

INDIA

Schedule of Specific Commitments to the Philippines

INDIA – SCHEDULE OF SPECIFIC COMMITMENTS TO THE PHILIPPINES
For the 1st Package of Commitments under ASEAN – India Agreement on Trade in Services

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
I. HORIZONTAL COMMITMENTS APPLICABLE TO SECTORS LISTED IN THE SECTORAL PART OF THE SCHEDULE			
ALL SECTORS INCLUDED IN THIS SCHEDULE	<p>(3) (i) For sectors and sub-sectors scheduled in the sectoral section, the policy on foreign direct investment (“FDI”) as announced by the Government of India from time to time, other than those already specified, shall apply. It is clarified that with regard to foreign equity and other restrictions specified in sectoral commitments, such restrictions shall prevail over any provision of the policy on FDI announced from time to time with regard to relevant sectoral commitments.</p> <p>(ii) Legal Entity: In all sectors in this schedule where type of legal entity is not specified, commercial presence shall take the form of a company incorporated in India</p>	<p>(3) In case of collaboration with public sector enterprises or government undertakings as joint venture partners, preference in access will be given to foreign service suppliers/entities which offer the best terms for transfer of technology.</p> <p>For transfer of equity in an existing company to the investor of the other Party where Security and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 as amended, are Applicable.</p> <p>Repatriation of sale proceeds of immovable property is subject to prior approval of Reserve Bank of India.</p> <p>Taxation laws for domestic and foreign service suppliers, as per the provisions of the relevant applicable law, shall apply.</p> <p>Subsidies: Unbound</p> <p>Acquisition of Land: Purchase of property by a foreign person resident outside India is prohibited. This restriction does not apply to</p>	

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	<p>(4) Unbound except for measures affecting the entry and temporary stay of Natural Persons who fall in any of the following categories:</p> <p>(a) <u>Business visitors (BVs)</u></p> <p>Persons who visit India temporarily for the purposes specified in (i) and (ii) below:</p> <p>(i) For the sale of services or entering into agreements for such sales for that services supplier (Service Seller) and/or</p> <p>(ii) Employees of a juridical person for the purpose of setting up a commercial presence of that juridical person in India.</p> <p>Access is subject to the condition that :</p> <ul style="list-style-type: none"> • Representatives of such services suppliers or employees of such 	<p>companies formed under laws of India, or to a branch office or other place of business authorized by the Reserve Bank of India when such acquisition is necessary for or incidental to carrying on of the permitted activity. A resident of India can acquire and hold property.</p> <p>(4) Unbound except for measures referred to under Market Access and subject to the following:</p> <p>(i) Requirement of requisite visa and the conditions attached to entry and temporary stay under such a visa for each of the categories specified in the Market Access column including:</p> <p><u>(i)</u> Fulfilment of specific requirements regarding information in support of the application and required documentation.</p> <p>(ii) Minimum wage requirements in respect of foreign nationals may be prescribed (except for Business Visitors).</p>	

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	<p>juridical persons will not be engaged in making direct sales to the general public or in supplying services themselves.</p> <ul style="list-style-type: none"> • Will not receive any remuneration from a source located within India. • Entry for persons in this category shall be for a period of not more than 180 days. <p>(b) <u>Intra-corporate transferees</u></p> <p>Specific categories of employees listed below who are in the employment of a juridical person of Philippines for a period not less than one year prior to the date of application for entry into India and are being transferred temporarily to a branch or a representative office or a juridical person owned or controlled by the aforesaid juridical person in the context of provision of a service in India.</p> <p>(i) Managers are: Persons who direct a branch office or one or more departments as their head, or supervise or control the work of other supervisory, professional or managerial personnel and have the authority to appoint or remove the personnel and</p>		

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	<p>powers to exercise discretionary authority over day-to-day operations.</p> <p>(ii) Executives are: Persons who are in senior positions within a juridical person including a branch who primarily direct the management, have wide decision-making powers and are either members of the board of directors or receive directions from the board or the general body of shareholders.</p> <p>(iii) Specialists are: Persons who possess high qualifications and knowledge at an advanced level relevant to the organization's activities or of the organization's research, equipment, techniques or management and may include persons who are members of accredited professional bodies.</p> <p>Entry for persons in the above categories shall be for a maximum period of five years.</p>		

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II. SECTOR – SPECIFIC COMMITMENTS			
1. BUSINESS SERVICES			
B. Computer and Related Services (CPC 841, 842, 843, 844, 845)	(1) Unbound (2) None (3) None, except that the establishment would only be through incorporation. (4) Unbound except as indicated in the horizontal section	(1) Unbound (2) None (3) None (4) Unbound except as indicated in the horizontal section	
C. Research and Development Services (a) R&D services on the following natural sciences only: Heat, light, electromagnetism, astronomy, but excluding atomic energy and related matters (CPC 85101**) Engineering and technology, including applied science and technology for casting, metal, machinery, electricity, communications, vessels, aircrafts, civil engineering, construction information, etc. (CPC 85103**)	(1) Unbound (2) Unbound* (3) Only through incorporation with a foreign equity ceiling of 51 per cent. In the case of foreign investors having prior collaboration in that specific service sector in India, FIPB approval would be required. (4) Unbound except as indicated in the horizontal section	(1) Unbound (2) Unbound* (3) None (4) Unbound except as indicated in the horizontal section	

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2. COMMUNICATION SERVICES			
C. Telecommunication Services ¹			
(a) Voice telephone service (CPC 7521**) (b) Packet Switched Data Transmission Services (CPC 7523**) (i) Radio Paging service (CPC 7523**) (c) Circuit switched data transmission services (CPC 7523**) (d) Telex Service (CPC 7523**) (e) Telegraph Service (CPC 7522**) (f) Facsimile Service (CPC 7521** + 7529**) (g) Private Leased Circuit Services (CPC 7522**) (o) Other (i) Cellular mobile telephone services.	(1) Unbound (2) None (3) The service will be permitted to be provided only after the operator gets a licence from the Designated Authority. The terms and conditions of the licence will be as laid down by the Designated Authority or Government or the prevailing laws in the country. In the case of foreign investors having prior collaboration in that specific service sector in India, FIPB approval would be required. The operator should be a company registered in India in which total foreign equity must not exceed 49%. Number of licenses, may, however, be limited due to scarce resources such as right of way and spectrum availability subject to a minimum of	(1) Unbound (2) None (3) Unbound	The definition and principles on the regulatory framework for the basic telecommunication services subscribed to by India are contained in the annex titled "Explanatory Paper on Additional Commitments by India".

¹ Excluding broadcasting services and measures affecting such services. Broadcasting is defined as a form of the uni-directional telecommunications intended for large number of users having appropriate receiving facilities and carried out by means of radio or cable network. This may include sound transmission, television transmission or other types of transmission.

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(ii) V-SAT services	<p>two licenses in each service area.</p> <p>Resale of telephone services will not be permitted.</p> <p>(4) Unbound except as indicated in the horizontal section</p>	<p>(4) Unbound except as indicated in the horizontal section</p>	
<p>Data and message transmission services, the following:</p> <p>(h) Electronic mail (CPC 7523***)</p> <p>(i) Voice mail (CPC 7523**)</p> <p>(j) On-line information and database retrieval (CPC 7523**)</p> <p>(l) Enhanced / value added facsimile services, including store forward, store and retrieve (CPC 7523**)</p> <p>(n) On-line information and/or data processing (CPC 843**)</p>	<p>(1) None, except the provision of all services is subject to commercial arrangements with licensed Telecom service suppliers</p> <p>(2) None</p> <p>(3) The service will be permitted to be provided as per license agreement only after the operator gets a licence from the Designated Authority.</p> <p>Only through incorporation with a foreign equity ceiling of 51%. For foreign equity more than 49%, FIPB approval would be required. In case of foreign investors having prior collaboration in that specific service sector in India, FIPB approval would be required.</p> <p>(4) Unbound except as indicated in the horizontal section</p>	<p>(1) None</p> <p>(2) None</p> <p>(3) Unbound</p> <p>(4) Unbound except as indicated in the horizontal section</p>	

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<p>D. Audiovisual Services</p> <p>a. Motion picture or video tape distribution services (CPC 96113)</p>	<p>(1) Unbound</p> <p>(2) Unbound*</p> <p>(3) (i) Only through representative offices which will be allowed to function as branches of companies incorporated outside India.</p> <p>(ii) Numerical ceiling for import of titles will be in accordance with India's GATS commitments, without any special dispensation to Philippines.</p> <p>(4) Unbound except as indicated in the horizontal section</p>	<p>(1) Unbound</p> <p>(2) Unbound*</p> <p>(3) Subject to the prescribed authority having certified that the motion picture has:</p> <p>(a) won an award in any of the international film festivals notified by the Ministry of Information & Broadcasting, Government of India; or</p> <p>(b) participated in any of the official sections of the notified international film festivals; or</p> <p>(c) received good reviews in prestigious film journals notified by the Ministry of Information & Broadcasting, Government of India</p> <p>(4) Unbound except as indicated in the horizontal section</p>	

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7. FINANCIAL SERVICES			
The commitments in financial services are made in accordance with the General Agreement on Trade in Services and the Annex on Financial Services. All the commitments are subject to entry requirements, domestic laws, rules, regulations, guidelines and the terms and conditions of the Reserve Bank of India, Securities and Exchange Board of India, Insurance Regulatory and Development Authority and any other competent authority in India.			
<p>A. Insurance and Insurance related services</p> <p>Non-life, limited to insurance of freight Ex. 5(a)(i)(B)</p>	<p>(1) Unbound except in the case of insurance of freight, where there is no requirement that goods in transit to and from India should be insured with Indian insurance companies only. Insurance is taken by the buyer or seller in accordance with the terms of the contract. This position will be maintained. Once under a contract the Indian importer or exporter agrees to assume the responsibility for insurance such as in the case of f.o.b. contracts for imports into India or c.i.f. contracts for exports from India, insurance has to be taken only with an Indian insurance company.</p> <p>(2) Unbound</p> <p>(3) Unbound</p> <p>(4) Unbound except as indicated in the horizontal section</p>	<p>(1) Unbound</p> <p>(2) Unbound</p> <p>(3) Unbound</p> <p>(4) Unbound except as indicated in the horizontal section</p>	

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Sector or Subsector	Limitation on Market Access	Limitation on National Treatment	Additional Commitments
Reinsurance and retrocession 5(a)(ii)	(1), (2) Reinsurance can be taken with foreign reinsurers to the extent of the residual uncovered risk after obligatory or statutory placements domestically with Indian insurance companies. (3) Unbound (4) Unbound except as indicated in the horizontal section	(1), (2) Unbound (3) Unbound (4) Unbound except as indicated in the horizontal section	

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Insurance intermediation, limited to reinsurance Ex. 5(a)(iii)	<p>(1), (2) Reinsurance of domestic risks can be placed with foreign reinsurers through overseas brokers, to the extent mentioned under reinsurance and retrocession</p> <p>(3) (i) Overseas brokers are allowed to have resident representatives and representative offices who can procure reinsurance business from Indian insurance companies to the extent mentioned above. They can also place reinsurance business from abroad with Indian insurance companies.</p> <p>(ii) Except for the business indicated above, the resident representatives and representative offices cannot undertake any other activity in India.</p> <p>(iii) All expenses of the resident representatives and representative offices have to be met by remittances from abroad and no income can be received in India from Indian residents.</p> <p>(4) Unbound except as indicated in the horizontal section</p>	<p>(1),(2) Unbound</p> <p>(3) Unbound</p> <p>(4) Unbound except as indicated in the horizontal section</p>	

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<p>B. Banking and other financial services (excluding insurance)</p> <p>1.(i) Acceptance of deposits and other repayable funds from the public 5(a)(v)</p> <p>(ii) Lending of all types, including consumer credit, mortgage credit and financing of commercial transactions but excluding factoring Ex. 5(a)(vi)</p> <p>(iii) All payment and money transmission services including credit, charge and debit cards, travellers cheques and bankers' drafts 5(a)(viii)</p> <p>(iv) Guarantees and commitments 5(a)(ix)</p> <p>(v) Trading for own account of:</p> <p> (a) money market instruments</p> <p> (b) foreign exchange</p> <p> (c) transferable securities Ex. 5(a)(x)(A)(B)(E)</p> <p>(vi) Portfolio management, custodial and trust services Ex. 5(a)(xiii)</p>	<p>(1) Unbound</p> <p>(2) Unbound</p> <p>(3) (i) Only through branch operations of a foreign bank licensed and supervised as a bank in its home country.</p> <p> (ii) Grant of licence as permissible under existing laws.</p> <p> (iii) The limit of licences per year both for new entrants and existing banks will be in accordance with India's commitments under the Uruguay Round, without any special dispensation to Philippines.</p> <p>(iv) Banks are allowed to install ATMs at branches and at other places identified by them. Installation of ATM at a place other than in licensed branches is treated as a new place of business and requires a licence. Licences issued for ATMs installed by foreign banks will not be included in the ceiling of twelve licences referred to in item (iii) above.</p>	<p>(1) Unbound</p> <p>(2) Unbound</p> <p>(3) (i) Foreign banks are required to constitute Local Advisory Boards consisting inter alia of professionals and persons having expertise in areas such as small scale industry and exports. The Chairman and members of the Local Advisory Board must be resident Indian nationals except for the Chief Executive Officer who may be a foreign national. The appointment of Chairman and members of the Board requires Reserve Bank of India approval.</p> <p>(ii) Public sector enterprises can invest surplus funds in term deposits only with scheduled commercial banks incorporated in India.</p>	

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<p>(vii) Clearing services for other banks for cheques, drafts and other instruments Ex. 5(a)(xiv)</p>	<p>(v) Investments in other financial services companies by branches of foreign banks licensed to do banking business in India individually not to exceed 10 per cent of owned funds or 30 per cent of the invested company's capital whichever is lower.</p> <p>(vi) Licences for new foreign banks may be denied when the maximum share of assets in India both on and off balance sheet of foreign banks to total assets both on and off balance sheet of the banking system exceeds 15 per cent.</p> <p>(vii) Foreign banks are subject to non discriminatory resource allocation requirements.</p> <p>(4) Unbound except as indicated in the horizontal section</p>	<p>(4) Unbound except as indicated in the horizontal section</p>	

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2. Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues 5(a)(xi)	(1) Unbound (2) Unbound (3) (i) Allowed for foreign bank branches licensed to do banking business in India. (ii) Allowed for foreign financial services companies (including banks) through incorporation with foreign equity not exceeding 51 per cent. (4) Unbound except as indicated in the horizontal section	(1) Unbound (2) Unbound (3) Unbound except for entities established in accordance with the limitations specified in the market access column. (4) Unbound except as indicated in the horizontal section	
3. Stock broking Ex. 5(a)(x)(E)	(1) Unbound (2) Unbound (3) Through establishment of locally incorporated joint venture company with foreign equity not exceeding 49 per cent. The foreign equity participation will be limited to recognized foreign stock broking companies. (4) Unbound except as indicated in the horizontal section	(1) Unbound (2) Unbound (3) Unbound except for entities established in accordance with the limitations specified in the market access column. (4) Unbound except as indicated in the horizontal section	

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4. Financial consultancy services, i.e. financial advisory services provided by financial advisers, etc. to customers on financial matters, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy Ex. 5(a)(xvi)	(1) Unbound (2) Unbound (3) (i) Allowed for foreign bank branches licensed to do banking business in India. (ii) Allowed for foreign financial services companies (including banks) through incorporation with foreign equity not exceeding 51 per cent. (4) Unbound except as indicated in the horizontal section	(1) Unbound (2) Unbound (3) Unbound except for entities established in accordance with the limitations specified in the market access column. (4) Unbound except as indicated in the horizontal section	
5. Factoring Ex. 5(a)(vi)	(1) Unbound (2) Unbound (3) Allowed for foreign financial services companies (including banks) through incorporation with foreign equity not exceeding 51 per cent. (4) Unbound except as indicated in the horizontal section	(1) Unbound (2) Unbound (3) Unbound except for entities established in accordance with the limitations specified in the market access column. (4) Unbound except as indicated in the horizontal section	

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6. Financial leasing 5(a)(vii)	(1) Unbound (2) Unbound (3) Allowed for foreign financial services companies (including banks) through incorporation with foreign equity not exceeding 51 per cent. (4) Unbound except as indicated in the horizontal section	(1) Unbound (2) Unbound (3) Unbound except for entities established in accordance with the limitations specified in the market access column. (4) Unbound except as indicated in the horizontal section	
7. Venture capital	(1) Unbound (2) Unbound (3) (i) Allowed for foreign financial services companies (including banks) through incorporation with foreign equity not exceeding 51 per cent. (ii) Funding has to be entirely out of equity. (4) Unbound except as indicated in the horizontal section	(1) Unbound (2) Unbound (3) Unbound except for entities established in accordance with the limitations specified in the market access column. (4) Unbound except as indicated in the horizontal section	

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8. HEALTH RELATED AND SOCIAL SERVICES			
A. Hospital Services (CPC 9311)	(1) Unbound (2) Unbound (3) Only through incorporation with a foreign equity ceiling of 51 per cent and subject to the condition that the latest technology for treatment will be brought in and further subject to the condition that in the case of foreign investors having prior collaboration in that specific service sector in India, FIPB approval would be required. Publicly funded services may be available only to Indian citizens or may be supplied at differential prices to persons other than Indian citizens. (4) Unbound except as indicated in the horizontal section	(1) Unbound (2) Unbound (3) None (4) Unbound except as indicated in the horizontal section	

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9. TOURISM AND TRAVEL RELATED SERVICES			
(a) Hotels and other lodging services (CPC Ex. 641)	(1) Unbound (2) Unbound (3) Only through incorporation with a foreign equity ceiling of 51 per cent. In the case of foreign investors having prior collaboration in that specific service sector in India, FIPB approval would be required. (4) Unbound except as indicated in the horizontal section	(1) Unbound (2) Unbound (3) None (4) Unbound except as indicated in the horizontal section	
(b) Travel Agency and Tour Operator Services (CPC 7471)	(1) Unbound (2) Unbound (3) Only through incorporation with a foreign equity ceiling of 51 per cent. In the case of foreign investors having prior collaboration in that specific service sector in India, FIPB approval would be required. (4) Unbound except as indicated in the horizontal section	(1) Unbound (2) Unbound (3) None (4) Unbound except as indicated in the horizontal section	

Explanatory Paper on Additional Commitments by India

Scope

The following are definitions and principles on the regulatory framework for the basic telecommunications services.

Definitions

Users mean service consumers and service suppliers.

Essential facilities mean facilities of a public telecommunications transport network or service that

- (a) are exclusively or predominantly provided by a single or limited number of suppliers; and
- (b) cannot feasibly be economically or technically substituted in order to provide a service.

A major supplier is a supplier which has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for basic telecommunications services as a result of :

- (a) control over essential facilities; or
- (b) use of its position in the market.

1. Competitive safeguards

Appropriate measures shall be maintained for the purpose of preventing service suppliers from engaging in or continuing in anti competitive practices of the following type:

- (a) using information obtained from competitors with anti competitive results; and
- (b) not making available to other services suppliers on a timely basis technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

2. Interconnection

2.1 This section applies to linking with suppliers providing public telecommunications transport network or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier, where specific commitments are undertaken.

2.2 Interconnection to be ensured

Interconnection with a major supplier will be ensured at any specified feasible point in the network as indicated in the licence. Such interconnection is provided:

- (a) of a quality no less favourable than that provided for its own like services or for like services of non affiliated service suppliers or for its subsidiaries or other affiliates;

- (b) upon request, at points in addition to the network termination points offered to the majority of users as per licence conditions, subject to mutually agreed charges.

2.3 Public availability of the procedures for interconnection negotiations

The procedures applicable for interconnection to a major supplier will be made publicly available.

2.4 Transparency of interconnection arrangements

It will be ensured that a major supplier will make publicly available either its interconnection agreements, or a reference interconnection offer.

2.5 Interconnection: dispute settlement

A service supplier requesting interconnection with a major supplier will have recourse, either:

- (a) at any time or
- (b) after a reasonable period of time which has been made publicly known

to a domestic regulatory authority to resolve disputes regarding appropriate terms, conditions and rates for interconnection within reasonable period of time, to the extent that these have not been established previously.

3. Universal service

India retains the right to define the kind of universal service obligation it wishes to maintain. Such obligations are not regarded as anti-competitive per se, since they would be administered in a transparent and non-discriminatory manner.

4. Public availability of licensing criteria

Where a licence is required, the following will be made publicly available:

- (a) All the licensing criteria and
- (b) the terms and conditions of individual licences.

5. Regulatory Authority

The decisions of and the procedures used by the regulatory authority shall be impartial with respect to all market participants.

6. Allocation and use of scarce resources

Any procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, will be carried out in an objective and timely manner.