

Chapter X
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 X (Definitions) of Chapter X (Investment);
 - (ii) an investor of a Party as defined in Article X (Definitions) of Chapter X (Investment), but does not include an investor in a financial institution or investor in a financial service supplier; or
Note: For greater certainty, an investor in a financial institution or financial service supplier may still be a ‘covered person’ in relation to other investments that are not in a financial institution or financial services supplier.
 - (iii) a service supplier of a Party as defined in Article X (Definitions) of Chapter X (Trade in Services);
- but does not include a “financial institution”, “public entity” or a “financial services supplier” as defined in Article X (Definitions) of Annex X (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) **personal information** means any information, including data, about an identified or identifiable individual;
- (e) **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;
- (f) **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.

Note: A Party may apply the definition to an unsolicited commercial electronic message delivered through one or more modes of delivery, such as, but no limited to, SMS or email. Notwithstanding, Parties should endeavour to adopt or maintain measures consistent with Article 10 that apply to other modes of unsolicited commercial electronic message delivery.

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 its use and development.
2. 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;
 - (c) enhance cooperation among the Parties regarding development of electronic commerce.

Article 3 Scope¹

1. This Chapter shall apply to measures adopted or maintained by a Party that affect electronic commerce.
2. The Chapter shall not apply to government procurement.
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.
4. Article 15 (Use and Localisation of Computing Facilities) and Article 17 (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 XX (Services) or Chapter XX (Investment) to the extent that such measures are adopted or maintained in accordance with:
 - (a) Article #.8 (Services – Schedules of Non-Conforming Measures) or Article XX (Investment – Non-Conforming Measures):
 - (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 #.6 (MFN) or Article #.7 (schedules of specific commitments) or
 - (c) Any exception that is applicable to the obligations in Chapter XX (Services) or Chapter XX (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 Chapter # (Investment) and Chapter # (Trade in Services, including its annexes), including Schedules of Specific Commitments and Schedules of Non-Conforming Measures annexed to this Agreement as well as any exceptions that are applicable to those obligations.

Article 4 Cooperation

1. Each Party shall, where appropriate, cooperate to:

¹ For greater certainty, the Parties affirmed that obligations under this Chapter are without prejudice to any Party's position in the WTO.

- (a) work together to assist small and medium enterprises 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 framework, such as research and training activities, capacity building and the provision of technical assistance;
 - (c) share information, experience and best practices in addressing challenges related to the development and use of electronic commerce;
 - (d) encourage business sectors to develop methods or practices that enhance accountability and consumer confidence to foster the use of electronic commerce;
 - (e) actively participate in regional and multilateral fora to promote development of electronic commerce.
2. The Parties shall endeavour to undertake forms of co-operation that build on and do not duplicate existing cooperation initiatives pursued in international fora.

**Section B
Trade Facilitation**

**Article 6
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 Organisation;
 - (b) endeavour to accept trade administration documents submitted electronically as the legal equivalent of the paper version of such documents; and
 - (c) endeavour to make trade administration documents available to the public in electronic form.
Note: Cambodia, Lao PDR and Myanmar shall not be obliged to apply Paragraph 1.a for a period of 5 years after the date of entry into force of this Agreement.
2. The Parties shall co-operate in international fora to enhance acceptance of electronic versions of trade administration documents.

**Article 7
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.
Note: Cambodia and Lao PDR shall not be obliged to apply Paragraph 1 for a period of 5 years after the date of entry into force of this Agreement.
2. Taking into account international norms for electronic authentication, each Party shall:
 - (a) permit participants in electronic transaction to determine the appropriate authentication technologies and implementation models for their electronic transactions;
 - (b) not limit the recognition of authentication technologies and implementation models; and

- (c) permit participants in electronic transactions to have the opportunity to prove that their electronic transactions comply with the Party's domestic laws and regulations with respect to authentication.
3. Notwithstanding paragraph 2, each Party may require that, for a particular category of electronic transactions, the method of authentication meets certain performance standards or is certified by an authority accredited in accordance with the laws and regulations of the Party.
4. The Parties shall encourage the use of interoperable electronic authentication.

Section C
Creating a Conducive Environment for Electronic Commerce

Article 8
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 measures conducive to the development of consumer confidence.
2. Each Party shall adopt or maintain domestic 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.
Note: Cambodia, Lao PDR and Myanmar shall not be obliged to apply Paragraph 2 for a period of 5 years after the date of entry into force of this Agreement.
3. The Parties recognise the importance of cooperation 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 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.

Article 9
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.
Note: Cambodia, Lao PDR and Myanmar shall not be obliged to apply Paragraph 1 for a period of 5 years after the date of entry into force of this Agreement.
Note: For greater certainty, a Party may comply with the obligation in paragraph 1 by adopting or maintaining measures such as comprehensive privacy, personal information protection laws and regulations, sector-specific laws covering protection of personal information, or laws that provide for the enforcement of contractual obligations assumed by enterprises relating to protection of personal information.

2. In the development of a 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 protections it provides to users of electronic commerce, including how:
 - (a) individuals can pursue remedies; and
 - (b) business can comply with any legal requirements.
4. The Parties shall encourage enterprises to publish, including on the internet, their policies and procedures related to protection of personal information.
5. The Parties shall cooperate, to the extent possible, for the protection of personal information transferred from a Party.

Article 10 **Unsolicited Commercial Electronic Messages**

1. 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 such messages; or
 - (b) Require the consent, as specific according to the laws and regulations of each Party, of recipients to receive commercial electronic messages; or
 - (c) Otherwise provide for the minimisation of unsolicited commercial electronic messages.
2. Each Party shall provide recourse against suppliers of unsolicited commercial electronic messages who do not comply with its measures implemented pursuant to its obligation under paragraph 1.

Note: Cambodia, Lao PDR and Myanmar shall not be obliged to apply Paragraph 2 for a period of 5 years after the date of entry into force of this Agreement.

Brunei Darussalam shall not be obliged to apply Paragraph 2 for a period of 3 years after the date of entry into force of this Agreement.
3. The Parties shall endeavour to cooperate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.

Article 11 **Domestic Regulatory Frameworks**

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

Note: Cambodia shall not be obliged to apply Paragraph 1 for a period of 5 years after the date of entry into force of this Agreement.

2. Each Party shall endeavour to avoid any unnecessary regulatory burden on electronic transactions.

Article 12 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 paragraph 3 of the WTO Ministerial Decision of 13 December 2017 in relation to the Work Programme on Electronic Commerce (WT/MIN(17)/65)
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 transmission within the framework of the Work Programme on Electronic Commerce.
4. The Parties shall review this Article in light of any further WTO Ministerial Decisions in relation to the Work Programme on Electronic Commerce.
5. For greater certainty, Paragraph 1 of Article 12 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 13 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 relevant requests by another Party for specific information on any of its measures of general application pertaining to or affecting the operation of this Chapter.

Article 14 Cyber Security

1. The Parties recognise the importance of:
 - (a) building the capabilities of their national entities responsible for computer security incident response including through exchange of best practices; and
 - (b) using existing collaboration mechanisms to cooperate on matters related to cyber security.

Section D
Promoting Cross Border Electronic Commerce

Article 15
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 territory.²³
3. Nothing in this Article shall prevent a Party from adopting or maintaining:
 - (a) measures inconsistent with paragraph 2 that it considers necessary to achieve a legitimate public policy objective⁴, 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 16
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 covered person.⁵⁶
3. Nothing in this Article shall prevent a Party from adopting or maintaining:
 - (a) measures inconsistent with paragraph 2 that it considers necessary to achieve a legitimate public policy objective⁷, provided that the measure is not applied in a manner which would

² Cambodia, Lao PDR and Myanmar shall not be obliged to apply Paragraph 2 for a period of five years after the date of entry into force of this Agreement, with additional three years if necessary.

³ Vietnam shall not be obliged to apply Paragraph 2 for a period of five years after the date of entry into force of this Agreement.

⁴ For the purpose of Paragraph 3 (a), the Parties affirm that the necessity behind the implementation of such legitimate public policy shall be decided by the implementing Party.

⁵ Cambodia, Lao PDR and Myanmar shall not be obliged to apply Paragraph 2 for a period of five years after the date of entry into force of this Agreement, with additional three years if necessary.

⁶ Vietnam shall not be obliged to apply Paragraph 2 for a period of five years after the date of entry into force of this Agreement.

- 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
Others**

**Article 17
Settlement of Disputes**

1. In the event of any differences between Parties regarding the interpretation and application of this Chapter, the Parties shall first engage in consultations in good faith and make every effort to reach a mutually satisfactory solution.
2. In the event that the consultations fail to resolve the differences, the matter may be referred to the RCEP Joint Committee in accordance with Article #.3 (Institutional Provisions Chapter – Functions of the RCEP Joint Committee).
3. No Party shall have recourse to dispute settlement in this Agreement for any matter arising under this Chapter. In accordance with Article #.8 (Final Provisions – General Review), the Parties shall review the application of the Chapter on Dispute Settlement to this Chapter. Following the completion of the review, Chapter XX (Dispute Settlement) may apply to this Chapter between those Parties that have agreed to its application.

**Article 18
Dialogue on Electronic Commerce**

1. The Parties recognise the value of dialogue, including with stakeholders where appropriate, in promoting the development and use of electronic commerce. Such dialogue shall consider the following matters:
 - (a) cooperation in accordance with Article #.4 (Cooperation);
 - (b) current and emerging issues, such as the treatment of digital products, source code, cross-border data flow and location of computing facilities in financial services; and
 - (c) other issues relevant to the development and use of electronic commerce, such as promotion of skills relevant for electronic commerce including for cross border temporary movement of professionals, anti-competitive practices, online dispute resolution.
2. The dialogue shall be conducted in accordance with Article # in Chapter XX (Institutional Structure).
3. The Parties shall take the matters listed in Paragraph 1, and any recommendation arising from the dialogue discussions, into account in the context of the General Review of this Agreement, in accordance with Article #.8 (Final Provisions – General Review).

⁷ For the purpose of Paragraph 3 (a), the Parties affirm that the necessity behind the implementation of such legitimate public policy shall be decided by the implementing Party.