asean insiders series

MARCH 2018

Foreign Direct Investment

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ASEAN – *Open for business*

Since its formation in 1967, ASEAN has grown from an underdeveloped region into one of the globe's most diverse and dynamic economic drivers. Located at the heart of the Asia-Pacific region and strategically nested across several major trade routes, ASEAN is bursting with investment opportunities.

In its 50th Edition Investment Report last October 2017, the ASEAN Secretariat reported that foreign direct investment flows into the region remained high despite the overall decline of investment flows to the region. This report also identified a rise in intra-ASEAN investment flows, in no small sense due to a two-thirds hike in investment in the manufacturing sector as well as a doubling of investment into finance. Additionally, the report credited the rise of intra-ASEAN investment to ASEAN firms' growing financial strength, strong cash holding, and increased drive to internationalise and build competitiveness.

As this happens, ASEAN member states have not neglected the importance of making business more streamlined and less restrictive to foreign stakeholders within their respective jurisdictions. These efforts are reflected in the pages that follow, where you will notice a trend in liberalising business sectors, easing the process of doing business and increasing the available investment incentives across the region.

In addition to all this is ASEAN's underlying commitment to becoming the primary trade bloc for free trade and competitive pricing. This commitment is mirrored by its entry into a number of global free trade agreements, two of which (namely the Regional Comprehensive Economic Partnership and Comprehensive and Progressive Agreement for Trans-Pacific Partnership) have not been fully realised due to global uncertainties.

ASEAN's commitment to moving with the times and embracing competition has not only retained the confidence of its existing investors (e.g. many Fortune Global 500 companies continue to invest in the region), it has also convinced a number of major source economies to raise their stakes and increase their investments in the region.

The following is a snap-shot of where ASEAN currently stands in allowing a freer flow of foreign investment and capital throughout the region.

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	BRUNEI	CAMBODIA
Investment laws, regulations etc	• Investment Incentive Order 2001 • Income Tax (as amended) Order 2001.	• Law on Investment 1994 • Law on the Amendment of the Law on Investment 2003 • Sub-Decree No. 111 on the Implementation of the Amendment to the Law on Investment of the Kingdom of Cambodia • Sub-Decree No. 17 on the Establishment of the Sub-Committee on Investment of the Provinces-Municipalities • Sub-Decree No. 60 on the Organisation and Functioning of the Council for the Development of Cambodia ("**CDC**").
Common forms of business vehicles	• Partnerships • Incorporation of private company • Setting up of branch of foreign company • Joint ventures with local companies.	• Limited liability companies (either single-member, private or public limited) • Branch offices • Representative offices • Partnerships (either general or limited) • Sole proprietorships.
Promoted investments	• Halal industry • Technology and creative industry • Business services industry • Tourism • Downstream oil and gas.	There is no definitive list of promoted investments under Cambodian law. However, many projects in the following sectors have been approved by the Cambodian Investment Board (**CIB**) over the past few years: • Agriculture • Mining and industrial sector • Services such as construction and telecommunication • Tourism.
Promoted investment incentives	• No tax on personal income, payroll, goods and services and capital gains • Zero tariff within ASEAN • Low corporate income tax of only 18.5% • Right to 100% foreign ownership of companies established in Brunei • Option of credible co-investment partnership • Availability of local business development initiatives.	• Profit tax exemptions or special depreciation for companies with Qualified Investment Projects ("**QIPs**") • Non-taxation on the distribution of dividends, profits or proceeds of investments, whether transferred abroad or distributed within the country • Duty free import of production equipment and construction materials.
Restricted or conditional investment sectors	• Businesses dealing in natural resources • Food security • Businesses located in industrial sites for which 30% minimum local equity participation is required.	• Production or processing of psychotropic substances and narcotics • Production of poisonous chemicals, agriculture pesticide and other goods using chemical substances prohibited by international regulations, the World Health Organization, or that affect the environment and public health • Exploitation of forestry.
Repatriation of profit and capital	Brunei does not restrict the repatriation of capital and there are no restrictions on the remittance of profits (e.g. dividends) or royalties from investments.	Foreign investors are free to purchase foreign currencies through the local banks and may remit such currencies abroad to discharge the financial obligations incurred on their investments, such as: • payment for imports and repayment of principal and interest on international loans • payment of royalties and management fees • remittance of profits • repatriation of invested capital.
Special economic zones	Brunei does not have any special economic zones.	As of 2016, about 30 special economic zones have been authorised by the Cambodia Special Economic Zone Board.
Corporate and withholding taxes	• **Corporate tax** 18.5%. • **Withholding tax** • Interests: 15% • Royalties: 10% • Dividends: 0%.	• **Corporate tax** 20%. • **Withholding tax** 4 – 15%.
Member of New York Convention	**Yes.**	**Yes.**
Bilateral investment treaties	Brunei has signed **8 bilateral investment treaties** as of the date of this publication.	As of the date of this publication, Cambodia has signed **23 bilateral investment treaties** with 12 in force.

	INDONESIA	LAOS
Investment laws, regulations etc	Law No. 25 of 2007 on Capital Investment.	Investment in Lao PDR is mainly governed by the Amended Investment Promotion Law 2016, which regulates the promotion and management of both domestic and foreign investments.
Common forms of business vehicles	Foreign investments must be in the form of a limited liability company (Perusahaan Terbatas) domiciled within the territory of the Republic of Indonesia, unless otherwise provided by law.	• Wholly domestic or foreign-owned investments • Joint ventures with domestic investors which foreign investors contribute capital of not less than 10% of the total capital • Business cooperation by contract with domestic investors without creating a new legal entity • Joint ventures between the state-owned enterprises and private enterprises creating a new legal entity • Joint ventures between the Government sectors and private sectors, or public-private partnerships ("**PPPs**").
Promoted investments	• Infrastructure • Industries • Tourism • Energy • Creative economy.	• Science and technology • Agriculture and agricultural processing • Information and culture • Tourism • Education • Sports • Labour skill development and employment • Public health • Banks and financial institution • Shopping malls • Public works and transportation.
Promoted investment incentives	• Tax allowances • Tax holidays • Import duty exemptions for machinery.	• Tax incentives through profit tax exemptions • Exemption from import and export duties • Exemption on state land leases and concession rental fees.
Restricted or conditional investment sectors	• Agriculture • Forestry • Marine and fisheries • Financial Industries.	Restricted**:** Sectors considered harmful to national security, environment, public health and culture. Conditional**:** Construction, transport, finance, insurance, and services sectors.
Repatriation of profit and capital	There are no restrictions on remittances of capital and profits. Investors are free to transfer assets to other parties subject to relevant provisions of the law.	Investors may repatriate profits via dividends subject to payment of the necessary tax and wages. Repatriation of investment capital, however, is limited to capital brought in through the Lao banking system and properly registered with the Bank of Lao PDR based on a capital importation certificate.
Special economic zones	There are currently 12 special economic zones (*Kawasan Ekonomi Khusus*) within Indonesia.	Lao PDR currently has 12 special economic zones, each with its own Zone Authority and separate regulations.
Corporate and withholding taxes	• **Corporate tax** 25%. • **General withholding tax** 20%, but may be lower depending on tax treaties.	• **Corporate tax** 24%. • **General withholding tax** 5 – 10%.
Member of New York Convention	**Yes.**	**Yes.**
Bilateral investment treaties	Indonesia has signed **64 bilateral investment treaties** as of the date of this publication.	Lao PDR has signed a total of **26 bilateral investment treaties** as of the date of this publication.

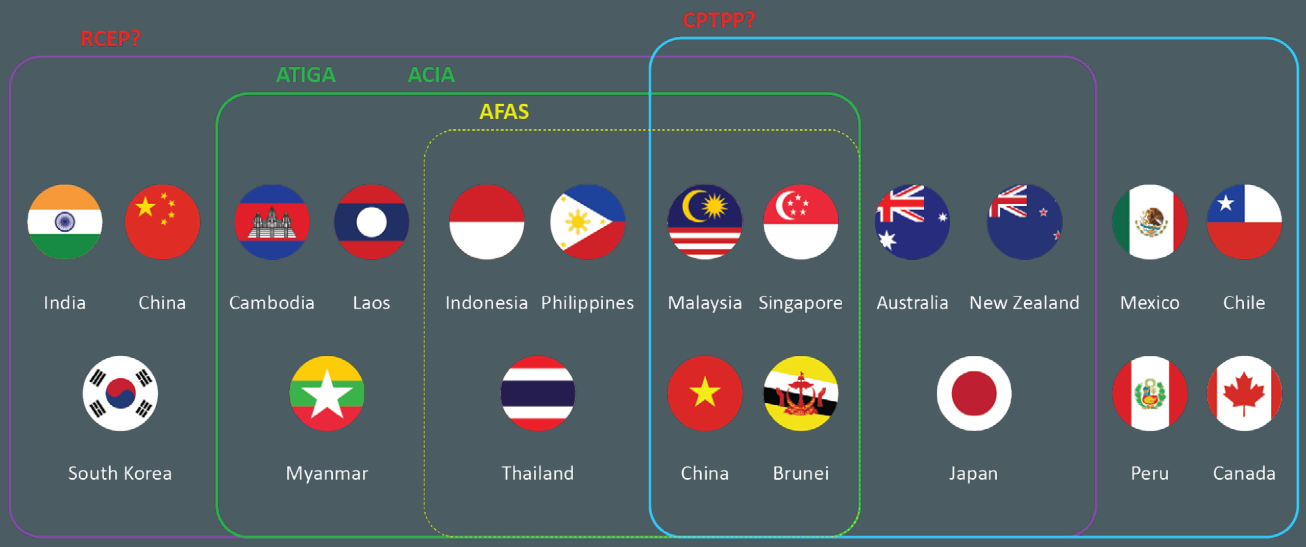
	MALAYSIA	MYANMAR
Investment laws, regulations etc	Investments are encouraged through the incremental liberalisation of equity conditions by various government agencies based on the provisions of the Promotion of Investments Act 1986. Such equity conditions are mostly set out in ministerial guidelines.	Myanmar Investment Law 2016.
Common forms of business vehicles	• Partnerships or joint ventures with domestic investors • Incorporation of private companies • Acquisition of shares or assets in existing companies • Setting up of branch or representative office.	• Incorporation of company • Setting up of branch or representative office of a foreign company • Joint ventures with local companies • Joint ventures with the government of Myanmar • Setting up of an association or non-profit organisation.
Promoted investments	• Financial services • Wholesale and retail • Information Communication and Technology (ICT) • Halal services • Tourism.	• Agriculture and its related services • Manufacturing (except manufacturing of cigarettes, liqueur, beer and other products deemed harmful to health) • Supply and transport services • Power generation, transmission and distribution • Telecommunications • Health • Information and technology.
Promoted investment incentives	• Investment tax allowances • Exemption from taxes • Income tax allowances • Accelerated capital allowances.	• Income tax exemptions • Custom duty tax exemptions • Long term land-use rights.
Restricted or conditional investment sectors	• Financial services • Wholesale and retail • ICT • Tourism.	• Fresh water fishing activities • Publishing and distribution of periodicals in ethnic languages • Pet care services • Manufacturing of forest products • Activities relating to the setting up and running of a convenience store or tour-guide service • Mineral prospecting, surveying, performing feasibility study and developing mineral for small and medium scale • Refinement of minerals by medium scale and small scale • Performing shallow oil wells up • Printing and issuing sticker for visa and stay permit for foreigners • Prospecting, exploration and production of jade/gem stones • Mini-market and convenience store.
Repatriation of profit and capital	There are no restrictions on repatriation of profits and capital from Malaysia.	Foreign investors may transfer the following types of funds abroad: • capital designated under the Capital Account Rules of the Central Bank of Myanmar • income resulting from investments • proceeds from total or partial sale of investments • payments made under contracts or resulting from settlement of disputes • remuneration, salary and earnings of foreign experts legally employed in Myanmar.
Special economic zones	Malaysia houses a number of special economic zones, i.e. • East Coast Economic Region • Iskandar Development Region • Northern Corridor Economic Region (*Koridor Utara*) • Sabah Development Corridor • Sarawak Corridor of Renewable Energy.	Myanmar has 3 special economic zones, namely: • Thilawa SEZ • Dawei SEZ • Kyauphyu SEZ • Out of the 3 SEZ's, only Thilawa SEZ is currently operational.
Corporate and withholding taxes	• **Corporate tax** 24%. • **General withholding tax** 10 – 15%.	• **Corporate tax** 25%. • **Withholding tax** 2- 15% depending on category and whether subject is local, resident foreigner or non-resident foreigner.
Member of New York Convention	**Yes.**	**Yes.**
Bilateral investment treaties	Malaysia has signed a total of **71 bilateral investment treaties** as of the date of this publication.	Myanmar has signed **12 Bilateral Investment Treaties**. as of the date of this publication.

	PHILIPPINES	SINGAPORE
Investment laws, regulations etc	• Omnibus Investments Code 1987 • Foreign Investments Act 1991.	• Companies Act • Income Tax Act.
Common forms of business vehicles	• Sole proprietorship • Partnership • Incorporation of either a foreign or domestic company. In addition to the above, foreign investors may also apply for registration with the Bangko Sentral ng Pilipinas ("**BSP**"). Such investments may be made through: • foreign direct investments in Philippine firms or enterprises • investments in peso-denominated certificates of indebtedness issued by public sector entities • investments in securities listed in the Philippine Stock Exchange • investments in peso-denominated money market instruments • investments in peso time deposits with a maturity of at least 90 days.	• Setting up of private company limited by shares • Setting up of partnership • Setting up of branch or representative office.
Promoted investments	• Qualified manufacturing activities Including agro-processing • Agriculture, fishery and forestry • Strategic services (e.g. telecommunications, knowledge-based services, etc.) • Healthcare services including drug rehabilitation centers • Mass housing • Infrastructure and logistics including public-private partnerships by local government units • Innovation drivers (e.g, R&D activities, conduct of clinical trials, etc.) • Inclusive business models in agriculture and tourism sectors • Environment or climate change-related projects • Energy.	• Information technology • Finance technology (FinTech) • Automation and robotics • Industrials such as high-end manufacturing of semiconductors and electronics • Healthcare such as biotechnology, production of medical equipment and pharmaceuticals.
Promoted investment incentives	• Tax exemptions • Exemptions from wharfage dues on import shipments of equipment • Reduced tax rates.	• Grants • Allowances • Awards • Tax exemptions • Reduced tax rates.
Restricted or conditional investment sectors	The Foreign Investments Act 1991 has identified a list of restrictions on foreign ownership according to industry sector. This list is known as the, "Negative List", and it is further sub-divided into the following 2 lists: • List A contains activities reserved for Philippine nationals. Activities in this list include mass media; private recruitment, construction and repair of locally-funded public works; advertising; exploration, development, and utilisation of natural resources and financing, and insurance • List B contains activities that are regulated for reasons of security, defence, health, morality and protection of small and medium enterprises.	• Property ownership • Media • Banking.
Repatriation of profit and capital	Foreign investments registered with the BSP are entitled to full and immediate capital repatriation and dividends and profit remittance privileges. Registered foreign investors need not obtain BSP approval in order to effect such repatriations or remittances via Authorised Agent Banks. Unregistered foreign investments on the other hand must effect profit remittances and capital repatriation using foreign exchange sourced from outside the domestic banking system.	Singapore places no restrictions on reinvestment or repatriation of earnings or capital.
Special economic zones	The Philippines has 2 special economic zones that offer enterprises certain incentives to invest in the region.	Singapore does not contain any special or specific economic zones.
Corporate and withholding taxes	• **Corporate tax** 30% or 2% of gross income, whichever is higher. • **Withholding tax** *on compensation*: rates vary depending on frequency of payment and amount of compensation paid to employee *expanded:* rates vary according to type of income payment. (Do note that the applicable tax laws may be amended in the next few months with respect to juridical persons/entities.)	• **Corporate tax** 17%. • **Withholding tax** 10 – 17%.
Member of New York Convention	**Yes.**	**Yes.**
Bilateral investment treaties	Philippines has signed **38 bilateral investment treaties** as of the date of this publication.	Singapore has approximately **40 international investment agreements** (also commonly called bilateral investment treaties) in force as of the date of this publication.

	THAILAND	VIETNAM
Investment laws, regulations etc	• Foreign Business Act (1999) • Investment Promotion Act (1977).	Law on Investment No. 67/2014/QH13 dated 26 November 2014 and Guiding Decrees ("**Law on Investment**").
Common forms of business vehicles	• Registration of private limited company • Setting up of branch or representative office of a foreign company • Joint ventures with local companies.	• Establishment of economic organisations • Capital contribution or purchase of shares or portion of capital contribution • Public private partnerships • Business co-operation contracts.
Promoted investments	The Board of Investment via the Investment Promotion Act (1977) promotes business activities based on the following categories: • Agriculture and agricultural products • Mining, ceramics and basic metals • Light industry • Metal products, machinery and transport equipment • Electronics and electrical appliances • Chemicals, paper and plastics • Services and public utilities • Technology and innovation development.	Subject to conditions, Vietnam grants preferential treatment to the following investment sectors: • high-tech, information technology and supporting industries • agriculture • environmental protection and infrastructure construction • education, culture, socialization, sport and medical health • manufacturing of certain products • science and technology, electronics, mechanical engineering, production of IT and IT materials.
Promoted investment incentives	• Corporate income tax exemption of up to 13 years • 50% reduction of corporate income tax rate of up to 10 years • Exemption of import duty on machinery, raw and essential material used for export products and products used for research and development • Non-tax incentives such as right to own land, permit to bring in skilled workers to work in promoted industries.	• Lower rate or reduction of corporate income tax • Exemption from import duty on raw materials, supplies and components for implementation of a project or for goods imported to form fixed assets • Exemption from and reduction of land rent, land use fees and land use tax.
Restricted or conditional investment sectors	Restricted activities are categorised by the following 3 lists under the Foreign Business Act (1999): • Activities in List 1 are completely reserved for locals • Activities in List 2 are only open to foreigners who obtain a foreign business license upon receipt of Cabinet approval • Activities in List 3 are only open to foreigners who obtain a foreign business license upon receipt of approval from the Ministry of Commerce.	The Law on Investment prohibits investments on the following: • Drugs as prescribed in Appendix 1 of the Law on Investment • Chemicals, minerals as prescribed in Appendix 2 of the Law on Investment • Specific types of endangered flora and fauna specimens • Prostitution • Human or parts of human body • Human asexual reproduction • Firecrackers. Conditional investments are prescribed in Appendix 4 of the Law on Investment.
Repatriation of profit and capital	Remittances in foreign currency are permitted. However, remittances of sums that exceed the limitations, or are for purposes other than those specified by the Bank of Thailand, require the Bank of Thailand's approval.	After fully discharging their financial obligations to the state of Vietnam in accordance with the relevant laws, foreign investors may remit the following assets overseas: • invested capital and proceeds from liquidations of its investments • income derived from business investment activities • other lawfully-owned assets and monies.
Special economic zones	The policy committee on special economic zone development has identified special economic zones across 10 border provinces.	The Government of Vietnam has approved in principle of the plan to establish 3 special administrative economic zones, namely in: • Van Don • Phu Quoc • Bac Van Phong.
Corporate and withholding taxes	• **Corporate tax** 20%. • **Withholding tax** 1 – 15%.	• **Corporate tax** The standard corporate income tax is 20%. However, the tax rate applicable for special industries (e.g. oil and gas, exploitation of sliver or gold) may range from 32 - 50%). • **Withholding tax** 5 – 15%.
Member of New York Convention	**Yes.**	**Yes.**
Bilateral investment treaties	Thailand has signed **41 bilateral investment treaties** as of the date of this publication.	Vietnam has signed **65 bilateral investment treaties** as of the date of this publication.

ASEAN TRADE PACTS TODAY

The ASEAN of today is an indispensable trade bloc for many global powerhouses. Its commitment to free trade, competitive pricing and enhanced business and legal conditions is reflected in its entry into a number of global free trade agreements, some of which are depicted in the illustration below.



RCEP: The proposed Regional Comprehensive Economic Partnership or RCEP has a combined GDP of USD17 trillion and a population of 3 billion. All of ASEAN are involved in RCEP negotiations and stand to open their doors to trade in goods and services, investment, economic and technical cooperation, intellectual property, competition policies and dispute settlement with other member states.

ATIGA: Signed in 1995, the ASEAN Trade in Goods Agreement (**ATIGA**) consolidates and streamlines the provisions of its predecessor, the Agreement on Common Effective Preferential Tariff of the ASEAN Free Trade Area (**CEPT-AFTA**). ATIGA contains elements such as tariff liberalization, removal of non-tariff barriers, rules of origin, trade facilitation, customs, standards and conformance, and sanitary and phytosanitary measures.

AFAS: The ASEAN Framework Agreement on Services (**AFAS**) eliminates barriers to trade in services and provides mutual recognition of qualifications and experience through Mutual Recognition Agreements. The AFAS also sets out a mechanism for dispute resolution and rule making.

ACIA: The ASEAN Comprehensive Investment Agreement (**ACIA**) aims to enhance the attractiveness of ASEAN as a single investment destination by covering benefits in almost all forms of investment, introducing non-discriminatory treatment policies, and promoting the liberalisation of the manufacturing, agriculture, fishery, forestry, mining and quarrying and incidental sectors.

CPTPP: The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (**CPTPP**) is a proposed agreement that is set to eliminate or reduce tariff and non-tariff barriers across trade in goods and services, facilitate the development of production and supply chains, enhance trade and facilitate cross-border integration by opening domestic markets. In short, the CPTPP is marked as the, "revival" of the Trans-Pacific Partnership Agreement (**TPP**) which the US has withdrawn from in early 2017.

Apart from the above, ASEAN has also signed Free Trade Agreements with China, Japan, the Republic of Korea, Australia, India and the European Union.

The revival of the TPP and its impact on ASEAN

When the United States withdrew from the TPP in early 2017, many thought that the TPP was dead. However, in May 2017, the remaining TPP member states convened to discuss the possibility of reviving the TPP under a new name, the CPTPP.

The only ASEAN countries that remain in CPTPP negotiations to date are **Malaysia, Singapore, Brunei, and Vietnam.**

The timeline for CPTPP to take effect is as follows:

- **23 January 2018:** Negotiations concluded in Tokyo.
- **8 March 2018:** CPTPP signed in Chile.
- CPTPP may take effect once all the member states have ratified the agreement.

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