



**INSTRUMENT OF INCORPORATION OF THE RULES FOR
REFERENCE OF NON-COMPLIANCE TO THE ASEAN
SUMMIT TO THE PROTOCOL TO THE ASEAN CHARTER
ON DISPUTE SETTLEMENT MECHANISMS**

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

RECALLING that the Protocol to the ASEAN Charter on Dispute Settlement Mechanisms, hereinafter referred to as "the Protocol", was signed on 8 April 2010;

BEARING IN MIND that the Protocol has not entered into force;

RECALLING ALSO that the Rules for Reference of Non-Compliance to the ASEAN Summit was adopted by the ASEAN Foreign Ministers on 2 April 2012 in Phnom Penh, Cambodia;

HAVE AGREED AS FOLLOWS:

ARTICLE 1

The Annex of this Instrument, which is titled "**Rules for Reference of Non-Compliance to the ASEAN Summit**", shall be incorporated as Annex 6 to the Protocol and constitute an annex under Article 20 thereof.

ARTICLE 2

1. This Instrument shall enter into force upon signature.
2. Annex 6 to the Protocol shall be applicable upon the entry into force of the Protocol.
3. The Instrument of Ratification of the Protocol by any Member State shall also represent its consent to be bound by Annex 6 to the Protocol.
4. This Instrument shall be deposited with the Secretary-General of ASEAN, who shall promptly furnish a certified copy thereof to each Member State.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed this Instrument of Incorporation of the Rules for Reference of Non-Compliance to the ASEAN Summit to the Protocol to the ASEAN Charter on Dispute Settlement Mechanisms.

DONE at Phnom Penh, the Kingdom of Cambodia, on the Second Day of April in the Year Two Thousand and Twelve, in a single copy in the English language.

For Brunei Darussalam:



PEHIN DATO LIM JOCK SENG
Minister of Foreign Affairs and Trade II

For the Kingdom of Cambodia:



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

For the Republic of Indonesia:



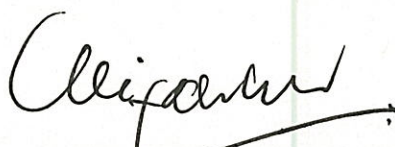
DR. R.M. MARTY M. NATALEGAWA
Minister for Foreign Affairs

For the Lao People's Democratic Republic:



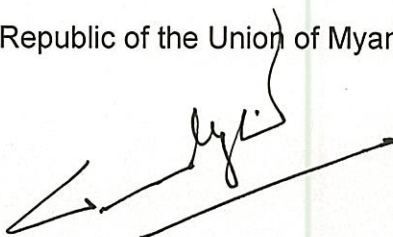
DR. THONGLOUN SISOULITH
Deputy Prime Minister, Minister of Foreign Affairs

For Malaysia:



DATO' SRI ANIFAH BIN HAJI AMAN
Minister of Foreign Affairs

For the Republic of the Union of Myanmar:



WUNNA MAUNG LWIN
Minister for Foreign Affairs

For the Republic of the Philippines:




ALBERT F. DEL ROSARIO
Secretary of Foreign Affairs

For the Republic of Singapore:



K. SHANMUGAM
Minister for Foreign Affairs and Minister for Law

For the Kingdom of Thailand:



SURAPONG TOVICHAKCHAIKUL
Minister of Foreign Affairs

For the Socialist Republic of Viet Nam:



PHAM BINH MINH
Minister for Foreign Affairs

ANNEX 6

RULES FOR REFERENCE OF NON-COMPLIANCE TO THE ASEAN SUMMIT

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 (b) 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.