

**ACIA HEADNOTE FOR THE
LIST SCHEDULE OF RESERVATIONS
AND NON-CONFORMING MEASURES**

1. The Schedule of ASEAN Member States sets out, pursuant to Article 9 (Reservations and Non-Conforming Measures), Member States' measures that do not conform to the obligations under:

The title of the document was amended pursuant to the 5th Protocol

- (a) Article 5 (National Treatment);
- (b) Article 7 (Prohibition of Performance Requirements); and
- ~~(bc)~~ Article 8 (Senior Management and Board of Directors).

Sub-paragraph (b) on PPR was added pursuant to the 4th Protocol

2. Each reservation sets out the following elements, where applicable:

- (a) "Sector(s)" refers to the sector(s) either manufacturing, agriculture, fishery, forestry, mining and quarrying, services incidental to these sectors (Mode 3 (commercial presence) of services incidental to these sectors), all or a combination of these sectors in which a reservation is taken;
- (b) "Sub-Sector(s)" refers to specific industries/products/activities in which a reservation is taken;
- (c) "Industry Classification" refers to the activities covered by the reservation according to:
 - International Standard Industrial Classification (ISIC) Revision 3 for manufacturing, agriculture, fishery, forestry, mining and quarrying or, where applicable;
 - ASEAN Harmonised Tariff Nomenclature (AHTN) ~~codes~~; or
 - UN ~~P~~rovisional Central Product Certification Classification (pCPC) 1991 (Series M No. 77) for services incidental to manufacturing, agriculture, fishery, forestry, mining and quarrying sectors (pCPC 881—885).

As necessary and appropriate, Member States could specify the exact coverage of the reservations if the reservations do not exactly conform to the classification system.

- (d) “Level of Government” specifies the level of government (Central or Regional) maintaining the measure for which a reservation is taken;
- (e) “Type of Obligation” refers to the obligation(s) of National Treatment, (NT) Prohibition of Performance Requirements or/and Senior Management and Board of Directors (SMBD), as the case may be, which do not apply to the listed measure(s);
- (f) “Description of Measure” shall refer to measures that do not conform to National Treatment, Prohibition of Performance Requirements, and Senior Management and Board of Directors Article(s), for which a reservation is taken; and
- (g) “Source of Measure” is identified for transparency purposes only, for existing measures that apply to the sector, sub-sector or activities covered by the reservations.

Sub-paragraph 2(a) and 2(c) were amended pursuant to the 5th Protocol

PPR was added to sub-paragraphs 2(e), 2(f), 3 and 4 pursuant to the 4th Protocol

~~3. Member States’ commitments under the GATS shall apply to measures affecting the supply of services under Modes 1, 2 and 4 of services incidental to manufacturing, agriculture, fishery, forestry, mining and quarrying. For this purpose, Member States need not make any reservations on measures that do not conform to Article 5 (National Treatment) and Article 8 (Senior Management and Board of Directors) for these sectors until such time when this Agreement is reviewed and additional commitments agreed. In addition, consistent with Article 3 of the Agreement, measures affecting liberalisation of investment in services sectors, other than services incidental to manufacturing, agriculture, fishery, forestry, mining and quarrying sectors (pCPC 881 – 885), do not fall within the scope of this Agreement. Therefore, the reservation lists attached to this Headnote do not include reservations on such measures.~~

3. Consistent with Article 3 (Scope of Application), as amended by the Fifth Protocol to Amend the ASEAN Comprehensive Investment Agreement, measures affecting liberalisation of investment in services sectors do not fall within the scope of this Agreement and are not included in the Schedules attached to this Headnote. Notwithstanding, noting that there is a transition period for Article 3 subparagraph 3(f) of the ACIA, Member States may make any reservations on measures that do not conform to Article 5 (National Treatment), Article 7 (Prohibition of Performance Requirements) and Article 8 (Senior Management and Board of Directors) for services incidental to manufacturing, agriculture, fishery, forestry, mining and quarrying sectors (pCPC 881 – 885) until such time that their respective scheduling of these sectors under the ATISA have been completed pursuant to Article 12 (Transition to Schedules of Non-Conforming Measures) of the ATISA.

Paragraph 3 was further amended pursuant to the 5th ACIA Protocol

4. Each Member State reserves the right to make future reservations on measures that do not conform to Article 5 (National Treatment), Article 7 (Prohibition of Performance Requirements) and Article 8 (Senior Management and Board of Directors) on:

- (a) new and emerging sectors, sub-sectors, industries, products, or activities; or
- (b) existing sectors, sub-sectors, industries, products, or activities;

which are unregulated at the time of submission of the Schedule of reservation Reservations and Non-Conforming Measures lists.

Renaming of reservation list was done pursuant to the 5th Protocol.

5. In the interpretation of a reservation, all elements of the reservation shall be considered. A reservation shall be interpreted in the light of this Agreement against which the reservation is taken. The “Description of Measure” element shall prevail over all other elements.

~~6. The ASEAN Member States agree that as soon as possible and in any event no later than 6 months from the date of entry into force of the Agreement, to enter into discussions to seek a mutually agreed solution on the treatment of “permanent residents” of a Member State as an investor. Until such discussions result in a mutually agreed solution, any obligations arising from the recognition of any natural person possessing the right of permanent residence in a Member State as investor under this Agreement shall neither apply to, nor be claimed upon, Cambodia, Indonesia, Myanmar, Philippines, Thailand, and Viet Nam.~~

Paragraph 6 on Permanent Residents was removed pursuant to the 2nd Protocol

~~7~~6. In the case of Brunei Darussalam where the investor is a “permanent resident” of Brunei Darussalam and also non-national of any country, the other Member State concerned may mutually agree to enter into bilateral consultations, on a case-by-case and non-prejudicial basis on the issue of whether to recognise the status of such natural person as an investor of Brunei Darussalam.

~~8. In the case of Thailand, as stipulated in the Foreign Business Act B.E.2542 (1999), nothing in this Agreement shall apply to an investor of the other Member States which is a juridical person constituted or otherwise organised under the law of a Member State that is not owned and/or controlled by nationals of Member States, and its investment. This provision shall be subject to review by the AIA Council on an annual basis.~~

Paragraph 8 on Thailand Foreign Business Act was removed pursuant to the 3rd Protocol.