

2012 RULES FOR REFERENCE OF NON-COMPLIANCE TO THE ASEAN SUMMIT

Adopted in Phnom Penh, Cambodia on 2 April 2012

These Rules have been made for the purpose of the Protocol to the ASEAN Charter on Dispute Settlement Mechanisms signed on 8 April 2010 in Ha Noi ("the Protocol") and pursuant to Paragraph 2 of Article 27 of the ASEAN Charter and are annexed to the Protocol.

RULE 1

(a) For the purpose of these Rules, "any Member State affected by non-compliance" shall mean any ASEAN Member State that is a Party to the dispute to which the instance of non-compliance relates.

(b) Any Member State affected by non-compliance with an arbitral award or settlement agreement resulting from good offices, mediation or conciliation under the Protocol, may refer the matter to the ASEAN Summit for a decision, through notification to the ASEAN Coordinating Council.

RULE 2

Upon receipt of the notification of non-compliance pursuant to Rule 1, the ASEAN Coordinating Council shall inform all other Member States that are Parties to the dispute to which the instance of non-compliance relates of such notification.

RULE 3

(a) Before a non-compliance is submitted to the ASEAN Summit, the ASEAN Coordinating Council shall attempt to facilitate consultations amongst the Member States that are Parties to the dispute to which the instance of non-compliance relates with a view to facilitating compliance with the arbitral award or settlement agreement without reference to the ASEAN Summit. Where such Member States have consulted amongst themselves they shall report the outcome of the consultation to the ASEAN Coordinating Council.

(b) The ASEAN Coordinating Council may authorise the Chair of the ASEAN Coordinating Council, or some other person, to facilitate the consultations under Paragraph (a) of this Rule, and report to it the outcome of the consultations.

RULE 4

Any Member State affected by non-compliance may, at any time, withdraw its referral of non-compliance to the ASEAN Summit made under Paragraph (a) of Rule 1, including when that Member State is satisfied with the outcome of the consultations under Rule 3. Such withdrawal shall be made in writing.

RULE 5

(a) The ASEAN Coordinating Council shall refer the non-compliance to the ASEAN Summit within 90 days of the receipt of the notification pursuant to Rule 1 or within any other timeframe agreed by the Member States that are Parties to the dispute to which the instance of non-compliance relates.

(b) The referral by the ASEAN Coordinating Council to the ASEAN Summit of an instance of non-compliance shall be accompanied by a report of the ASEAN Coordinating Council setting out the following:

(i) the arbitral award or settlement agreement in question;

(ii) information provided by the relevant Parties to the dispute to which the instance of non-compliance relates, on actions taken to ensure compliance with the arbitral award or settlement agreement in question;

(iii) actions taken by the ASEAN Coordinating Council to facilitate consultations;

(iv) reference to the report of the Secretary-General of ASEAN submitted to the ASEAN Summit pursuant to Paragraph 1 of Article 27 of the ASEAN Charter, if any; and

(v) recommendations of the ASEAN Coordinating Council, if any.