ĐIỀU ƯỚC QUỐC TẾ

BỘ NGOẠI GIAO

CỘNG HÒA XÃ HỘI CHỦ NGHĨA VIỆT NAM
Độc lập - Tự do - Hạnh phúc

Số: 40/2017/TB-LPQT

Hà Nội, ngày 30 tháng 10 năm 2017

THÔNG BÁO
Về việc điều ước quốc tế có hiệu lực

Thực hiện quy định tại Điều 56 của Luật Điều ước quốc tế năm 2016, Bộ Ngoại giao trân trọng thông báo:

Hiệp định về ưu đãi và miễn trừ của Hiệp hội các quốc gia Đông Nam Á (Agreement on the Privileges Immunity of the Association of Southeast Asian Nations), ký ngày 25 tháng 10 năm 2009 tại Hủa-Hỉn, Thái Lan, có hiệu lực đối với Việt Nam từ ngày 20 tháng 4 năm 2017.

Bộ Ngoại giao trân trọng gửi bản sao Hiệp định theo quy định tại Điều 59 của Luật nêu trên./.

TL. BỘ TRƯỞNG
VỤ TRƯỞNG
VỤ LUẬT PHÁP VÀ ĐIỀU ƯỚC QUỐC TẾ

Lê Thị Tuyết Mai

AGREEMENT ON THE PRIVILEGES AND IMMUNITIES OF THE ASSOCIATION OF SOUTHEAST ASIAN NATIONS

The Governments of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, 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 Southeast Asian Nations (ASEAN), hereinafter collectively referred to as "Member States" or individually as "Member State";

RECALLING the ASEAN Charter signed in Singapore on 20 November 2007;

RECOGNISING that Article 3 of the ASEAN Charter confers on ASEAN, as an inter-governmental organisation, legal personality; and

FURTHER RECOGNISING that Articles 17, 18 and 19 of the ASEAN Charter accord privileges and immunities to ASEAN in the territories of its Member States as are necessary for the fulfilment of its purposes; the Secretary-General of ASEAN and staff of the ASEAN Secretariat as are necessary for the independent exercise of their functions; and the Permanent Representatives of the Member States to ASEAN, officials of the Member States and officials on ASEAN duties as are necessary for the exercise of their functions, respectively,

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HAVE AGREED AS FOLLOWS:

Article 1
Definitions

In this Agreement, the terms:

1. "Host Member State" means the Member State where the ASEAN Secretariat or other ASEAN institution or institutions are situated;

2. "Members of the administrative and technical staff" means members of the staff of the Permanent Mission employed in the administrative and technical service of the Permanent Mission";

3. "Members of the service staff" means members of the staff of the Permanent Mission employed in the domestic service of the Permanent Mission;

4. "Official ASEAN activities" means meetings, conferences and activities of the organs of ASEAN referred to in Chapter IV of the ASEAN Charter in the exercise of their tasks and functions;

5. "Officials of the Member States" means persons duly appointed by a Member State to act in an official capacity and who participate in official ASEAN activities in that capacity on behalf of that Member State, or who are appointed by an appropriate organ of ASEAN referred to in Chapter IV of the ASEAN Charter as its representatives in the Member States, who are:

(a) in possession of a diplomatic or official passport; or

(b) notified to the receiving Member State, either through diplomatic channels or to the agency

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prescribed by the receiving Member State, as persons to be accorded the privileges and immunities under this Agreement; which privileges and immunities may be denied by the receiving Member State, in accordance with the provisions of the ASEAN Charter and relevant principles of international law.

6. "Officials on ASEAN duties" means persons appointed by each Member State to be members of the Permanent Mission, having diplomatic rank, with the duty of supporting the functions of the Permanent Representative;

7. "Permanent Mission" means the mission of a Member State to ASEAN based in Jakarta, headed by the Permanent Representative of that Member State;

8. "Permanent Representative" means the person appointed as Permanent Representative to ASEAN, with the rank of Ambassador, by each Member State to be based in Jakarta, with the duty of acting in that capacity;

9. "Premises of ASEAN" means the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of ASEAN, including the residence of the Secretary-General of ASEAN;

10. "Premises of the Permanent Mission" means the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the Permanent Mission, including the residence of the Permanent Representative;

11. "Private servants" means persons who are in the domestic service of any member of the Permanent Mission and who are not employees of the sending Member State;

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12. "Property and assets of ASEAN" means all property, whether immovable or movable, which belong to ASEAN, wherever located and by whomsoever held;

13. "Vienna Convention" means the 1961 Vienna Convention on Diplomatic Relations.

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 3
ASEAN

1. ASEAN and the property and assets of ASEAN shall enjoy immunity from every form of legal process except insofar as in

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any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

2. The premises of ASEAN shall be inviolable. The property and assets of ASEAN shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

3. All forms of communications and the archives of ASEAN, and in general all documents wherever located, belonging to it or held by it, whether in electronic or any other form where the information contained therein can be retrieved for future reference, shall be inviolable.

4. Without being restricted by financial controls, regulations or moratoria of any kind, ASEAN:

(a) may hold funds, gold or currency of any kind and operate accounts in any currency; and

(b) shall be free to transfer its funds, gold or currency from one country to another or within any country and to convert any currency held by it into any other currency.

5. Notwithstanding Paragraph 4 of this Article, ASEAN shall comply with the laws and regulations of the Member States relating to the reporting of funds and foreign exchange movements.

6. In exercising its rights in Paragraph 4 of this Article, ASEAN shall pay due regard to any representations made by the Government of any Member State insofar as it is

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considered that effect can be given to such representations without detriment to the interests of ASEAN.

7. ASEAN and the property and assets of ASEAN shall be:

(a) exempt from all direct taxes; it is understood, however, that ASEAN will not claim exemption from taxes which are, in fact, no more than charges for public utility services;

(b) exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by ASEAN for its official use. It is understood, however, that articles imported under such exemption will not be sold in the Member State into which they were imported except under conditions agreed with the Government of that Member State;

(c) exempt from customs duties and prohibitions and restrictions on imports and exports in respect of its publications.

8. While ASEAN will 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 ASEAN is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, Member States will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.

9. The exemption from taxation and duties referred to in this Article shall not apply to such taxes and dues payable under the law of the Member States by persons contracting with ASEAN.

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10. ASEAN shall enjoy in the territory of each Member State for its official communications treatment not less favourable than that accorded by the Government of that Member State to any other Government including its diplomatic mission in the matter of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephones and other communications; and press rates for information to the press and radio. No censorship shall be applied to the official correspondence and other official communications of ASEAN.

11. ASEAN shall have the right to use codes and to dispatch and receive its correspondence by courier or in bags, which shall have the same privileges and immunities as diplomatic couriers and bags.

Article 4
Secretary-General of ASEAN and Staff of the ASEAN Secretariat

1. The Secretary-General of ASEAN, subject to the decision of the Committee of Permanent Representatives, shall specify the categories of staff of the ASEAN Secretariat to which the provisions of this Article apply. These categories shall be communicated to the Governments of all Member States. The names of the persons included in these categories shall from time to time be made known to the Governments of Member States.

2. The staff of the ASEAN Secretariat who are entitled to privileges and immunities under this Agreement shall be provided with special Identification Cards issued by the Secretary-General of ASEAN or his or her authorised representative that identify them as such persons.

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3. The Secretary-General of ASEAN and the staff of the ASEAN Secretariat referred to in Paragraph 1 of this Article shall, while in the performance of and for the independent exercise of their respective duties, functions and responsibilities:

(a) be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;

(b) be exempt from taxation on the salaries and emoluments paid to them by ASEAN;

(c) be immune from national service obligations;

(d) be immune, together with their spouses, dependent children, and minor children, from immigration restrictions and alien registration;

(e) be accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Government concerned;

(f) be given, together with their spouses, relatives and children, the same repatriation facilities in time of international crisis as diplomatic envoys;

(g) have the right to import free of duty their furniture and effects, including one motor vehicle, at the time of first taking up their post in the host Member State.

4. In addition to the privileges and immunities specified in Paragraph 3 of this Article, the Secretary-General of ASEAN and all Deputy Secretaries-General of ASEAN shall be accorded in respect of themselves, their spouses and minor

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children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

5. The privileges and immunities under this Article, except Paragraph 3(a), shall not apply to persons referred to in Paragraph 1 of this Article, who are nationals of or permanently resident in the granting Member State.

6. Privileges and immunities are granted to the Secretary-General of ASEAN and staff of the ASEAN Secretariat referred to in Paragraph 1 of this Article in the interests of ASEAN and not for the personal benefit of the individuals themselves. The Secretary-General of ASEAN shall have the right and the duty to waive the immunity of any member of the staff of the ASEAN 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.

7. The Secretary-General of ASEAN shall cooperate at all times with the appropriate authorities of Member States 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, immunities and facilities provided under this Article.

Article 5
Experts on Missions for ASEAN

1. Each Member State shall, where it considers appropriate, accord any or all of, but not limited to, the following privileges and immunities to experts on missions for ASEAN:

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(a) immunity from personal arrest or detention and from seizure of their personal baggage;

(b) in respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for ASEAN or participating on behalf of Member States in connection with official ASEAN activities;

(c) inviolability for all papers and documents;

(d) for the purpose of their communications with ASEAN, the right to use codes and to receive papers or correspondence by courier or in sealed bags;

(e) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;

(f) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.

2. Privileges and immunities are granted to experts in the interests of ASEAN and not for the personal benefit of the individuals themselves. The Secretary-General of ASEAN shall have the right and the duty to waive the immunity of any expert in any case where, in his or her opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of ASEAN.

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3. Before the commencement of missions of such experts on missions for ASEAN, the Secretary-General of ASEAN shall:

(a) send a notification to the ASEAN National Secretariat of the Member State concerned in which they are performing their missions, the names of the appointed experts on missions for ASEAN, the nature of their missions and the length of their stay; and

(b) issue documents of identification, if necessary, for such appointed experts on missions for ASEAN.

Article 6
Permanent Mission

The relevant provisions on privileges and immunities relating to diplomatic missions in the Vienna Convention shall apply *mutatis mutandis* to the Permanent Mission.

Article 7
Permanent Representatives and Officials on ASEAN Duties

1. The relevant provisions in the Vienna Convention relating to privileges and immunities for diplomatic agents and members of their families forming part of their households shall apply *mutatis mutandis* to the Permanent Representatives and officials on ASEAN duties and members of their families while they are in the host Member State.

2. The provisions on privileges and immunities relating to the officials of the Member States under Article 9 of this Agreement shall apply *mutatis mutandis* to the Permanent Representatives and officials on ASEAN duties while they participate in official

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ASEAN activities or represent ASEAN in Member States, other than the host Member State.

3. Privileges and immunities are accorded to the Permanent Representatives and officials on ASEAN duties in order to safeguard the independent exercise of their functions in connection with ASEAN and not for the personal benefit of the individuals themselves. Consequently, a Member State not only has the right but is under a duty to waive the immunity of its Permanent Representative and officials on ASEAN duties in any case where in the opinion of that Member State the immunity would impede the course of justice, and it can be waived without prejudice to the purposes for which the immunity is accorded.

Article 8
Staff of the Permanent Mission

1. The relevant provisions in the Vienna Convention relating to privileges and immunities for members of the administrative and technical staff of a diplomatic mission and members of their families forming part of their respective households shall apply *mutatis mutandis* to members of the administrative and technical staff of the Permanent Mission and members of their families.

2. The relevant provisions in the Vienna Convention relating to privileges and immunities for members of the service staff of a diplomatic mission shall apply *mutatis mutandis* to members of the service staff of the Permanent Mission.

3. Private servants shall, if they are not nationals of or permanently resident in the host Member State, be exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects, they may enjoy privileges and immunities only to the extent admitted by the

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host Member State. However, the host Member State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the Permanent Mission.

4. Other members of the staff of the Permanent Mission and private servants who are nationals of or permanently resident in the host Member State shall enjoy privileges and immunities only to the extent admitted by the host Member State. However, the host Member State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the Permanent Mission.

Article 9
Officials of the Member States

1. The officials of the Member States shall, while participating in official ASEAN activities or representing ASEAN in the Member States, enjoy the following privileges and immunities as are necessary for the exercise of their functions:

(a) immunity from personal arrest or detention and from seizure of their personal baggage, and, in respect of words spoken or written and all acts done by them in their capacity as representatives, immunity from legal process of every kind;

(b) inviolability for all papers and documents;

(c) the right to use codes and to receive papers or correspondence by courier or in sealed bags;

(d) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;

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(e) the immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.

2. In order to secure, for the officials of the Member States, complete freedom of speech and independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer the officials of the Member States.

3. Privileges and immunities are accorded to the officials of the Member States in order to safeguard the independent exercise of their functions in connection with ASEAN and not for the personal benefit of the individuals themselves. Consequently a Member State not only has the right but is under a duty to waive the immunity of its officials in any case where in the opinion of that Member State the immunity would impede the course of justice, and it can be waived without prejudice to the purposes for which the immunity is accorded.

4. The provisions of Paragraphs 1 and 2 of this Article are not applicable as between the officials of the Member States and the authorities of the Member State of which they are nationals or are permanently resident, or of which they are or have been the officials.

Article 10
Cooperation and Compliance

1. ASEAN, as an inter-governmental 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

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connection with the persons entitled to the privileges and immunities under this Agreement.

2. Member States shall ensure that the persons whom they have appointed or employed who are accorded privileges and immunities under this Agreement, respect the laws and regulations of the Member State in whose territory they are in, in a manner that is consistent with the privileges and immunities enjoyed by them.

Article 11
Settlement of Disputes

Disputes arising out of the interpretation or application of this Agreement shall be resolved amicably in accordance with Chapter VIII of the ASEAN Charter.

Article 12
Amendments

1. Amendments to this Agreement may be made at any time by consensus of all Member States and shall be ratified by them in accordance with their respective internal procedures.

2. An amendment shall enter into force on the thirtieth day following the date of deposit of the last instrument of ratification with the Secretary-General of ASEAN.

Article 13
Final Provisions

1. This Agreement shall be signed by all Member States.

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2. This Agreement shall be subject to ratification by all Member States in accordance with their respective internal procedures.

3. Instruments of ratification shall be deposited with the Secretary-General of ASEAN who shall promptly notify all Member States of each deposit.

4. This Agreement shall enter into force on the thirtieth day following the date of deposit of the tenth instrument of ratification with the Secretary-General of ASEAN.

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

Done at Cha-am Hua Hin, Thailand, on the Twenty-Fifth Day of October in the Year Two Thousand and Nine, in a single copy in the English language.

For the Government of Brunei Darussalam:

LIM JOCK SENG
Second Minister of Foreign Affairs and Trade

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For the Government of the Kingdom of Cambodia:

HOR NAMHONG
Deputy Prime Minister and
Minister of Foreign Affairs and International Cooperation

For the Government of the Republic of Indonesia:

DR. R.M. MARTY M. NATALEGAWA
Minister for Foreign Affairs

For the Government of the Lao People's Democratic Republic:

DR. THONGLOUN SISOULITH
Deputy Prime Minister and Minister of Foreign Affairs

For the Government of Malaysia:

DATUK ANIFAH AMAN
Minister of Foreign Affairs

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For the Government of the Union of Myanmar:

NYAN WIN
Minister for Foreign Affairs

For the Government of the Republic of the Philippines:

ALBERTO G. ROMULO
Secretary of Foreign Affairs

For the Government of the Republic of Singapore:

GEORGE YONG-BOON YEO
Minister for Foreign Affairs

For the Government of the Kingdom of Thailand:

KASIT PIROMYA
Minister of Foreign Affairs

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DEPUTY SECRETARY GENERAL, THE ASEAN SECRETARIAT

For the Government of the Socialist Republic of Viet Nam:

DR. PHAM GIA KHIEM
Deputy Prime Minister and Minister for Foreign Affairs

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