

10. Replace Chapter 10 (Electronic Commerce) with:

CHAPTER 10
ELECTRONIC COMMERCE
SECTION A

General Provisions

Article 1
Definitions

For the purposes of this Chapter:

- (a) **computing facilities** means computer servers and storage devices for processing or storing information for commercial use;
- (b) **covered person** means:
 - (i) a “covered investment” as defined in Article 1(a) (Definitions) of Chapter 11 (Investment);
 - (ii) an “investor of a Party” as defined in Article 1(d) (Definitions) of Chapter 11 (Investment) but does not include an investor in a financial institution or an investor in a financial service supplier;¹ or
 - (iii) a service supplier of a Party as defined in Article 1 (Definitions) of Chapter 8 (Trade in Services),

but does not include a “financial institution”, a “public entity”, or a “financial service supplier”, as

¹ For greater certainty, an investor in a financial institution or an investor in a financial service supplier may still be a “covered person” in relation to other investments that are not in a financial institution or in a financial service supplier.

defined in Article 1 (Definitions) of Annex 8A (Financial Services);

- (c) **electronic authentication** means the process of verifying or testing an electronic statement or claim, in order to establish a level of confidence in the statement's or claim's reliability;
- (d) **electronic invoicing** means the automated creation, exchange and processing of requests for payments between suppliers and buyers using a structured digital format;
- (e) **unsolicited commercial electronic message** means an electronic message which is sent for commercial or marketing purposes to an electronic address, without the consent of the recipient or despite the explicit rejection of the recipient;² and
- (f) **trade administration documents** means forms issued or controlled by a Party which must be completed by or for an importer or exporter in relation to the import or export of goods.

Article 2

Principles and Objectives

1. The Parties recognise the economic growth and opportunities provided by electronic commerce, the importance of frameworks that promote consumer confidence in electronic commerce and the importance of facilitating the development and use of electronic commerce.

² A Party may apply the definition to unsolicited commercial electronic messages delivered through one or more modes of delivery, including Short Message Service (SMS) or e-mail. Notwithstanding this footnote, Parties should endeavour to adopt or maintain measures consistent with Article 11 (Unsolicited Commercial Electronic Messages) that apply to other modes of delivery of unsolicited commercial electronic messages.

2. In supporting the development and promotion of electronic commerce, each Party recognises the importance of providing an enabling legal and regulatory environment, providing a conducive and competitive business environment and protecting the public interest.

3. The legal and regulatory frameworks in each Party that support electronic commerce shall take into account model laws, conventions, principles or guidelines of relevant international organisations or bodies.

4. The Parties recognise the importance of the principle of technological neutrality and the benefits of alignment in policy and regulatory approaches among the Parties as far as possible, to facilitate cross-border electronic commerce.

5. The objectives of this Chapter are to:

- (a) promote electronic commerce among the Parties and the wider use of electronic commerce globally;
- (b) contribute to creating an environment of trust and confidence in the use of electronic commerce; and
- (c) enhance co-operation among the Parties regarding the development of electronic commerce.

Article 3 Scope³

1. This Chapter shall apply to measures adopted or maintained by a Party that affect electronic commerce.

2. This Chapter shall not apply to government procurement.

³ For greater certainty, the Parties affirm that the obligations under this Chapter are without prejudice to any Party's position in the WTO.

3. This Chapter shall not apply to information held or processed by or on behalf of a Party, or measures related to such information, including measures related to its collection, except for Article 15 (Open Government Data).

4. Article 17 (Location of Computing Facilities) and Article 18 (Cross-Border Transfer of Information by Electronic Means) shall not apply to aspects of a Party's measures that do not conform with an obligation in Chapter 8 (Trade in Services) or Chapter 11 (Investment) to the extent that such measures are adopted or maintained in accordance with:

- (a) Article 12 (Schedules of Non-Conforming Measures) of Chapter 8 (Trade in Services) or Article 13 (Reservations and Non-Conforming Measures) of Chapter 11 (Investment);
- (b) any terms, limitations, qualifications and conditions specified in a Party's commitments, or are with respect to a sector that is not subject to a Party's commitments, made in accordance with Article 9 (Most-Favoured-Nation Treatment) or Article 11 (Schedules of Specific Commitments) of Chapter 8 (Trade in Services); or
- (c) any exception that is applicable to the obligations in Chapter 8 (Trade in Services) or Chapter 11 (Investment).

5. For greater certainty, measures affecting the supply of a service delivered electronically are subject to the obligations contained in the relevant provisions of:

- (a) Chapter 8 (Trade in Services); and
- (b) Chapter 11 (Investment),

including Annex 2 (Schedules of Specific Commitments for Services), Annex 3 (Schedules of Reservations and Non-

Conforming Measures for Investment and Services), as well as any exceptions that are applicable to those obligations.

Article 4 Co-operation

1. Each Party shall, where appropriate, co-operate to:
 - (a) work together to assist MSMEs to overcome obstacles in the use of electronic commerce;
 - (b) identify areas for targeted co-operation between the Parties which will help Parties implement or enhance their electronic commerce legal frameworks, such as research and training activities, capacity building and the provision of technical assistance;
 - (c) share information, experiences and best practices in addressing challenges related to the development and use of electronic commerce;
 - (d) encourage co-operative activities to promote electronic commerce including those that would improve the effectiveness and efficiency of electronic commerce;
 - (e) encourage business sectors to develop methods or practices that enhance accountability and consumer confidence to foster the use of electronic commerce; and
 - (f) actively participate in regional and multilateral fora to promote the development of electronic commerce.

2. The Parties shall endeavour to undertake forms of co-operation that build on and do not duplicate existing co-operation initiatives pursued in international fora.

SECTION B

Trade Facilitation

Article 5 Paperless Trading

1. Each Party shall:
 - (a) work towards implementing initiatives which provide for the use of paperless trading, taking into account the methods agreed by international organisations including the World Customs Organization;⁴
 - (b) endeavour to accept trade administration documents submitted electronically as the legal equivalent of the paper version of such trade administration documents; and
 - (c) endeavour to make trade administration documents available to the public in electronic form.

2. The Parties shall co-operate in international fora to enhance acceptance of electronic versions of trade administration documents.

Article 6 Electronic Authentication and Electronic Signature

1. Except in circumstances otherwise provided for under its laws and regulations, a Party shall not deny the legal validity of a signature solely on the basis that the signature is in electronic form.⁵

⁴ Cambodia, Lao PDR and Myanmar shall not be obliged to apply Subparagraph (a) before 1 January 2027.

⁵ Cambodia, Lao PDR and Myanmar shall not be obliged to apply Paragraph 1 before 1 January 2027.

2. Taking into account international norms for electronic authentication, each Party shall:

- (a) permit participants in electronic transactions to determine appropriate electronic authentication technologies and implementation models for their electronic transactions;
- (b) not limit the recognition of electronic authentication technologies and implementation models for electronic transactions; and
- (c) permit participants in electronic transactions to have the opportunity to prove that their electronic transactions comply with its laws and regulations with respect to electronic authentication.

3. Notwithstanding Paragraph 2, each Party may require that, for a particular category of electronic transactions, the method of electronic authentication meets certain performance standards or is certified by an authority accredited in accordance with its laws and regulations.

4. The Parties shall encourage the use of interoperable electronic authentication.

Article 7

Electronic Invoicing

1. The Parties recognise the importance of electronic invoicing which increases the efficiency, accuracy and reliability of transactions.

2. The Parties recognise the benefits of interoperable electronic invoicing systems. When developing measures related to electronic invoicing, a Party shall endeavour to take into account international standards, where applicable, and in accordance with its readiness in terms of capacity, regulations and infrastructure.

3. The Parties agree to co-operate and collaborate on initiatives which promote, encourage, support or facilitate the adoption of electronic invoicing.

SECTION C

Creating a Conducive Environment for Electronic Commerce

Article 8

Digital Trade Standards and Conformity Assessment

1. The Parties recognise the important role of relevant international standards in reducing barriers to trade and fostering a well-functioning digital economy, including their potential to decrease trade compliance costs and increase interoperability, reliability and efficiency.

2. Each Party shall, where appropriate, encourage the adoption of international standards that support digital trade.

3. The Parties shall endeavour to explore collaborative initiatives, share best practices and exchange information on standards, technical regulations and conformity assessment procedures in areas of mutual interest with a view to facilitating electronic commerce and digital trade.

Article 9

Online Consumer Protection

1. The Parties recognise the importance of adopting and maintaining transparent and effective consumer protection measures for electronic commerce as well as other measures conducive to the development of consumer confidence.

2. Each Party shall adopt or maintain laws or regulations to provide protection for consumers using electronic

commerce against fraudulent and misleading practices that cause harm or potential harm to such consumers.⁶

3. The Parties recognise the importance of co-operation between their respective competent authorities in charge of consumer protection on activities related to electronic commerce in order to enhance consumer protection.

4. Each Party shall publish information on the consumer protection it provides to users of electronic commerce, including how:

- (a) consumers can pursue remedies; and
- (b) business can comply with any legal requirements.

5. Each Party shall endeavour to promote awareness of, and access to, consumer redress mechanisms, including mechanisms for cross-border transactions.

6. The Parties recognise the benefits of alternative dispute resolution to facilitate the resolution of claims over electronic commerce transactions. To this end, the Parties shall endeavour to, where appropriate, share best practices and collaborate on alternative dispute resolution.

Article 10

Online Personal Information Protection

1. Each Party shall adopt or maintain a legal framework which ensures the protection of personal information of the users of electronic commerce.^{7, 8}

⁶ Cambodia, Lao PDR and Myanmar shall not be obliged to apply Paragraph 2 before 1 January 2027.

⁷ Cambodia, Lao PDR and Myanmar shall not be obliged to apply Paragraph 1 before 1 January 2027.

⁸ For greater certainty, a Party may comply with the obligation under Paragraph 1 by adopting or maintaining measures such as comprehensive privacy or personal

2. In the development of its legal framework for the protection of personal information, each Party shall take into account international standards, principles, guidelines and criteria of relevant international organisations or bodies.

3. Each Party shall publish information on the personal information protection it provides to users of electronic commerce, including how:

(a) individuals can pursue remedies; and

(b) business can comply with any legal requirements.

4. Recognising that the Parties may take different legal approaches to protecting personal information, each Party shall encourage the development and adoption of mechanisms to promote compatibility and where appropriate, interoperability, between different legal frameworks for protecting personal information. The Parties also recognise that, in accordance with their respective laws and regulations, there are other existing mechanisms, including contractual provisions, for the transfer of personal information across their territories to ensure the protection of personal information.

5. The Parties shall encourage juridical persons to publish, including on the internet, their policies and procedures related to the protection of personal information.

6. The Parties shall co-operate, to the extent possible, for the protection of personal information transferred from a Party.

information protection laws and regulations, sector-specific laws and regulations covering the protection of personal information, or laws and regulations that provide for the enforcement of contractual obligations assumed by juridical persons relating to the protection of personal information.

Article 11

Unsolicited Commercial Electronic Messages

1. The Parties recognise the importance of promoting confidence and trust in electronic commerce, including through transparent and effective measures that limit unsolicited commercial electronic messages. Each Party shall adopt or maintain measures regarding unsolicited commercial electronic messages that:

- (a) require suppliers of unsolicited commercial electronic messages to facilitate the ability of recipients to stop receiving such messages;
- (b) require the consent, as specified according to its laws and regulations, of recipients to receive commercial electronic messages; or
- (c) otherwise provide for the minimisation of unsolicited commercial electronic messages.

2. Each Party shall endeavour to ensure that commercial electronic messages are clearly identifiable as such, clearly disclose on whose behalf they are sent, and to the extent provided for in a Party's laws and regulations, contain the necessary information to enable recipients to request cessation free of charge and at any time.

3. Each Party shall provide recourse against suppliers of unsolicited commercial electronic messages who do not comply with its measures implemented pursuant to Paragraph 1.⁹

4. The Parties shall endeavour to co-operate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.

⁹ Cambodia, Lao PDR and Myanmar shall not be obliged to apply Paragraph 3 before 1 January 2027. Brunei Darussalam shall not be obliged to apply Paragraph 3 before 1 January 2025.

Article 12

Domestic Regulatory Framework

1. Each Party shall adopt or maintain a legal framework governing electronic transactions, taking into account the *UNCITRAL Model Law on Electronic Commerce 1996*, the *United Nations Convention on the Use of Electronic Communications in International Contracts done at New York on 23 November 2005*, or other applicable international conventions and model laws relating to electronic commerce.¹⁰

2. Each Party shall endeavour to avoid any unnecessary regulatory burden on electronic transactions and take into account input by interested persons¹¹ in the development of its legal framework for electronic transactions.

Article 13

Customs Duties

1. Each Party shall maintain its current practice of not imposing customs duties on electronic transmissions between the Parties.

2. The practice referred to in Paragraph 1 is in accordance with the *WTO Ministerial Decision adopted on 17 June 2022* in relation to the Work Programme on Electronic Commerce (WT/MIN(22)/32).

3. Each Party may adjust its practice referred to in Paragraph 1 with respect to any further outcomes in the WTO Ministerial Decisions on customs duties on electronic transmissions within the framework of the Work Programme on Electronic Commerce.

¹⁰ Cambodia shall not be obliged to apply Paragraph 1 before 1 January 2027.

¹¹ For the purposes of Paragraph 2, a Party may limit “interested persons” to those persons provided for in, and in accordance with, its laws and regulations.

4. The Parties shall review this Article in the light of any further WTO Ministerial Decisions in relation to the Work Programme on Electronic Commerce.

5. For greater certainty, Paragraph 1 shall not preclude a Party from imposing taxes, fees or other charges on electronic transmissions, provided that such taxes, fees or charges are imposed in a manner consistent with this Agreement.

Article 14 Transparency

1. Each Party shall publish as promptly as possible or, where that is not practicable, otherwise make publicly available, including on the internet where feasible, all relevant measures of general application pertaining to or affecting the operation of this Chapter.

2. Each Party shall respond as promptly as possible to a relevant request from another Party for specific information on any of its measures of general application pertaining to or affecting the operation of this Chapter.

Article 15 Open Government Data¹²

1. The Parties recognise that facilitating public access to and use of government information and data may foster economic and social development, competitiveness and innovation.

2. To the extent that a Party makes government information and data available to the public, it shall endeavour, to the extent practicable, to ensure that the information is made available in an open or machine-readable format.

¹² Cambodia, Lao PDR and Myanmar shall not be obliged to apply this Article for a period of five years after the date of entry into force of the Second Protocol.

3. The Parties shall endeavour to co-operate in matters that facilitate and expand public access to and use of government information and data, including exchanging information and experiences on practices and policies, with a view to encouraging the development of electronic commerce and creating business opportunities, especially for MSMEs.

4. For greater certainty, this Article is without prejudice to each Party's laws and regulations, including on intellectual property and personal data protection.

Article 16 Cyber Security

The Parties recognise the importance of:

- (a) building the capabilities of their respective competent authorities responsible for computer security incident responses, including through the exchange of best practices; and
- (b) using existing collaboration mechanisms to co-operate on matters related to cyber security.

SECTION D

Promoting Cross-Border Electronic Commerce

Article 17 Location of Computing Facilities

1. The Parties recognise that each Party may have its own measures regarding the use or location of computing facilities, including requirements that seek to ensure the security and confidentiality of communications.

2. No Party shall require a covered person to use or locate computing facilities in that Party's territory as a condition for conducting business in that Party's territory.¹³

3. Nothing in this Article shall prevent a Party from adopting or maintaining:

- (a) any measure inconsistent with Paragraph 2 that it considers necessary to achieve a legitimate public policy objective,¹⁴ provided that the measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; or
- (b) any measure that it considers necessary for the protection of its essential security interests. Such measures shall not be disputed by other Parties.

Article 18

Cross-border Transfer of Information by Electronic Means

1. The Parties recognise that each Party may have its own regulatory requirements concerning the transfer of information by electronic means.

2. A Party shall not prevent cross-border transfer of information by electronic means where such activity is for the conduct of the business of a covered person.¹⁵

¹³ Cambodia, Lao PDR and Myanmar shall not be obliged to apply Paragraph 2 before 1 January 2027, with an extension until 1 January 2030 if necessary. Viet Nam shall not be obliged to apply Paragraph 2 before 1 January 2027.

¹⁴ For the purposes of Subparagraph (a), the Parties affirm that the necessity behind the implementation of such legitimate public policy shall be decided by the implementing Party.

¹⁵ Cambodia, Lao PDR and Myanmar shall not be obliged to apply Paragraph 2 before 1 January 2027, with an extension until 1 January 2030 if necessary. Viet Nam shall not be obliged to apply Paragraph 2 before 1 January 2027.

3. Nothing in this Article shall prevent a Party from adopting or maintaining:

- (a) any measure inconsistent with Paragraph 2 that it considers necessary to achieve a legitimate public policy objective,¹⁶ provided that the measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; or
- (b) any measure that it considers necessary for the protection of its essential security interests. Such measures shall not be disputed by other Parties.

SECTION E

Other Provisions

Article 19

Digital Inclusion for Electronic Commerce

1. The Parties recognise the importance of digital inclusion and that all people and businesses including MSMEs can participate in, contribute to, and benefit from electronic commerce and digital trade. To this end, the Parties recognise the importance of expanding and facilitating electronic commerce and digital trade opportunities by addressing barriers to, and encouraging participation in, electronic commerce and digital trade. The Parties also recognise that this may require tailored approaches, developed in consultation with any individuals and groups that disproportionately face such barriers and other relevant stakeholders.

¹⁶ For the purposes of Subparagraph (a), the Parties affirm that the necessity behind the implementation of such legitimate public policy shall be decided by the implementing Party.

2. To promote digital inclusion, the Parties shall endeavour to co-operate on matters relating to digital inclusion. This may include:

- (a) identifying and addressing barriers to accessing electronic commerce and digital trade opportunities;
- (b) developing programmes to promote participation of all groups in electronic commerce and digital trade;
- (c) sharing experiences and best practices, including exchange of experts, with respect to digital inclusion; and
- (d) co-operation in other areas as jointly agreed by the Parties.

Article 20 Settlement of Disputes

1. Unless otherwise provided in this Chapter, Chapter 20 (Consultations and Dispute Settlement) shall apply to this Chapter, subject to the following:

- (a) Chapter 20 (Consultations and Dispute Settlement) shall not apply to Article 17 (Location of Computing Facilities) and Article 18 (Cross-border Transfer of Information by Electronic Means) until three years after the date of entry into force of the Second Protocol; and
- (b) in relation to Cambodia, Lao PDR and Myanmar, Chapter 20 (Consultations and Dispute Settlement) shall not apply to any matter arising under this Chapter.

2. Notwithstanding Paragraph 1(b), Chapter 20 (Consultations and Dispute Settlement) may apply in relation to Cambodia, Lao PDR and Myanmar after a review of the application of Chapter 20 (Consultations and Dispute Settlement) to this Chapter for Cambodia, Lao PDR and Myanmar, which shall commence within 10 years of the date of entry into force of the Second Protocol for that Party. In the course of that review, which shall be completed within three years from the date of its commencement, Cambodia, Lao PDR and Myanmar shall give due consideration to applying Chapter 20 (Consultations and Dispute Settlement) to either the whole or parts of this Chapter.

3. In the event of any difference between the Parties regarding the operation, interpretation, or application of Article 17 (Location of Computing Facilities) or Article 18 (Cross-border Transfer of Information by Electronic Means), the Parties concerned shall first engage in consultations in good faith and make every effort to reach a mutually satisfactory solution.

4. In the event of any difference between Cambodia, Lao PDR or Myanmar, or between Cambodia, Lao PDR or Myanmar and another Party, regarding the operation, interpretation, or application of this Chapter while Chapter 20 (Consultations and Dispute Settlement) does not apply in relation to Cambodia, Lao PDR and Myanmar, the Parties concerned shall first engage in consultations in good faith and make every effort to reach a mutually satisfactory solution.

5. In the event that the consultations referred to in Paragraph 3 or 4 fail to resolve the difference, any Party engaged in the consultations may refer the matter to the FTA Joint Committee.