

CHAPTER 12

ELECTRONIC COMMERCE

SECTION A GENERAL PROVISIONS

Article 12.1: 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 subparagraph (a) of Article 10.1 (Definitions);
 - (ii) an “investor of a Party” as defined in subparagraph (e) of Article 10.1 (Definitions), 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 8.1 (Definitions),
- (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; and
- (d) **unsolicited commercial electronic message** means an electronic message which is sent for commercial or marketing purposes to an electronic address, without the

but does not include a “financial institution”, a “public entity”, or a “financial service supplier”, as defined in Article 1 (Definitions) of Annex 8A (Financial Services);

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.

consent of the recipient or despite the explicit rejection of the recipient.²

Article 12.2: 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. 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 cooperation among the Parties regarding development of electronic commerce.

Article 12.3: 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. 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 12.14 (Location of Computing Facilities) and Article 12.15 (Cross-Border Transfer of Information by Electronic Means) shall

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 12.9 (Unsolicited Commercial Electronic Messages) that apply to other modes of delivery of unsolicited commercial electronic messages.

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

not apply to aspects of a Party's measures that do not conform with an obligation in Chapter 8 (Trade in Services) or Chapter 10 (Investment) to the extent that such measures are adopted or maintained in accordance with:

- (a) Article 8.8 (Schedules of Non-Conforming Measures) or Article 10.8 (Reservations and 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 8.6 (Most-Favoured-Nation Treatment) or Article 8.7 (Schedules of Specific Commitments); or
- (c) any exception that is applicable to the obligations in Chapter 8 (Trade in Services) or Chapter 10 (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 10 (Investment),

including Annex II (Schedules of Specific Commitments for Services), Annex III (Schedules of Reservations and Non-Conforming Measures for Services and Investment), as well as any exceptions that are applicable to those obligations.

Article 12.4: Cooperation

1. Each Party shall, where appropriate, cooperate to:
 - (a) work together to assist small and medium enterprises to overcome obstacles in the use of electronic commerce;
 - (b) identify areas for targeted cooperation 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, experiences, 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; and
- (e) actively participate in regional and multilateral fora to promote the development of electronic commerce.

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

SECTION B **TRADE FACILITATION**

Article 12.5: 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 cooperate in international fora to enhance acceptance of electronic versions of trade administration documents.

⁴ Cambodia, Lao PDR, and Myanmar shall not be obliged to apply this subparagraph for a period of five years after the date of entry into force of this Agreement.

Article 12.6: 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
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.

SECTION C

CREATING A CONDUCTIVE ENVIRONMENT FOR ELECTRONIC COMMERCE

Article 12.7: Online Consumer Protection

1. The Parties recognise the importance of adopting and maintaining transparent and effective consumer protection

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

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 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 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.

Article 12.8: 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}
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.

⁶ Cambodia, Lao PDR, and Myanmar shall not be obliged to apply this paragraph for a period of five years after the date of entry into force of this Agreement.

⁷ Cambodia, Lao PDR, and Myanmar shall not be obliged to apply this paragraph for a period of five years after the date of entry into force of this Agreement.

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

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. The Parties shall encourage juridical persons to publish, including on the internet, their policies and procedures related to the protection of personal information.
5. The Parties shall cooperate, to the extent possible, for the protection of personal information transferred from a Party.

Article 12.9: 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 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 provide recourse against suppliers of unsolicited commercial electronic messages who do not comply with its measures implemented pursuant to paragraph 1.⁹
3. The Parties shall endeavour to cooperate 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 this paragraph for a period of five years after the date of entry into force of this Agreement. Brunei Darussalam shall not be obliged to apply this paragraph for a period of three years after the date of entry into force of this Agreement.

Article 12.10: 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.

Article 12.11: 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 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 transmissions 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 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 12.12: Transparency

1. Each Party shall publish as promptly as possible or, where that is not practicable, otherwise make publicly available, including on

¹⁰ Cambodia shall not be obliged to apply this paragraph for a period of five years after the date of entry into force of this Agreement.

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 12.13: 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 cooperate on matters related to cyber security.

SECTION D PROMOTING CROSS-BORDER ELECTRONIC COMMERCE

Article 12.14: 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.¹¹
3. Nothing in this Article shall prevent a Party from adopting or maintaining:

¹¹ Cambodia, Lao PDR, and Myanmar shall not be obliged to apply this paragraph for a period of five years after the date of entry into force of this Agreement, with an additional three years if necessary. Viet Nam shall not be obliged to apply this paragraph for a period of five years after the date of entry into force of this Agreement.

- (a) any measure inconsistent with paragraph 2 that it considers necessary to achieve a legitimate public policy objective,¹² 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 12.15: 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.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

¹² For the purposes of this subparagraph, the Parties affirm that the necessity behind the implementation of such legitimate public policy shall be decided by the implementing Party.

¹³ Cambodia, Lao PDR, and Myanmar shall not be obliged to apply this paragraph for a period of five years after the date of entry into force of this Agreement, with an additional three years if necessary. Viet Nam shall not be obliged to apply this paragraph for a period of five years after the date of entry into force of this Agreement.

¹⁴ For the purposes of this subparagraph, the Parties affirm that the necessity behind the implementation of such legitimate public policy shall be decided by the implementing Party.

be disputed by other Parties.

SECTION E OTHER PROVISIONS

Article 12.16: 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. In conducting such a dialogue, the Parties shall consider the following matters:
 - (a) cooperation in accordance with Article 12.4 (Cooperation);
 - (b) current and emerging issues, such as the treatment of digital products, source code, and cross-border data flow and the location of computing facilities in financial services; and
 - (c) other matters relevant to the development and use of electronic commerce, such as anti-competitive practices, online dispute resolution, and the promotion of skills relevant for electronic commerce including for cross-border temporary movement of professionals.
2. The dialogue shall be conducted in accordance with subparagraph 1(j) of Article 18.3 (Functions of the RCEP Joint Committee).
3. The Parties shall take the matters listed in paragraph 1, and any recommendation arising from any dialogue conducted pursuant to this Article, into account in the context of the general review of this Agreement undertaken in accordance with Article 20.8 (General Review).

Article 12.17: Settlement of Disputes

1. In the event of any differences between Parties regarding the interpretation and application of this Chapter, the Parties concerned 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 referred to in paragraph 1 fail

to resolve the differences, any Party engaged in the consultations may refer the matter to the RCEP Joint Committee in accordance with Article 18.3 (Functions of the RCEP Joint Committee).

3. No Party shall have recourse to dispute settlement under Chapter 19 (Dispute Settlement) for any matter arising under this Chapter. As part of any general review of this Agreement undertaken in accordance with Article 20.8 (General Review), the Parties shall review the application of Chapter 19 (Dispute Settlement) to this Chapter. Following the completion of the review, Chapter 19 (Dispute Settlement) shall apply to this Chapter between those Parties that have agreed to its application.