decision-making for customs release and clearance. A single decision-making shall be uniformly interpreted as a single point of decision for the release of cargoes by the Customs on the basis of decisions, if required, taken by line ministries and agencies and communicated in a timely manner to the Customs;
- d. "regional services" means a set of applications and information, to be agreed to by Member States, that will be accessible by Member States via the ASW closed secure network, providing supporting services to the ASW;
- e. "Service Level Agreement" (hereinafter referred to as "SLA") refers to a service provider agreement dealing with quantitative performance metrics or key performance indicators for the service provider's services;
- f. "service level requirements" means, in respect of services offered by a service provider, measurable and achievable standards for the performance of such services;

- g. "transaction" means, as between NSWs, the transmission and receipt of information or data.

PART III

ASW AND NSW OPERATIVE PROVISIONS

ARTICLE 6

TRANSMISSION AND EXCHANGE OF DATA AND INFORMATION

1. Member States shall establish and maintain national laws and regulations¹ that enable the operation of their NSWs and permit cross-border transmission and exchange of trade and customs-related data and information between NSWs that Member States have specifically agreed to for the purposes of the ASW. Such transmission and exchange shall be subject to the consent of the trader submitting the data and information, where such consent is required by national law, and shall be made in accordance with this Protocol.
2. Member States shall establish policies and regulations for the transmission and exchange, use, and dissemination of NSW data and information for domestic government usage that are consistent with the provisions of this Protocol.
3. Data and information transmitted, exchanged and disseminated by a Member State's NSW to another Member State's NSW through the ASW environment shall be used and maintained only in furtherance of this Protocol and the objectives of the ASW.
4. For the purposes of the ASW, Member States shall recognise trade and customs-related data and information transmitted and exchanged within the ASW for customs clearance and release, to be agreed by Member States.

ARTICLE 7

SERVICE LEVEL REQUIREMENTS

1. Any service level requirement related to ASW regional services shall be agreed among Member States and set out in SLAs to be entered into between an entity that is responsible for the governance of the ASW pursuant to Article 18 and service providers involved in ASW regional services.
2. Each Member State shall establish service level requirements for its NSW to carry out transactions in a timely manner.

¹ In adopting or maintaining laws and regulations referred under this provision, Member States may decide to ensure that the transmission and exchange of data and information within the ASW environment shall be subject to comparable safeguards to those it applies in its own jurisdiction.

ARTICLE 8

STANDARDISED DATA AND INFORMATION

For purposes of transactions between NSWs within the ASW environment, Member States shall comply with the World Customs Organization Data Model or, where appropriate, any other data model or parameters that may be agreed by Member States.

ARTICLE 9

INFORMATION SECURITY AND CONFIDENTIALITY

1. Each Member State 'shall ensure that its NSW protects the security and confidentiality of the data and information in its NSW information system.
2. Each Member State shall further ensure that the use of data and information received through the ASW environment shall be for lawful and authorised purposes consistent with the terms of this Protocol.
3. Each Member State shall establish in its national laws and regulations, protection from unlawful disclosure of confidential information that may be transmitted, exchanged or disseminated by the NSWs of other Member States pursuant to this Protocol. Such information shall be used only for the purposes specified, and shall not be otherwise disclosed by the receiving Member State without the specific permission of the Member State providing the information.
4. Where confidential information is transmitted, exchanged or disseminated between NSWs, Member States of both the transmitting and receiving NSWs shall ensure that there is no unlawful disclosure of such information.
5. Nothing in this Protocol shall be construed to require any Member State to furnish or allow access to confidential information pursuant to this Protocol the disclosure of which it considers would:
 - a. be contrary to the public interest;
 - b. be contrary to any of its legislation including but not limited to those protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions;
 - c. impede law enforcement; or
 - d. prejudice the competitive position of the person providing the information.
6. Each Member State shall ensure that its NSW provides information security protections commensurate with the risk and magnitude of the harm resulting from the unauthorised access, use, disclosure, theft or loss of confidential information that is provided by other NSWs pursuant to this Protocol. Information security will include, but not be limited to, technical, managerial and operational security controls that are appropriate for the type of data and information for which it is responsible.
7. Each Member State shall ensure that its NSW adopts information security controls and procedures (technical, operational and managerial) for access to data and information contained in their respective NSW.

8. For the purpose of information security and confidentiality management in the ASW closed secure network, an entity that is responsible for the governance of the ASW pursuant to Article 18 shall:
 - a. implement the use of privacy impact assessments periodically using risk analysis techniques to identify privacy risks to confidential information;
 - b. determine how changes can be made to the ASW closed secure network or to the handling of the data to mitigate the risks identified in such assessments; and
 - c. implement the required changes.
9. Member States shall jointly develop security incident management procedures for the purposes of information security in the ASW environment.

ARTICLE 10 FOCAL POINT

Each Member State shall designate its focal point responsible for the monitoring and the implementation of this Protocol.

ARTICLE 11 NSW REGISTRATION AND AUTHENTICATION OF NON-GOVERNMENTAL USERS

1. Member States shall register all non-governmental entities, including individuals, companies, and organisations, that will be permitted access to their respective NSW for purposes of providing or receiving information and/or documents in electronic data format to or from their respective NSW and shall establish authentication procedures in relation to registered users.
2. Member States shall maintain a secure and updated electronic registry, listing all authorised registrants that are permitted to submit to or receive information from their respective NSW and shall not permit access to their respective NSW by any unauthorised person or entity.
3. Authorised registrants of a Member State's NSW shall not be permitted access to data or information other than such data or information that is authorised by law, rules, regulations and policies.

ARTICLE 12 INTEGRITY OF DATA

1. Member States shall adopt data integrity requirements and measures that will ensure the integrity of electronic data and information that is processed in their respective NSW and transmitted in the ASW environment.
2. Such data integrity requirements and measures, where appropriate, shall also be applied to the transmission of data and information through the ASW environment.
3. Each Member State shall ensure that the data integrity requirements and measures adopted to assure the integrity of electronic data and information will provide for mechanisms, among others, that enable the recipients of electronic data and information to determine whether such data and information is complete and has not been altered in the process of transmission.

4. Each Member State shall ensure that its NSW adopts such data integrity requirements and measures to electronic archiving and data retention as well as with those for authentication purposes as provided for in this Protocol.

ARTICLE 13 DATA RETENTION REQUIREMENTS

1. Recognising the importance of retaining data and information that is submitted to and/or processed by an NSW or through the ASW for subsequent use, Member States agree to adopt minimum schedules for data retention, archiving, and data disposal for each type of data that is processed in their respective NSW.
2. Member States agree to establish technical standards and procedures for maintaining authenticated electronic data and information and for retaining such data and information, per the requirements of paragraph 1 of this Article, in a secured environment in their respective NSW.
3. In the event that a dispute arises in which one Member State has received electronic data and information from another Member State's NSW and has archived such data and information as provided for in paragraphs 1 and 2 of this Article, the Member State receiving such electronic data and information will, subject to its national laws and regulations, upon request of the sending Member State, provide a copy of it, upon payment of a fee as may be prescribed, in a timely and secured manner to the Member State in which such dispute has arisen; provided, however, no Member State shall be required to provide data and information beyond that which had been provided to it by the requesting Member State.

PART IV ADDITIONAL PROVISIONS

ARTICLE 14 PROTECTION OF INTELLECTUAL PROPERTY RIGHTS AND DATA OWNERSHIP

1. The protection of intellectual property rights of technological products and services being developed by Member States for the ASW or which is contained in any information that is exchanged under this Protocol shall be enforced in conformity with the respective national laws, rules and regulations of the Member States and with international agreements that the respective Member State is a party to.
2. The use of the name, logo and/or official emblem of any Member State on any publication, document and/or paper relating to this Protocol is prohibited without the prior written approval of that Member State.
3. Notwithstanding paragraph 1 of this Article, the intellectual property rights in respect of any data generated by or arising from the making, implementation or application of the ASW, technological development, products and services development, carried out -
 - a. collectively by all the Member States or research results obtained through the collective activity efforts of all the Member States pursuant to the ASW shall be collectively owned by the Member States in accordance with terms to be mutually agreed upon;
 - b. jointly by several Member States or research results obtained through the joint activity efforts of several Member States pursuant to the ASW shall be jointly owned by those Member States in accordance with terms to be mutually agreed upon; or

- c. solely and separately by one Member State or the research results obtained through the sole and separate effort of one Member State, shall be solely owned by the Member State concerned.

ARTICLE 15

LEGAL EFFECT OF ELECTRONIC DOCUMENTS, DATA, AND INFORMATION

1. Each Member State shall adopt procedures for the authentication of NSW electronic documents, data, and information that shall be used or processed within the NSW and transmitted in an electronic form in the ASW environment.
2. Subject to national laws, rules and regulations of each Member State, authenticated electronic documents produced in connection with transactions under this Protocol may be admissible as evidence of any fact stated therein.

ARTICLE 16

LIABILITY RELATED TO THE ASW

SLAs established under Article 7 (Service Level Requirements) of this Protocol in respect of ASW regional services shall address the liability of the service provider by providing recourse (whether limited or otherwise) against such service provider in breach of the SLA for such parties in the ASW environment suffering loss as a result of such breach.

ARTICLE 17

COOPERATIVE EFFORTS

1. Subject to Member States' national laws, rules, regulations and policies, Member States agree to cooperate on the following areas:
 - a. sharing of information and experiences in relation to the establishment of their NSWs and operations of the ASW environment with the view to facilitating transactions between NSWs; and
 - b. sharing of experiences related to the adoption of international best practices and approaches in the development of their respective NSW legal frameworks.
2. The cooperative activities undertaken under paragraph 1 of this Article shall be subject to resource constraints.

ARTICLE 18

GOVERNANCE OF THE ASW

Member States agree to develop the ASW governance structure which shall cover the following areas, for the implementation of the ASW and as may be amended from time to time:

- a. ownership composition;
- b. management of operations;
- c. type of entity; and
- d. any other matters relating to the development of the ASW governance structure.

ARTICLE 19 FUTURE INSTRUMENTS

Member States may adopt legal instruments in the future pursuant to the provisions of this Protocol. Upon their respective entry into force, such instruments shall form part of this Protocol.

ARTICLE 20 DISPUTE SETTLEMENT

1. Any difference or dispute between Member States concerning the interpretation and/or implementation and/or application of any of the provisions of this Protocol shall be settled amicably through mutual consultations and/or negotiations between Member States without reference to any third party or international tribunal.
2. If Member States fail to resolve the difference or dispute pursuant to paragraph 1 of this Article, Member States may wish to settle any differences or disputes between them concerning the interpretation and/or implementation and/or application of this Protocol under the ASEAN Protocol on Enhanced Dispute Settlement Mechanism, signed on 29 November 2004 in Vientiane, Lao PDR.

PART V FINAL PROVISIONS

ARTICLE 21 REVISION, MODIFICATION AND AMENDMENT

1. Any Member State may request in writing a revision, modification or amendment of all or any part of this Protocol.
2. Any revision, modification or amendment agreed to by Member States shall be reduced into writing and shall form part of this Protocol.
3. Such revision, modification or amendment shall come into force on such date as may be determined by Member States.
4. Any revision, modification or amendment shall not prejudice the rights and obligations arising from or based on this Protocol before or up to the date of such revision, modification or amendment.

ARTICLE 22 RESERVATIONS

No reservations shall be made with respect to any of the provisions of this Protocol.

ARTICLE 23 DEPOSITORY

This Protocol shall be deposited with the Secretary General of ASEAN who shall promptly furnish a certified copy thereof to each Member State.

ARTICLE 24

FORCE MAJEURE

1. In the event that an event or circumstance which is beyond the control and without the fault or negligence of the Member State affected and which by the exercise of reasonable diligence the Member State was unable to prevent, provided that event or circumstance is limited to the following:
 - a. earthquakes, flood, fire or other physical natural disasters;
 - b. war, invasion, acts of foreign enemies, hostilities (whether war be declared or not) acts of terrorism, civil war, rebellion, revolution, insurrection; and
 - c. declared national security emergencies ("events of force majeure").
2. Such Member State is not responsible for any failure to perform its obligations under this Protocol, if it is prevented or delayed in performing those obligations by an event of force majeure.
3. Where there is an event of force majeure, the Member State prevented from or delayed in performing its obligations under this Protocol shall immediately notify the other Member States giving full particulars of the event of force majeure and the reasons for the event of force majeure preventing it from, or delaying it in performing its obligations under this Protocol, and that Member State shall use its reasonable efforts to mitigate the effect of the event of force majeure.
4. Upon cessation of the event of force majeure, the Member State affected shall as soon as reasonably practicable recommence the performance of its obligations under this Protocol.

ARTICLE 25

ENTRY INTO FORCE

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.

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

For the Government of Brunei Darussalam: **PEHIN DATO ABD RAHMAN IBRAHIM**, Minister of Finance II at the Prime Minister's Office

For the Government of the Kingdom of Cambodia: **VONGSEY VISSOTH**, Secretary of State, Ministry of Economy and Finance

For the Government of the Republic of Indonesia: **BAMBANG PERMADI SOEMANTRI BRODJONEGORO**, Minister of Finance

For the Government of the Lao People's Democratic Republic: **THIPPHAKONE CHANTHAVONGSA**, Deputy Minister of Finance

For the Government of Malaysia: **DATO' SERI AHMAD HUSNI MOHAMAD HANADZLAH**, Minister of Finance II

For the Government of the Republic of the Union of Myanmar: **U WIN SHEIN**, Union Minister, Minister of Finance

For the Government of the Republic of the Philippines: **CESAR V. PURISIMA**, Secretary of Finance

For the Government of the Republic of Singapore: **THARMAN SHANMUGARATNAM**, Deputy Prime Minister and Minister for Finance

For the Government of the Kingdom of Thailand: **SOMMAI PHASEE**, Minister of Finance

For the Government of the Socialist Republic of Viet Nam: **DINH TIEN DUNG**, Minister of Finance