

**Protocol to Implement the Fifth Package of Commitments on Financial Services
under the ASEAN Framework Agreement on Services**

**VIETNAM
SCHEDULE OF SPECIFIC COMMITMENTS**

VIETNAM
SCHEDULE OF HORIZONTAL COMMITMENTS UNDER AFAS

Modes of Supply: 1) Cross-border supply 2) Consumption aboard 3) Commercial presence 4) Presence of natural persons

Sector or Subsector	Limitation on Market Access	Limitation on National Treatment	Additional Commitments
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I. HORIZONTAL COMMITMENTS			
ALL SECTORS INCLUDED IN THIS SCHEDULE	<p>(3) None, except: Unless otherwise specified in each specific sector or sub-sector of this Schedule, foreign enterprises are allowed to establish commercial presence in Viet Nam in the form of business co-operation contract¹, joint venture enterprise, 100% foreign-invested enterprise.</p> <p>Representative offices of foreign service suppliers are permitted to be established in Viet Nam, but they shall not engage in any direct profit-making activities².</p> <p>Unless otherwise indicated in each specific sector or sub-sector of this Schedule, the establishment of branches is unbound.</p>	<p>(3) None, except: Eligibility for subsidies may be limited to Vietnamese service suppliers, i.e. to juridical persons established within the territory of Viet Nam, or a part thereof. The granting of one-time subsidisation to promote and facilitate the process of equitisation is not in breach of this commitment. Unbound for subsidies for Research and Development. Unbound for subsidies in the Health, Education and Audio-visual sectors. Unbound for subsidies aimed at promoting the welfare and employment of ethnic minorities.</p>	

¹ Business co-operation contract is a document which is signed by two or more parties (of which at least one party must be Vietnamese legal entity and one party must be foreign legal entity) and which stipulates the responsibilities of, and the sharing of business results between, the parties for the purpose of conducting investment and business in Viet Nam without creating a legal entity.

² Representative office is a subordinate unit of foreign enterprises, established under the Vietnamese law in order to seek, promote trade and tourism opportunities but is not allowed to engage in any direct profit-making activities.

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	<p>The conditions of ownership, operation and juridical form and scope of activities as set out in the respective licenses or other form of approval establishing or authorising the operation or supply of services by an existing foreign service supplier shall not be made more restrictive than they exist.</p> <p>Foreign-invested enterprises shall be permitted by competent authorities of Viet Nam to lease the land to carry out their investment projects. The land leasing period shall correspond to the time of operation of those enterprises and shall be stipulated in their investment licenses and shall be extended whenever the time of operation of those enterprises is extended by competent authorities. Foreign service suppliers are permitted to make capital contribution in the form of buying shares of Viet Nam's enterprises. In this case, the total equity held by foreign investors in each enterprise may not exceed 30% of the enterprise's chartered capital unless otherwise provided by Viet Nam's laws or authorised by Viet Nam's competent authority.</p>		

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	<p>After 2007, the 30% foreign equity limitation for acquisition of Vietnamese enterprises shall be eliminated, except for capital contribution in the form of buying shares of joint-stock commercial banks, and except for the sectors not committed in this Schedule. For the other sectors and sub-sectors committed in this Schedule, the level of equity held by foreign investors in acquisition of Vietnamese enterprises shall be corresponding to the limitations on foreign capital participation set forth therein, if any, including the limitations in the form of transitional periods, where applicable.</p> <p>(4) Unbound, except measures relating to entry and temporary stay of natural persons who fall in one of the following categories:</p> <p>(a) <u>Intra-corporate transferees</u> Managers, executives and specialists, as defined hereunder, of a foreign enterprise which has established a commercial presence in the territory of Viet Nam, temporarily moving as intra-corporate transferees to that commercial presence and who have been previously employed by the foreign enterprise for at least</p>	<p>(4) Unbound, except as indicated in market access column.</p>	

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	<p>one year, shall be granted entry and a stay permit for an initial period of three years which may be extended subject to the term of operation of those entities in Viet Nam.</p> <p>At least 20% of the total number of managers, executives and specialists shall be Vietnamese nationals. However, a minimum of 3 non-Vietnamese managers, executives and specialists shall be permitted per enterprise.</p> <p>Managers and executives are those who primarily direct the management of the foreign enterprises which have established commercial presence in Viet Nam, receiving only general supervision or direction from the board of directors or stockholders of the business or their equivalent, including directing the establishment or a department or subdivision of the establishment, supervising and controlling the work of other supervisory, professional or managerial employees, having the authority personally to hire and fire or recommend hiring, firing or other</p>		

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	<p>personnel actions, and who do not directly perform tasks concerning the actual supply of the services of the establishment.</p> <p>Specialists are natural persons working within an organisation who possess knowledge at an advanced level of expertise and with knowledge of the organisation's services, research equipment, techniques or management. In assessing such knowledge, account will be taken not only of knowledge specific to the commercial presence, but also of whether the person has a high level of skills or qualification referring to a type of work or trade requiring specific technical knowledge. Specialists may include, but are not limited to, members of licensed professions.</p> <p>(b) <u>Other personnel</u></p> <p>Managers, executives and specialists, as defined in (a) above, who cannot be substituted by Vietnamese and who are employed outside Viet Nam's territory by a foreign enterprise which has established a commercial presence in the territory of Viet Nam with a view to</p>		

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	<p>participating in the foreign enterprise's activities in Viet Nam, shall be granted entry and a stay permit in conformity with the term of the concerned employment contract or for an initial period of three years whichever is shorter, which may be extended subject to the employment contract between them and the commercial presence.</p> <p>(c) <u>Service sales persons</u></p> <p>Persons not based in the territory of Viet Nam and receiving no remuneration from a source located within Viet Nam, and who are engaged in activities related to representing a service provider for the purpose of negotiating for the sale of the services of that provider where: (i) such sales are not directly made to the general public; and (ii) the salesperson is not directly engaged in supplying the service. The stay of these salespersons is limited to a 90-day period.</p> <p>d) <u>Persons responsible for setting up a commercial presence</u></p> <p>Managers and executives (as defined in (a) above) within a</p>		

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	<p>juridical person, who are responsible for the setting up, in Viet Nam, of a commercial presence of a service provider of a Member when (i) these people are not engaged in making direct sales or supplying services; and (ii) the service provider has its principal place of business in the territory of a WTO Member other than Viet Nam and has no other commercial presence in Viet Nam. The stay of these persons is limited to a 90-day period.</p> <p>(e) <u>Contractual service suppliers (CSS)</u></p> <p>Natural persons who are employees of a foreign enterprise having no commercial presence in Viet Nam may enter and stay in Viet Nam for a period of 90 days or for the duration of the contract, whichever is less provided that the following conditions and requirements shall be applied:</p> <ul style="list-style-type: none"> - The foreign enterprise has obtained a service contract from a Vietnamese enterprise engaged in business operation in Viet Nam. The competent authority of Viet Nam must be able to establish the necessary procedures to guarantee the 		

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	<p>bona fide character of the contract.</p> <ul style="list-style-type: none"> - These persons must possess: (a) a university degree or a technical qualification document demonstrating knowledge of an equivalent level; (b) professional qualifications where this is required to exercise an activity in the sector concerned pursuant to the laws and regulations of Viet Nam; and (c) at least 5 years of professional experience in the sector. - The number of these persons covered by the service contract shall not be larger than necessary to fulfil the contract, as it may be decided by the laws and regulations and requirement of Viet Nam. - These persons should have been employed by the foreign enterprise having no commercial presence in Viet Nam for a period of no less than 2 years and have met the requirements prescribed for "specialist" above. 		

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	<p>The entry of these persons is allowed for computer and related services (CP 841 845, 849) and engineering services (CPC 8672).</p>		