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Foreign Direct Investment

ZICO law

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 Investment Report last November 2018, the ASEAN Secretariat reported that foreign direct investment rose to record levels underpinned by significant rise in investment in the region. The report examines ASEAN's rapidly growing digital network backed by expanding digital networks. With foreign and ASEAN digital MNEs and ICT companies increasing their attention to the region, member states are intensifying cooperation in order to strengthen and expand e-commerce and facilitate digital connectivity. This includes the execution of an ASEAN e-commerce agreement and adoption of an ASEAN Digital Integration Framework with the aim to facilitate transformation of the region into a competitive global digital hub.

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, though even with the coming into force of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership there are still uncertainties to its application.

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 (revised in 2011) • 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 • Agriculture	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 or reduction of production equipment, construction materials and agricultural 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 • Processing and production of electrical power by using any waste imported from a foreign country • 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	An oil refinery special economic zone designated by Zhejiang Hengyi plant at "Pulau Muara Besar".	As at the date of this publication, about 34 special economic zones have been approved 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 **27 bilateral investment treaties** with 14 in force.

	INDONESIA	LAOS
Investment laws, regulations etc	• Law No. 25 of 2007 on Capital Investment • Law No. 40 of 2007 on Limited Liability Companies • Regulation of the President of the Republic of Indonesia Number 44 of 2016 on the List of Business Activities that are Closed to Investments and Business Activities that are Open to Investments with Certain Conditions • Regulation of the Indonesian Investment Coordinating Board Number 6 of 2018 on Guidelines and Procedures for the Permit and Facilities for Investments	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 (*Perseroan Terbatas*) domiciled within the territory of the Republic of Indonesia.	• 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, and in the case of a limited liabilities company, its articles of association.	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 **72 bilateral investment treaties**, with only 25 of them being in force as of the date of this publication.	Lao PDR has signed a total of **26 bilateral investment treaties**, with 21 bilateral investment treaties in force as of the date of this publication.

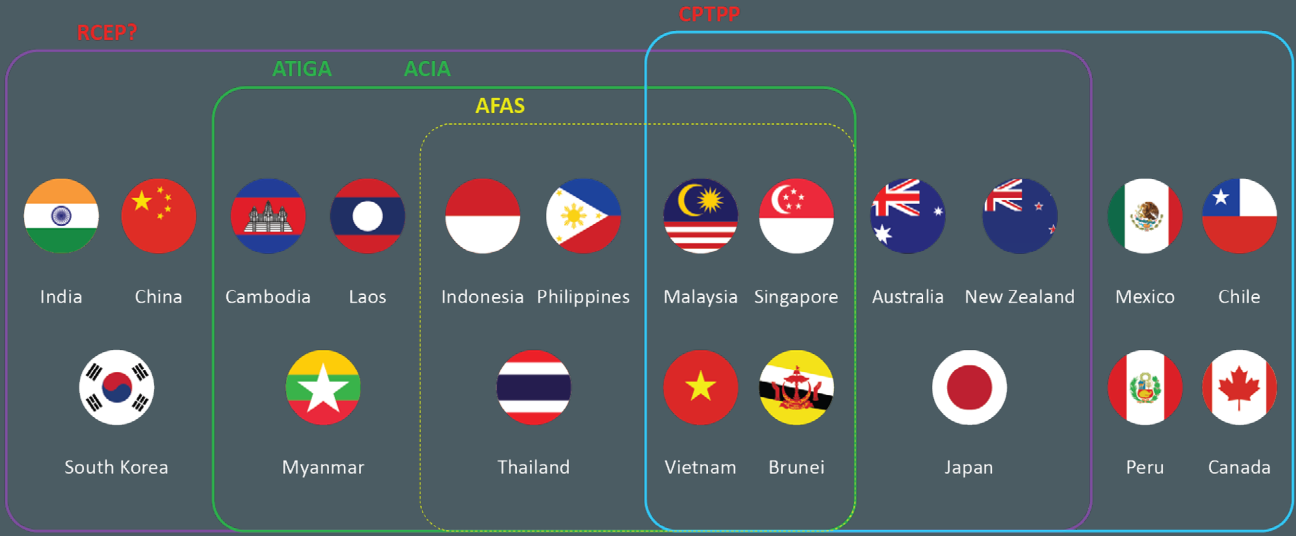
	MALAYSIA	MYANMAR
Investment laws, regulations etc	Investments are encouraged through the incremental liberalisation of equity conditions by various government agencies based on the provisions of the Promotion of Investments Act 1986. Such equity conditions are mostly set out in ministerial guidelines.	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 as overseas corporation • Joint ventures with local companies • Joint ventures with the government of Myanmar • Setting up of an association or non-profit organisation as company limited by guarantee
Promoted investments	• Financial services • Wholesale and retail • Information Communication and Technology (ICT) • Halal services • Tourism • Agriculture • Manufacturing • Supporting products or services	• 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 • Oil and gas • Legal services	• 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 • Iskandar Malaysia in Southern Johor (IRDA) • Northern Corridor Economic Region (NCER) • East Coast Economic Region (ECER) • Sabah Development Corridor (SDC) • Sarawak Corridor of Renewable Energy (SCORE)	Myanmar has 3 special economic zones ("**SEZ**"), 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** 18 – 24% • **General withholding tax** 3 – 25%	• **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 of 1987, as amended • Foreign Investments Act of 1991, as amended	• Companies Act (Chapter 50) of Singapore • Income Tax Act (Chapter 134) of Singapore • Securities and Futures Act (Chapter 289) of Singapore
Common forms of business vehicles	• Sole proprietorship • Partnership and/or joint ventures • Domestic corporation (i.e. subsidiary) • Branch office • Regional headquarters • Regional operating headquarters • Representative office 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 sole proprietorship • Setting up of partnership or limited 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, commercialisation of new and emerging technologies, etc.) • Inclusive business models in agriculture and tourism sectors that provide opportunities to micro and small enterprises • 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, tax holidays and tax reductions • Exemptions from wharfage dues on import shipments of equipment • Simplification of customs procedures	• Grants • Allowances • Awards • Tax exemptions • Reduced tax rates
Restricted or conditional investment sectors	The Foreign Investments Act of 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, among others, and repair of locally-funded public works; advertising; and exploration, development, and utilisation of natural resources • 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. On the other hand, 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% of net income 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.	• **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 **36 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) (as amended) • Eastern Special Development Zone Act (2018) • Industrial Estate Authority of Thailand (1979) (as amended)	• Law on Investment No. 67/2014/QH13 dated 26 November 2014 and Guiding Decrees (as amended from time to time) • Law on Enterprises No. 68/2014/QH13 dated 26 November 2014 • Relevant Decrees and Circulars guiding the above laws
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	• Branch or representative office of a foreign company • Wholly-owned foreign-invested enterprise • Joint ventures with local companies • Public Private Partnerships (i.e. BOT, BT, etc.) • Business Cooperation Contracts (BCC)
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 certain investment sectors including but not limited to: • High-tech activities • New materials, or new, clean, or renewable energy • Electronics, agricultural machinery, automobiles • Information technology • Infrastructure facilities Vietnam law also provides preferential investment to certain geographical areas provided by law and industrial, export processing, high-tech and economic zones
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	• Corporate income tax ("**CIT**") exemption or reduction • Import duty exemption on raw materials, supplies and components for implementation of a project or for goods imported to form fixed assets • Land rent, land use fees and land use tax exemption and reduction
Restricted or conditional investment sectors	Restricted activities are categorised into 3 lists under the Foreign Business Act (1999): • List 1 activities are generally strictly reserved for locals • List 2 activities are only open to foreigners who obtain a foreign business license with permission from the Minister of Ministry of Commerce and Cabinet's approval • List 3 activities are only open to foreigners who obtain a foreign business license with permission from the Director-General of the DBD and the Foreign Business Commission's approval Where businesses promote under the Investment Promotion Act and/or operate trade for export under the Industrial Estate Authority of Thailand Act (1979), restriction under the Foreign Business Act is relaxed, though activities might be restricted by regulations governing specific business sector.	The Law on Investment prohibits investments in the following sectors: • Certain types of pharmaceuticals • Certain chemicals, minerals • Specific types of endangered flora and fauna • Prostitution • Humans or parts of human body • Human asexual reproduction • Firecrackers Conditional investment sectors are provided in Vietnam's WTO commitments and other treaties (e.g logistics, telecommunication, audiovisual services).
Repatriation of profit and capital	Remittances in foreign currency is permitted, however where remittance exceed the limitations, or are for purposes other than those specified, approval by the Bank of Thailand is required.	There are no restrictions on repatriation of profits and capital, provided financial obligations to the state of Vietnam have been discharged. Currently, there is no profit remittance tax, unless profits are paid to an individual.
Special economic zones	The policy committee on special economic zone development has identified special economic zones across 10 border provinces. The Eastern Special Development Zone Act 2018 also provides for Special Economic Promotional Zone which targets activities in certain industries such as intelligent electronics, robotics, digital, aviation and logistics.	The Draft Law on Special Administrative Economic Zones is under development. Three special administrative economic zones, specified in the draft are: • Van Don • Phu Quoc • Bac Van Phong
Corporate and withholding taxes	• **Corporate tax** 20% • **Withholding tax** 1 – 15% subject to Double Taxation Agreements), specifically: - corporate income tax - outward remittance of profit	• **Corporate tax** The standard corporate income tax is 20%. However, the tax rate applicable for special industries (e.g. prospecting, exploring and mining petroleum, gas, and other natural resources) may range from 32-50%. • **Withholding tax** 0 – 10% (subject to adjustments under Double Taxation Agreements), specifically: - Value Added Tax: 0-10% - Foreign Contractor Withholding Tax: • VAT: 2-5% • CIT: 0.1-10%
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 treatie**s 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 touted as a “next-generation” trade agreement eliminating or reducing tariff and non-tariff barriers across trade in goods and services, facilitating the development of production and supply chains, enhancing 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 CPTPP finally came into force for Australia, Canada, Japan, Mexico, New Zealand and Singapore on 30 December 2018 and for Vietnam 14 January 2019. The CPTPP will only enter into force for Brunei, Chile, Malaysia and Peru 60 days after they complete their respective ratification process. As they have yet to complete the ratification process, these countries are unable to enjoy the preferential tariff rates for members under the CPTPP.

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