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## BRUNÉI DARUSSALAM

### Projet de version codifiée de la Liste d'engagements spécifiques<sup>1</sup>

On trouvera ci-joint un projet de version codifiée de la Liste d'engagements spécifiques du Brunéi Darussalam en format Word. Ce document ne remplace pas les engagements juridiquement contraignants souscrits par le Brunéi Darussalam dans sa Liste d'engagements spécifiques (GATS/SC/95; GATS/SC/95/Suppl.1).

Est joint au projet de liste codifiée la Liste d'exemptions de l'article II (NPF) du Brunéi Darussalam (GATS/EL/95) en format Word.

Le projet de version codifiée de la liste et la Liste d'exemptions de l'obligation NPF ont été établis par le Secrétariat, à la demande des Membres, pour faciliter le processus de négociation, y compris la présentation des offres initiales.

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<sup>1</sup> Le présent document a été établi, en anglais seulement, par le Secrétariat sous sa propre responsabilité et sans préjudice des positions des Membres ni de leurs droits et obligations dans le cadre de l'OMC.

## BRUNEI DARUSSALAM – SCHEDULE OF SPECIFIC COMMITMENTS

Mode of Supply:           (1)       Cross-border supply           (2)       Consumption abroad           (3)       Commercial presence           (4)       Presence of natural persons

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
<b>I. HORIZONTAL COMMITMENTS</b>			
ALL SECTORS INCLUDED IN THIS SCHEDULE	<p>3) Unbound for measures concerning foreign equity or interest in companies established or wishing to establish a commercial presence</p> <p>4) Unbound except for measures concerning the entry and temporary presence of intra-corporate transferees at the level of managers, executives and specialists. Intra-corporate transferees refers to managers, executives and specialists, as defined below, who are employees of firms that provides services within Brunei Darussalam through a branch, subsidiary, or affiliate established in Brunei Darussalam and who have been in the prior employ of their firms outside Brunei Darussalam for a period of not less than one year immediately preceding the date of their application for admission and who are one of the following:</p>	<p>3) Unbound except with respect to existing commercial presence: half of the board members of a public company and half the directors of a private company must be nationals or residents of Brunei Darussalam.</p> <p>- all companies incorporated outside Brunei Darussalam which establish or have established a place of business in Brunei Darussalam must have one or more locally resident agents to accept service of process and any service of process or any notices required to be served on the company.</p> <p>4) Unbound except for measures concerning the categories of natural persons referred to in the market access column.</p>	

Mode of Supply: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural persons

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
	<p>(a) Managers - persons within an organisation who primarily direct the organisation, or a department or sub-division of the organisation, supervise and control the work of other supervisory, professional or managerial employees, have the authority to hire and fire or commend hiring, firing or other personnel actions (such as promotion or leave authorisation), and exercise discretionary authority over day-to-day operations. Does not include first-line supervisors, unless the employees supervised are professionals, nor does it include employees who primarily perform tasks necessary for the provision of the service.</p> <p>(b) Executives - persons within the organisation who primarily direct the management of the organisation, exercise wide latitude in decision-making and receive only general supervision or direction from higher-level executives, the board of directors, or stockholders of the business.</p>		

Mode of Supply: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural persons

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
	<p>Executives would not directly perform tasks related to the actual provision of the service or services of the organisation.</p> <p>(c) Specialists - persons within an organisation who possess knowledge at an advanced level of expertise and who possess proprietary knowledge of the organisation's service, research equipment, techniques, or management. (Specialists may include, but are not limited to, members of licensed professions).</p> <p>Entry for these intra-corporate transferees is limited to a three year period that may be extended for up to two additional years for a total term not to exceed five years.</p>		
<b>II. SECTOR SPECIFIC COMMITMENTS</b>			
1. BUSINESS SERVICES			
A. <u>Professional Services</u>			
b) Auditing services (CPC 862)	1) Foreign-based auditors are allowed to audit local accounts provided they are authorised by the Ministry of Finance.	<p>1) In order to apply to be an authorised auditor, a person must have as minimum qualifications:</p> <p>A. For accounts kept in English</p> <p>1. Associate membership of one of the following bodies:</p>	

Mode of Supply: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural persons

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
	2) Foreign-based auditors are allowed to audit local accounts provided they are authorised by the Ministry of Finance.	<p>(a) The institute of Chartered Accountants (of Australia, Canada, England and Wales, Ireland, New Zealand and Scotland).</p> <p>(b) The Association of Certified Accountants.</p> <p>(c) The Australian Society of Accountants</p> <p>(d) The New Zealand Society of Accountants</p> <p>B. For accounts kept in language other than English:</p> <p>(a) Associate membership of one of the bodies set out in A(a) above; and</p> <p>(b) Evidence of competency in the language concerned.</p> <p>- In order to practice as an authorised auditor, he must have at least 5 years auditing experiences.</p> <p>2) In order to apply to be an authorised auditor, a person must have as minimum qualifications.</p> <p>A. For accounts kept in English:</p> <p>1. Associate membership of one of the following bodies:</p> <p>(a) The institute of Chartered Accountants (of Australia, Canada, England and Wales, Ireland, New Zealand and Scotland).</p> <p>(b) The Association of Certified Accountants.</p> <p>(c) The Australian Society of Accountants</p> <p>(d) The New Zealand Society of Accountants</p> <p>B. For accounts kept in languages other than English.</p> <p>(a) Associate membership of one of the bodies set out in A(a) above; and</p>	

Mode of Supply: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural persons

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
		(b) Evidence of competency in the language concerned. - In order to practice as an authorised auditor, he must have at least 5 years auditing experiences.  3) Must prove commitment to recruit and develop more local human resources.  4) Unbound except as indicated under horizontal measures.	
(h) Medical and dental services (9312)	3) Audit firm may be set up only as a sole proprietorship or partnership but has to be registered with the Registrar of Business Names. - Maximum number of partners in an audit firms is twenty. - A partnership may consist of only individuals, local companies and/or branches of foreign companies. - Principal or only place of residence within Brunei Darussalam.  4) Unbound except as indicated under horizontal measures.	1) None 2) None 3) None 4) Unbound except as indicated in the horizontal measures	
<b>B. <u>Computer and Related Services</u></b>			
(a) Consultancy services related to the installation of computer hardware	1) None 2) None 3) Commercial presence is permitted only through a company which is registered in Brunei Darussalam. 4) Unbound except as indicated under horizontal measures.	1) None 2) None 3) None 4) Unbound except as indicated under horizontal measures.	
(b) Software implementation			
(c) Data processing services			
(d) Database services (CPC 841, 842, 843, 844, 845 + 849)			

Mode of Supply: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural persons

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
<p>E. <u>Rental/Leasing Services without Operators</u></p> <p>b) Rental/leasing services relating to aircraft without operators (CPC 83104)</p>	<p>1) Aircraft must be certified. Entry to Brunei Darussalam is subject to approval and limitations on the basis of infrastructure capacity.</p> <p>2) None</p> <p>3) Unbound except:</p> <p>(a) Only through a representative office; or</p> <p>(b) Only by appointment of a General Sales Agent, that is Bruneian Controlled Company; and</p> <p>(c) Permanent address in Brunei Darussalam is required with respect to (a).</p> <p>4) Unbound except with respect to (b), one technical post subject to:</p> <p>Local availability test, Designation of a specified number of Brunei trainees.</p>	<p>1) None</p> <p>2) None</p> <p>3) Unbound</p> <p>4) Unbound except as indicated under horizontal "measures (in order to practice a licensed profession in Brunei Darussalam the following conditions must be met; (a) residency (b) registration).</p>	
2. COMMUNICATION SERVICES			
C. <u>Telecommunication Services</u>			

Mode of Supply: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural persons

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
1. Local service (a) Public switched voice telephone services	1) Subject to commercial arrangements with licensed operator(s). 2) Unbound 3) Subject to licence by the appropriate regulatory authority and Brunei Darussalam Companies' Act. Local public switched voice telephone services are provided exclusively by JTB which is a government department. 4) Unbound except as indicated in the horizontal section.	1) Unbound 2) Unbound 3) None except as indicated in the horizontal section 4) Unbound except as indicated in the horizontal section.	See annex The period of exclusivity for local public switched voice telephone services will be extended for up to 10 years after privatisation of JTB. The government will conduct a review of policy with respect to whether to permit additional suppliers of such services upon the expiry of this period.
2. International service (a) Public switched voice telephone services	1) Subject to commercial arrangements with licensed operator(s). 2) Unbound 3) Subject to licence by the appropriate regulatory authority and Brunei Darussalam Companies' Act. International public switched voice telephone services are exclusively provided by JTB (government department) and DSTCom (private company). 4) Unbound except as indicated in the horizontal section.	1) Unbound 2) Unbound 3) None except as indicated in the horizontal section. 4) Unbound except as indicated in the horizontal section.	The period of exclusivity for the two operators expires in year 2010. The government will conduct a review of policy with respect to whether to permit additional suppliers of such services upon the expiry of this period.



Mode of Supply: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural persons

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
3. Mobile services			
(a) Public cellular mobile telephone service	1) Subject to commercial arrangements with licensed operator(s). 2) Unbound 3) Subject to licence by the appropriate regulatory authority and Brunei Darussalam Companies' Act. Public cellular mobile telephone service using AMPS and GSM technologies are exclusively provided by DSTCom. 4) Unbound except as indicated in the horizontal section.	1) Unbound 2) Unbound 3) None except as indicated in the horizontal section 4) Unbound except as indicated in the horizontal section.	Issuance of a licence to provide public cellular mobile telephone services employing other than AMPS and GSM technologies will be considered by the government in year 2010 if public interest and economic conditions justify the issuance of such licence.
(c) Circuit-switched data transmission services (CPC 7523**)	1) None except service provider must use Public Telecom Network under Government National Telecom Authority Control 2) None 3) Unbound 4) Unbound except as indicated in the horizontal section.	1) None 2) None 3) Unbound 4) Unbound except as indicated in the horizontal section.	
(f) Facsimile services (CPC 7521** + CPC 7529**)	1) None except service provider must use Public Telecom Network under Government National Telecom Authority Control 2) None 3) Unbound 4) Unbound except as indicated in the horizontal section.	1) None 2) None 3) Unbound 4) Unbound except as indicated in the horizontal section.	
(h) Electronic mail (CPC 7523**)	1) None except service provider must use Public Telecom Network under Government National Telecom Authority Control 2) None 3) Unbound 4) Unbound except as indicated in the horizontal section.	1) None 2) None 3) Unbound 4) Unbound except as indicated in the horizontal section.	

Mode of Supply: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural persons

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
(j) On-line information and database retrieval (CPC 7523**)	1) None except service provider must use Public Telecom Network under Government National Telecom Authority Control 2) None 3) Unbound 4) Unbound except as indicated in the horizontal section.	1) None 2) None 3) Unbound 4) Unbound except as indicated in the horizontal section.	
(k) Electronic data interchange (EDI) (CPC 7523**)	1) None except service provider must use Public Telecom Network under Government National Telecom Authority Control 2) None 3) Unbound 4) Unbound except as indicated in the horizontal section.	1) None 2) None 3) Unbound 4) Unbound except as indicated in the horizontal section.	
(l) Enhanced/value-added facsimile services, including store and forward and retrieve (CPC 7523**)	1) None except service provider must use Public Telecom Network under Government National Telecom Authority Control 2) None 3) Unbound 4) Unbound except as indicated in the horizontal measures.	1) None 2) None 3) Unbound 4) Unbound except as indicated in the horizontal section.	

Mode of Supply: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural persons

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
7. FINANCIAL SERVICES			
A. <u>All insurance and insurance-related services</u>			
(a) Direct insurance (life) including annuity, disability income, accident and health insurance services. (CPC 8121)	1) Unbound 2) None 3) Commercial presence is permitted only through insurance companies that are registered in Brunei Darussalam. 4) Unbound except as indicated under horizontal measures.	1) Unbound 2) None 3) None 4) Unbound except as indicated under horizontal measures.	
(b) Direct insurance (non-life) including disability income, accident and health insurance and contracts of fidelity bonds, performance body or similar contracts of guarantee. (CPC 8129)	1) Unbound 2) Compulsory insurance of Motor Third Party Liability and Workmen's Compensation can be purchased only from insurance companies established in Brunei. 3) Commercial presence is permitted only through insurance companies that are registered in Brunei Darussalam. 4) Unbound except as indicated under horizontal measures.	1) None 2) None 3) None 4) Unbound except as indicated under horizontal measures.	
(c) Reinsurance and retrocession (life and non-life) (CPC 81299*)	1) Unbound 2) Unbound 3) Unbound 4) Unbound except as indicated under horizontal measures	1) None 2) None 3) None 4) Unbound except as indicated under horizontal measures	

Mode of Supply: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural persons

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
(d) Insurance and intermediation comprising broking and agency services (CPC 8140)  Services auxiliary to insurance, as follows:  (a) Consultancy (excludes insurance agency services to insurance industry) (b) Actuarial risk assessment (c) Risk management (d) Maritime loss adjusting	1) Unbound 2) Insurance intermediation is not allowed to act for unregistered insurers. 3) (i) Broking for direct insurance of Bruneian risks requires approval from MOF. (ii) Broker, underwriting and insurance managers require approval. 4) Unbound except as indicated under horizontal measures.	1) Unbound 2) None 3) Unbound 4) Unbound except as indicated under horizontal measures.     1) None 2) None 3) None 4) Unbound except as indicated under horizontal measures.	

Mode of Supply: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural persons

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
11. TRANSPORT SERVICES			
C. <u>Air Transport Services</u>			
(c) Rental of aircraft with crew (CPC 734)	<p>1) None except: Aircraft must be certified Entry to Brunei Darussalam is subject to approval and limitation on infrastructure capacity.</p> <p>2) None</p> <p>3) Unbound except: (a) Only through a representative office; or (b) Only by appointment of a General Sales Agent; who is a Bruneian Controlled Company; and (c) Permanent address in Brunei Darussalam with respect to (a).</p> <p>4) Unbound except with respect to (b), one technical post subject to: Local availability test; Designation of a specified number of Brunei trainees.</p>	<p>1) None</p> <p>2) None</p> <p>3) Unbound</p> <p>4) Unbound except as indicated in the horizontal section</p>	

## ANNEX

### 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

### 1.1 Prevention of anti-competitive practices in telecommunications

Appropriate measures shall be maintained for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.

### 1.2 Safeguards

The anti-competitive practices referred to above shall include in particular:

- (a) engaging in anti-competitive cross-subsidization;
- (b) using information obtained from competitors with anti-competitive results; and
- (c) 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 networks 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 technically feasible point in the network. Such interconnection is provided.

- (a) under non-discriminatory terms, conditions (including technical standards and specifications) and rates and 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) in a timely fashion, on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided; and
- (c) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

## 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 is 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 an independent domestic body, which may be a regulatory body as referred to in paragraph 5 below, to resolve disputes regarding appropriate terms, conditions and rates for interconnection within a reasonable period of time, to the extent that these have not been established previously.

## 3. Universal service

Any Member has the right to define the kind of universal service obligation it wishes to maintain. Such obligations will not be regarded as anti-competitive *per se*, provided they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Member.

4. Public availability of licensing criteria

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

- (a) all the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence and
- (b) the terms and conditions of individual licences.

The reasons for the denial of a licence will be made known to the applicant upon request.

5. Independent regulators

The regulatory body is separate from, and not accountable to, any supplier of basic telecommunications services. The decisions of and the procedures used by regulators 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, timely, transparent and non-discriminatory manner. The current state of allocated frequency bands will be made publicly available, but detailed identification of frequencies allocated for specific government uses is not required.

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## BRUNEI DARUSSALAM – FINAL LIST OF ARTICLE II (MFN) EXEMPTIONS

Sector or Subsector	Description of measure indicating its inconsistency with Article II	Countries to which the measure applies	Intended duration	Conditions creating the need for the exemption
All Sectors	Future liberalisation of measures affecting limitations on foreign equity or interest in companies established in Brunei Darussalam shall be carried out in a differentiated manner, and at the discretion of the relevant authorities.	All Countries	Indefinite	The measure would be applied in a differentiated manner to those investment that match Brunei Darussalam's specific development requirements with the abilities and facilities provided by foreign enterprises and their home countries. The objective is to maximise economic benefits of foreign participation in the Brunei Darussalam economy.
All sectors	Preferences for entry and temporary stay of workers from traditional sources of supply.	Traditional sources	Indefinite. Brunei Darussalam will periodically review this in the light of domestic and national policy considerations.	Due to the small population base the government needs to regulate the flow of foreign workers, both skilled and unskilled, to ensure social cohesion in Brunei Darussalam.
Legal Services	All measures pertaining to the provision of legal services in Brunei Darussalam.	All countries	Indefinite. Brunei Darussalam will keep the possibility of removing this exemption under review.	The exemption is necessary as the establishment of foreign law firms in Brunei Darussalam is based on case-by-case approval.

Sector or Subsector	Description of measure indicating its inconsistency with Article II	Countries to which the measure applies	Intended duration	Conditions creating the need for the exemption
<p>Radio and Television</p> <p>Radio and television is defined to include:</p> <ul style="list-style-type: none"> <li>- Free-to-air broadcasting</li> <li>- Cable and Pay television</li> <li>- Direct broadcasting by satellite</li> <li>- Teletext</li> <li>- All broadcasting services listed in Services Sectoral Classification List, MTN.GNS/W/120.</li> </ul>	<p>The Radio Television Brunei (RTB) accords preferential broadcast and transmission rights to selected countries with which it has signed bilateral agreements.</p>	<p>All countries. Currently, only Singapore, Malaysia and Indonesia are given preferential broadcast and transmission rights.</p>	<p>Brunei Darussalam will keep the possibility of removing the exemption under review.</p>	<p>To promote social economic and cultural relations.</p>
<p>Financial Services</p>	<p>Treatment with respect to the granting of approval to establish offshore banks and merchant banks, to expand existing operations and conduct new activities in the financial services sector may be accorded to service suppliers of another member in a differentiated manner or on the basis of reciprocity and at the discretion of the relevant authority.</p>	<p>All countries</p>	<p>Indefinite</p>	<p>To accord differentiated treatment to another member which accords favourable treatment to Brunei Darussalam financial institutions.</p>

Sector or Subsector	Description of measure indicating its inconsistency with Article II	Countries to which the measure applies	Intended duration	Conditions creating the need for the exemption
Reinsurance and retrocession	Exception granted to ASEAN Reinsurance Corporation (ASEAN Re), a private-sector venture with equal shareholdings from six ASEAN countries, to be established with paid-up capital of B\$6 million instead of the minimum B\$10 million stipulated in the Insurance Act. Other than this, ASEAN Re is subject to the same rules and regulations applied to all reinsurers in Brunei Darussalam.	ASEAN	Indefinite	To promote greater cooperation among ASEAN in the reinsurance sector.
Banking and other financial services	Under a currency interchangeability agreement between Brunei Darussalam and Singapore, the currency issuing authorities of Brunei Darussalam and Singapore would:	Singapore	Indefinite, until either country terminates the agreement.	The currency interchangeability agreement was entered into in 1967 arising from special historical and economic ties between Brunei Darussalam and Singapore.

Sector or Subsector	Description of measure indicating its inconsistency with Article II	Countries to which the measure applies	Intended duration	Conditions creating the need for the exemption
	<ul style="list-style-type: none"> <li>- accept from banks, notes and coins by the other issuing authority, at par and without charge and to exchange such notes and coins into the currency of the country concerned; and</li> <li>- arrange for repatriation at the expense of the respective currency issuing authority, the notes and coins issued by the other currency issuing authority and to receive at par the equivalent in any agreed currency.</li> </ul>			