

**UN ESCAP & UNNExt CAPACITY BUILDING WORKSHOP ON**  
**CROSS-BORDER PAPERLESS TRADE FACILITATION: LESSONS FROM**  
**ON-GOING INITIATIVES AND WAY FORWARD**

***SESSION 1: LESSONS FROM MULTILATERAL INITIATIVES FROM THE  
REGION AND BEYOND***

**PROTOCOL ON THE LEGAL FRAMEWORK (“PLF”)  
TO IMPLEMENT THE ASEAN SINGLE WINDOW**

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**4 NOVEMBER 2015**

# **BACKGROUND**



- To realise the ASEAN Economic Community (“AEC”), ASEAN Member States (“AMS”) will harmonise customs procedures, improve customs control and compliance, and facilitate trade through the electronic submission/transmission of import and export customs documents in a single window.
- To implement the single window initiative, the ASEAN Ministers in charge of Economic Cooperation signed the *Agreement to Establish and Implement the ASW* (“ASW Agreement”) in December 2005 and in December 2006, the *Protocol to Establish and Implement the ASW* was signed by ASEAN Finance Ministers (“ASW Protocol”).

# **BACKGROUND**



- Under Article 5 of the ASW Agreement, AMS are to develop and implement their National Single Windows (“NSW”) in a timely manner for the establishment of the ASW.
- Article 5(1) of the ASW Agreement stipulates that NSWs of Brunei Darussalam, Indonesia, Malaysia, the Philippines, Thailand and Singapore are to be operationalised in 2008.
- Cambodia, Lao PDR, Viet Nam and Myanmar are expected to do so by no later than 2012.

# **BACKGROUND**



- For the ASW, two(2) working groups were established to undertake its implementation pursuant to the decision of the ASW Steering Committee (“ASWSC”) held in March 2007. They are:
  - ❖ Working Group on Technical Matters (“TWG”); and
  - ❖ Working Group on Legal And Regulatory Matters (“LWG”).
- Before embarking into a full-fledge and live implementation of the ASW, AMS had decided that it was better that ASEAN to first implement an ASW Pilot Project. During the 2<sup>nd</sup> ASWSC Meeting on 7 – 9 April 2008 in Bali Indonesia, the ASWSC had agreed that –
  - ❖ the ASW Pilot Project be implemented to examine and test the ASW technical infrastructure which enables the electronic exchange of information between NSWs of AMS; and
  - ❖ a Memorandum of Understanding to be drafted for the purposes of providing a legal framework for the implementation of the ASW Pilot Project.

# **BACKGROUND**



- **Pursuant to Article 1 of Part I of the ASW Agreement**

*“The **“ASEAN Single Window”** is the environment where National Single Windows of Member Countries operate and integrate.”*

- **The “National Single Window” is a system which enables:**

- a single submission of data and information;*
- a single and synchronous processing of data and information; and*
- a single decision-making for customs release and clearance. A single decision-making shall be uniformly interpreted as a single point of decision for the release of cargoes by the Customs on the basis of decisions, if required, taken by line ministries and agencies and communicated in a timely manner to the Customs.*

- **Pursuant to Article 5 (General Definitions) of PLF:**

- - **“ASW”** is the secured environment where NSWs of Member States operate and integrate. The ASW constitutes a regional facility to enable a seamless, standardised and harmonised routing and communication of trade and customs-related information and data for customs clearance and release from and to NSWs. Trade and related customs data and information will stay within, and belong to respective Member States;

# KEY FEATURES AND SALIENT PROVISIONS



After the finalisation of the MoU on ASW Pilot Project in 2010, a more comprehensive and binding Protocol in the form of the PLF was drafted and negotiated by the LWG, which is now known as the “Protocol on the Legal Framework (“PLF”) to Implement The ASEAN Single Window”.

## • KEY FEATURES:

- Preambles
- Part I (Sphere Of Application)
- Part II (General Provisions)
- Part III (ASW AND NSW OPERATIVE PROVISIONS)
- Part IV (Additional Provisions)
- Part V (Final Provisions)

## SALIENT PROVISIONS:

- Article 1 (Scope of Application)
- Article 3 (Objectives)
- Article 5 (General Definitions)
- Article 6 (Transmission and Exchange of Data and Information)

# KEY FEATURES AND SALIENT PROVISIONS



**RECALLING** the commitments and agreements that Member States have made to establish the ASEAN Single Window (hereinafter referred to as “ASW”), as well as the National Single Windows (hereinafter referred to as “NSWs” or individually as “NSW”), including the Agreement to Establish and Implement the ASEAN Single Window (hereinafter referred to as “ASW Agreement”) signed on 9 December 2005 in Kuala Lumpur, Malaysia and the Protocol to Establish and Implement the ASEAN Single Window (hereinafter referred to as “ASW Protocol”) signed on 20 December 2006 in Siem Reap, the Kingdom of Cambodia;

**FURTHER RECALLING** the importance of a harmonised trade and customs environment to the ASEAN Economic Community as stated in the Vientiane Action Programme;

**RECOGNISING** the importance of establishing an enabling legal framework based on international standards and best practices for the implementation of the ASW as mandated in Article 6 of the ASW Agreement;

**NOTING** that Member States have also committed in Article 5 of the ASW Protocol to utilising international standards and best practices reflected in international conventions and agreements;

**AFFIRMING** that the terms of this Protocol shall be based on the objectives, principles and obligations established by the ASW Agreement and the ASW Protocol;

**NOTING** the relevant principles and recommendations developed by international bodies such as the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce, the United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) Recommendation 35 and the United Nations Convention on the Use of Electronic Communications in International Contracts for purposes of transactions between the NSWs within the ASW environment,

# KEY FEATURES AND SALIENT PROVISIONS



## Article 1 Scope of Application

1. This Protocol shall apply to transactions between NSWs within the ASW environment exclusively among Member States.
2. Nothing in this Protocol shall be construed as creating any obligations for Member States with respect to the domestic operations and transactions of their own NSW, save as prescribed in Article 9 (Information Security and Confidentiality) of this Protocol.
3. Such transactions that are contemplated in this Protocol shall comply with the technical and operational criteria to be agreed by Member States.



# KEY FEATURES AND SALIENT PROVISIONS



## Article 3 Objectives

This Protocol aims to provide a legal framework for the operations, interactions, and electronic processing of transactions between NSWs within the ASW environment, taking into account the relevant international standards and best practices recommended by international agreements and conventions concerning trade facilitation and modernisation of customs techniques and practices.

# KEY FEATURES AND SALIENT PROVISIONS



- **Pursuant to Article 1 of Part I of the ASW Agreement**

*“The **“ASEAN Single Window”** is the environment where National Single Windows of Member Countries operate and integrate.”*

- **The “National Single Window” is a system which enables:**

- *a single submission of data and information;*
- *a single and synchronous processing of data and information; and*
- *a single decision-making for customs release and clearance. A single decision-making shall be uniformly interpreted as a single point of decision for the release of cargoes by the Customs on the basis of decisions, if required, taken by line ministries and agencies and communicated in a timely manner to the Customs.*

- **Pursuant to Article 5 (General Definitions) PLF:**

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- **“ASW”** is the secured environment where NSWs of Member States operate and integrate. The ASW constitutes a regional facility to enable a seamless, standardised and harmonised routing and communication of trade and customs-related information and data for customs clearance and release from and to NSWs. Trade and related customs data and information will stay within, and belong to respective Member States;

# KEY FEATURES AND SALIENT PROVISIONS



## **Article 6**

### **Transmission and Exchange of Data and Information**

1. Member States shall establish and maintain national laws and regulations that enable the operation of their NSWs and permit cross-border transmission and exchange of trade and customs-related data and information between NSWs that Member States have specifically agreed to for the purposes of the ASW. Such transmission and exchange shall be subject to the consent of the trader submitting the data and information, where such consent is required by national law, and shall be made in accordance with this Protocol.
2. Member States shall establish policies and regulations for the transmission and exchange, use, and dissemination of NSW data and information for domestic government usage that are consistent with the provisions of this Protocol.
3. Data and information transmitted, exchanged and disseminated by a Member State's NSW to another Member State's NSW through the ASW environment shall be used and maintained only in furtherance of this Protocol and the objectives of the ASW.
4. For the purposes of the ASW, Member States shall recognise trade and customs-related data and information transmitted and exchanged within the ASW for customs clearance and release, to be agreed by Member States.

#### **Footnote:**

*In adopting or maintaining laws and regulations referred under this provision, Member States may decide to ensure that the transmission and exchange of data and information within the ASW environment shall be subject to comparable safeguards to those it applies in its own jurisdiction.*

# **SALIENT LEGAL ISSUES**



- Transmission and Exchange of Data and Information
- Information Security and Confidentiality
- Legal Effect of Electronic Documents, Data, and Information

# LESSONS LEARNT



- Continuous guidance and support from the ASWSC as well as continuous technical support and clarification the ASW TWG;
- Continuous process of conducting and updating “Gap Analysis of Domestic Legal Framework To Implement ASW” ; and
- Continuous consultation, co-operation and collaborative efforts with line agencies.

# **Thanking You For Your Kind Attention!**



**Terima Kasih!**

**谢谢 (Xièxiè)!**

**شكرا جزيلا (Syukran Jazilan)!**

**Muchas Gracias!**

**Merci Beaucoup!**

**Arigatou gozaimasu!**

**Salamat Po!**

**Danke sehr!**

**ขอบคุณ[มาก (Khop Khun)!**