

*Draft as of 24 September 2008  
Reflecting comments received from ASEAN Member States*

**DRAFT**  
**Memorandum of Understanding on Establishing the ASEAN-China  
Centre Between the Governments of the Member States of the  
Association of Southeast Asian Nations and the Government of the  
People's Republic of China**

The Governments of the Member States of the Association of Southeast Asian Nations comprising Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam (hereinafter referred to collectively as "ASEAN" or "ASEAN Member States") and the Government of the People's Republic of China (hereinafter referred to as "China") (hereinafter referred to collectively as "Contracting Parties" or "Parties"; or singularly as "Contracting Party" or "Party");

**RECALLING** the thrust of economic cooperation between ASEAN and China which both sides can mutually benefit;

**MINDFUL** of the Framework Agreement on Comprehensive Economic Cooperation between ASEAN and the People's Republic of China signed in Phnom Penh on 4 November 2002 ("Framework Agreement") as well as the various agreements on trade in goods, services, dispute settlement, investment and other agreements relating to economic cooperation signed between ASEAN and China under the umbrella of the Framework and the Joint Declaration of the Heads of State/Government of Association of Southeast Asian Nations and the People's Republic of China on ASEAN-China Strategic Partnership for Peace and Prosperity signed in Bali on 8 October 2003;

**REALIZING** the vast potential for economic cooperation between the Contracting Parties;

**RECOGNISING** that cooperation is based on equity, friendship and mutual benefit;

**STRESSING** that the areas of cooperation under this Memorandum of Understanding shall be complementary to the activities carried out in other ASEAN-China fora;

**HAVE AGREED** as follows:

**ARTICLE I**  
**Establishment and Location**

1. The Contracting Parties shall hereby establish a one-stop information and activities centre known as the ASEAN-China Centre (hereinafter referred to as "the Centre") to promote ASEAN-China cooperation ~~on~~ in trade, investment, tourism, education and culture, with active involvement of the private sector. The Centre shall gradually expand to include a more comprehensive array of activities and participants.

2. The Centre shall be a non-profit organisation but be able to raise funds necessary for its operation.
3. The Headquarters of the Centre shall be located in Beijing. Its affiliated centres may be established in ASEAN Member States as well as other parts of China in the future.

## **ARTICLE II**

### **Objectives**

The objectives of the Centre are:

- (a) to support the implementation of the Framework Agreement on Comprehensive Economic Cooperation between ASEAN and the People's Republic of China signed on 4 November 2002; and various agreements on trade in goods, services, dispute settlement, investment and other agreements relating to economic cooperation signed under the umbrella of the Framework Agreement;
- (b) to enhance two-way trade between ASEAN and China and further cultivate trade partnership in order to jointly promote exports to outside markets and achieve market expansion;
- (c) to promote two-way flows of investment between ASEAN and China;
- (d) to undertake activities to help investors and businessmen from less developed ASEAN Member States, especially Cambodia, Laos, Myanmar and Vietnam, in exploring trade and investment opportunities in China;
- (e) to promote flows of tourists between ASEAN and China;
- (f) to enhance interaction among the business communities of ASEAN and China;
- (g) to increase people-to-people contacts, public awareness, mutual understanding, as well as active participation among the ASEAN and Chinese peoples through cultural and educational exchanges; and
- (h) to synergise the potentials of ASEAN and China in order to enhance the region's appeal to external partners and facilitate access to ASEAN and Chinese ventures.

## **ARTICLE III**

### **Roles and Activities**

1. To achieve its objectives, the Centre shall work closely with the trade, investment, tourism, education and cultural promotion offices/representatives of ASEAN Member States, particularly those based in China, on undertaking activities that contribute to further enhancing trade, investment, tourism, education and cultural promotion between ASEAN and China.
2. The Centre shall have dual roles, acting as an information centre and an activities centre.
3. The Centre shall undertake the following activities:
  - (a) to serve as a central coordinator of information, advice and activities to provide a comprehensive information bank on trade, investment, tourism, culture and education to businesses and peoples of ASEAN and China;

- (b) to serve as a channel for the meaningful exchange of information relevant to the enhancement of trade, investment, tourism and education of the ASEAN Member States and China, including rules and regulations concerning market access, particularly in supporting the development of Small and Medium Enterprises (SMEs),
- (c) to undertake studies in the areas of trade and investment that highlights the benefits of the ASEAN-China Free Trade Area, through comprehensive data and information gathering, analysis, and trends on markets;
- (d) to publicise cultures and education by disseminating information on traditional arts, handicrafts, music, dance, drama, movies and languages of ASEAN and China and educational opportunities in ASEAN and China;
- (e) to introduce and publicise products, industries and investment opportunities, tourism resources, culture and education of ASEAN and China to their companies, investors, and peoples by providing consultations, educational advisory services, as well as organising trade and investment exhibitions, tourism fairs, food festivals, art exhibitions and educational exhibition fairs;
- (f) to undertake market survey activities to identify potential markets and areas of cooperation;
- (g) to manage the permanent ASEAN Trade, Investment and Tourism Exhibition Hall within the framework of the Centre;
- (h) to serve as a central investment promotion unit creating sectoral linkages and facilitating business opportunities between ASEAN and Chinese ventures, especially assisting investors and companies seeking local business partners;
- (i) to maintain close cooperation in the fields of trade, investment and tourism with the Governments of ASEAN Member States and China and relevant regional and international organisations;
- (j) to facilitate trade and investment missions between ASEAN and China;
- (k) to provide a list of related agencies and Government Officials related to the fields of trade, investment and tourism of both ASEAN and China;
- (l) to undertake capacity building initiatives to support the promotion of trade, investment and tourism between ASEAN and China;
- (m) to support the development of small- and medium-sized cultural enterprises (SMCE) in order to promote cultural tourism;
- (n) to undertake seminars or workshops on topics related to the facilitation of trade and, investments and tourism between China and ASEAN Member States;
- (o) to establish a learning centre on arts, culture and language so as to enhance people-to-people contacts and to improve mutual understanding between the peoples and societies of ASEAN and China;
- (p) to look into the possibilities of undertaking people-to-people exchange programs related to the fields of trade, investment and tourism;
- (q) support programmes that are related to narrowing the development gap in ASEAN Countries; and
- (r) to undertake such other activities as may be deemed necessary to achieve the purpose of the Centre.

The initial phases of operation of the Centre are outlined in Annex.

#### **ARTICLE IV Membership**

1. China and the ASEAN Member States shall become Members of the Centre by becoming Contracting Parties to this Memorandum of Understanding in accordance with Article XXV.
2. Ventures and organizations can apply, through the Secretariat, to become Associates of the Centre. The approval criteria, terms and conditions of joining the Centre as Associates shall be determined by the Joint Council. Ventures and organizations shall pay association dues.

#### **ARTICLE V Organisation**

The operation of the Centre shall be governed by three bodies: the policy-making body, the advisory body, and the Secretariat. The policy-making body is the highest authority represented by the Joint Council. The advisory body provides policy advice to the Secretariat and is represented by the Joint Executive Board. The Secretariat is the operating body responsible directly to the Joint Executive Board and the Joint Council.

#### **ARTICLE VI Joint Council**

1. The Joint Council shall be the policy-making body and provide policy directives for the Centre.

**2. The Joint Council shall comprise the members of the ASEAN-China Joint Cooperation Committee.**

3. The Joint Council shall be the supreme organ of the Centre and exercise the powers and functions to:

- (a) determine the general policies governing the activities of the Centre;
- (b) approve the plan of operation and work programme concerning the operation of the Centre;
- (c) approve the annual work programme and the annual budget of revenues and expenditures of the Centre within the framework of the plan of operation and work programme as proposed by the Joint Executive Board;
- (d) approve the annual report on the operation of the Centre;
- (e) determine the powers and functions to be entrusted to the Joint Executive Board;
- (f) approve the appointment of the Secretary-General;
- (g) consider and approve the expansion of areas of cooperation besides those referred to in Article I;
- (h) adopt its own rules and procedure to be the norms and basic regulations for the running of the Centre;
- (i) decide on the disposal of the property and assets of the Centre in case of the dissolution of the Centre, and on any other matters connected with the dissolution; and

(j) decide on and/or approve other important matters concerning the Centre.

34. All the decisions of the Joint Council shall be made by consensus.

#### **ARTICLE VII** **Joint Executive Board**

1. The Joint Executive Board shall consist of the ASEAN Beijing Committee (ABC) and the China Council, which shall be established to include representatives from Chinese agencies involved in trade, investment, tourism, educational and cultural matters.

2. The Joint Executive Board shall exercise the following functions and other functions as and when entrusted by the Joint Council:

(a) supervise the activities of the Centre so that the decisions of the Joint Council are effectively implemented;

(b) function as the Advisory Council to offer advice on policy-related matters;

(c) exercise the power to guide the Secretary-General with the procedure to recruit staff of the Centre; and

(d) consider and endorse the annual work plan and annual budget of the Centre as prepared by the ASEAN-China Centre Secretariat for consideration and approval of the Joint Council.

3. The Joint Executive Board shall meet regularly or at any time as may be necessary.

4. All the decisions of the Joint Executive Board shall be made by consensus.

#### **ARTICLE VIII** **ASEAN-China Centre Secretariat**

1. The ASEAN-China Centre Secretariat ("ACCS") shall be an executing body, responsible for the day-to-day operation of the Centre, and produce an annual report to the Joint Council.

2. The ASEAN-China Centre Secretariat ("ACCS") shall consist of a Secretary-General and such professional staff as the Centre may require, who must be nationals of Members.

3. The Secretary-General shall represent the Secretariat as its chief executive and shall be responsible to the Joint Council and the Joint Executive Board.

4. The tenure of the Secretary-General shall be 3 years on a contract basis. He/she shall be selected and approved by the Joint Council.

5. The Secretary-General shall be a national of a Member. He/she shall work full time for the Centre and shall not hold any other position in the government or private organisations.
6. The selection of the first two Secretary-Generals shall be on a rotational basis. The first Secretary-General shall be a Chinese national, and the second Secretary-General shall be a national of an ASEAN Member State. Selection of the third Secretary-General, and onwards, shall be open ~~for~~ to candidates from ~~both sides~~ any Member of the Centre.
7. The Secretary-General shall execute the annual work programme, administer the annual budget, and implement the decisions of the Joint Council, under the supervision and advice of the Joint Executive Board.
8. The Secretary-General shall prepare an annual report which shall include the annual work programme and the annual budget estimates, and present them for approval to the annual meeting of the Joint Council.
9. The Secretary-General shall recruit Directors as head of divisions. The appointment of Directors shall be approved by the Joint Executive Board. The tenure of Directors shall be on a contract basis and can be renewed by the Joint Executive Board.
10. The terms and conditions of employment of staff shall be set out in staff regulations approved by the Joint Executive Board.

#### ARTICLE IX Official Language

The official language of the Centre shall be English.

#### ARTICLE X Funding

1. The ASEAN Member States and China shall contribute to the Centre, in accordance with an amount of money to be agreed by Contracting Parties necessary for the operation of the Centre. The Members shall also take into account the importance of maintaining the sustainability of the funding sources with regard to the implementation of the Centre's goals.
2. The expenses borne by China shall be as follows:
  - (a) the rent of the office(s) occupied by the Centre in the territory of China; and
  - (b) the wages, insurance fees and other expenses necessary to hire staff who are nationals of China.
3. The expenses borne by ASEAN shall be the wages, insurance fees and other expenses necessary to hire staff who are nationals of the ASEAN Member States.
4. The expenses necessary for the Centre to execute its regular functions performed in the territory of China and the expenses necessary for the Centre to carry out activities shall be borne by the Parties in the following proportion:  
China 90% and ASEAN Member States 10%.

5. The Centre shall secure funding from the Chinese and ASEAN private sector, including rental fees for exhibition space, association dues, activities charges and sponsorship of activities, with the eventual goal of being financially independent to support various activities of the Centre.

6. The statement of financial account of the Centre shall be annually examined and duly approved by external auditor in accordance with international accounting standards.

#### **ARTICLE XI** **Juridical Personality**

The Centre shall possess juridical personality. It shall have the capacity:

- (a) to enter into a contract;
- (b) to acquire and dispose of movable and immovable property; and
- (c) to institute legal proceedings.

#### **ARTICLE XII** **Privileges and Immunities**

1. The Centre and persons related to its Secretariat shall enjoy, in the territory of China, privileges and immunities in accordance with the provisions of Article XIII to XIX. The privileges and immunities provided by this Article and Articles XIII to XIX shall not apply to Associates of the Centre and Staff of the Associates of the Centre.

2. For the furtherance of the purpose of this Memorandum of Understanding, the Centre may conclude, with one or more Members other than China, agreements on privileges and immunities which shall be approved by the Joint Council.

3. In case of establishment of affiliated centres, the privileges and immunities enjoyed by the affiliated centres, the scope of persons who shall enjoy privileges and immunities, and the privileges and immunities they shall enjoy shall be decided separately by the Joint Council in consultation with the host countries of the affiliated centres before their establishment.

#### **ARTICLE XIII** **Privileges and Immunities on Property, Funds and Assets**

1. The Centre, its property and assets shall enjoy immunity from proceedings in the courts except in so far as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall imply waiver of immunity in respect of the execution of judgement.

The provisions of this paragraph shall not apply in case of civil proceedings related to disputes arising out of contracts and out of damage caused by a vehicle.

2. The archives of the Centre and in general all official papers and documents belonging to it or held by it shall be inviolable. The private papers of the officials of