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Information Seminar on the

ASEAN Comprehensive Investment Agreement (ACIA)

Towards Free Flow of Investment in the
ASEAN Single Market

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Information Seminar on the ASEAN Comprehensive Investment Agreement (ACIA)

Towards the Free Flow of Investment in the ASEAN Single Market

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Glossary

ACIA	ASEAN Comprehensive Investment Agreement
AEC	ASEAN Economic Community
AFAS	ASEAN Framework Agreement on Services
AIA	ASEAN Investment Area
AMS	ASEAN Member States
ASEAN	Association of South East Asian Nations
ASYCUDA	Automated System for Customs Data
CCS	Coordinating Committee on Services
CLMV	Cambodia, Lao PDR, Myanmar, Vietnam
FDI	Foreign Direct Investment
IMF	International Monetary Fund
ISDS	Investor-State Dispute Settlement
ICSID	International Centre for Settlement of Investment Disputes
MFN	Most-Favoured Nation Treatment
MRA	Mutual Recognition Arrangement
PPR	Prohibition of Performance Requirements
SEZ	Special Economic Zone
SMBD	Senior Management and Board of Directors
UNCITRAL	United Nations Commission on International Trade Law

Session 1: Introduction to the ACIA

Mr. Tan Tai Hiong, ASEAN Secretariat

Mr. Hiong presented the context and development of the ACIA, as well as its sectoral coverage (manufacturing, mining and quarrying, agriculture and forestry), its four pillars (liberalisation, facilitation, promotion and protection) and key benefits for investors.

Earlier investment frameworks in ASEAN lacked the scope and aspirations of the ACIA.¹ Investment agreements in ASEAN have a long tradition. The first one, the ASEAN Investment Guarantee Agreement, was adopted in 1987. It focussed on protection and investor-state dispute settlement (ISDS). The Framework Agreement on the ASEAN Investment Area (AIA), adopted in 1998, went further and contained provisions on facilitation, promotion and liberalisation. ACIA revised, merged and improved upon previous agreements and therefore supersedes the two precursory agreements. ACIA re-affirms the centrality of national treatment and most-favoured-nation treatment. Yet, it also adds forward-looking new provisions and improvements such as comprehensive provisions on ISDS; the prohibition of performance requirements (PPR); provisions on Senior Management and Board of Directors (SMBD) and transfers and treatment of investment. ACIA also introduces innovations such as a broader definition of investments (including portfolio investment and intellectual property) and investors (including for example 3rd country nationals). The concepts mentioned here will be explained in depth later in Sessions 2-3, pages 10-12 of this documentation.

The main objective of the ACIA is to create a free and open investment regime in ASEAN, based on international best practices. ACIA was signed on 26th February 2009, entered into force on 29th March 2012 and was amended again on 26th August 2014. ACIA consists of 49 articles, 3 annexes and a schedule of reservation lists (see Box 2 for an explanation on the ACIA Schedule). The recent amendment added the 3rd annex which lays out a step-by-step process (along with timelines) for the modification and amendment of the ACIA Schedule (or ACIA Reservation List) – this will make it easier for Member States to modify or amend their respective reservation lists towards greater liberalisation. ACIA covers both direct and portfolio investment and applies to the following economic sectors: manufacturing, agriculture, fishery, forestry, mining and quarrying, as well as services incidental to these sectors. ACIA aims at a) the progressive liberalisation of the investment regimes of Member States; b) the provision of enhanced protection to investors in Member States; c) the improvement of transparency and predictability of investment rules, regulations and procedures and d) the joint promotion of the region as an integrated investment area.

The four pillars of ACIA are liberalisation, facilitation, protection and promotion. Liberalisation covers the articles and provisions related to national treatment, most-favoured nation treatment, prohibition of performance requirements, provisions related to Senior Management & Board of Directors, as well as the ACIA Schedule of reservations. Facilitation subsumes provisions related to streamlining and simplifying procedures, one-stop centres, advisory services to the business community, and making rules and procedures more transparent, consistent and predictable. Protection is offered through provisions regarding fair & equitable treatment, full protection and security, free transfer of funds, no unlawful expropriation, and ISDS. Finally, Promotion becomes important under ACIA e.g. through cross-linking websites of investment agencies in ASEAN, enhancing production networks & industrial complementation, organising joint investment missions as well as briefings and seminars on investment opportunities and policies.

ACIA provides multiple benefits for the business sector. ASEAN-based investors can enjoy non-discriminatory treatment when they invest in other ASEAN Member States (AMS). In the case of disputes with host governments, investors have a choice to bring a claim in either a domestic court or before international arbitration. ACIA mandates fair and equitable treatment and protection to investors and their investments, as

¹ The legal text of the ACIA, as well as previous agreements can be found here: <http://www.asean.org/communities/asean-economic-community/category/agreements-declarations-7>

well as free transfer of funds, including capital, profits, and dividends. Investments will not be expropriated, except for public purposes with compensation based on fair market value. Non-discriminatory treatment for compensation for losses arising from civil strife is also foreseen in the ACIA. However, in order for investors to enjoy these benefits, the ACIA needs to be fully implemented in national law.

Box 1. Current initiatives to implement the ACIA

Examples of various initiatives to implement the ACIA, currently ongoing
<p>Liberalisation</p> <ul style="list-style-type: none">• Peer review mechanism and other modalities to eliminate restrictions/impediments to investment in AMS;• Mechanism to amend/modify the ACIA schedule (i.e. the reservations of AMS);• Discussion on the build-in issues in the ACIA including the headnote of its reservation lists (reducing the general exceptions and uncertainties described in the headnote; mandate to continue liberalising and reducing the reservations in the ACIA Schedule).
<p>Facilitation</p> <ul style="list-style-type: none">• Updating investment rules and regulations in AMS;• Updating information on national ACIA focal points and investment promotion agencies officials²;• ASEAN Investment Forum;• Investment policy reviews;• Workshop on Best Practices and Outsourcing.
<p>Promotion</p> <ul style="list-style-type: none">• ASEAN investment publications;• ASEAN investment website/portal;• ACIA promotion forums and seminars in various AMS.
<p>Technical Assistance for CLMV countries</p> <ul style="list-style-type: none">• Outbound investment missions from ASEAN-6 to CLMV;• Investment facilitation and technical assistance;• Training on investment policy making in CLMV countries.

ASEAN leaders are currently finalizing the post-2015 vision and agenda for the field of Free Flow of Investments. The ASEAN Community Vision 2025 will be launched at the 27th ASEAN Summit in November 2015 and includes an ASEAN Economic Community (AEC) Blueprint 2025. The AEC Blueprint 2025 builds on achievements and early gains of the AEC 2015. It also takes into account recent developments at both a regional and global level to set a forward-looking direction for the next 10 years. With regards to investment, the Blueprint mostly emphasizes the full and thorough implementation of the ACIA. The very recent and modern ACIA will pave the way to make ASEAN a global hub for investments by providing an open, transparent and predictable investment environment throughout the region.

The ACIA does not apply to services sectors except for the provisions on protection. There are two main exceptions regarding ACIA and services. First, as mentioned before, ACIA fully applies to services incidental to manufacturing, agriculture, fishery, forestry and mining and quarrying. And second, paragraph 5 of Article 3 of the ACIA stipulates that the articles on investment protection (Article 11 on Treatment of Investment, Article 12 on Compensation in Cases of Strife, Article 13 on Transfers, and Section B on Investment Disputes between an Investor and a Member State) shall apply to investment in all sectors, including services sectors. This is independently of whether or not a Member State took commitments under the ASEAN Framework Agreement on Services (AFAS) (see below): investment protection is guaranteed for all sectors under the ACIA.

² The contact information for ASEAN Investment Agencies can be found here: <http://www.asean.org/communities/asean-economic-community/category/links-8>

Box 2. The ACIA Schedule or ACIA Reservation List

The Schedule to the ASEAN Comprehensive Investment Agreement³

The ACIA Schedule (also called ACIA reservation list or sensitive list or temporary exclusion list) is at the core of ACIA implementation. The schedule consists of 10 individual reservation lists, one for each AMS.

In the Schedule, each AMS lists measures that do not conform to the obligations under

- a) Article 5 of the ACIA (National Treatment); and
- b) Article 8 (Senior Management and Board of Directors)

Exceptions or reservations that refer to other Articles are not allowed. Hence for example the protection measures need to be granted for all sectors and industries.

However, and important for developing countries, each Member State may add future reservations for existing or emerging sectors that are unregulated at the time of submission of the reservation list.

For each reservation, countries clearly state sector, sub-sector, and industry classification; and clearly identify the measure, the source of the measure and the level of government maintaining the measure.

The 'Headnote' to the ACIA Schedule presents those guidelines and list some more details on exceptions, reservations, need for discussion and need for period review of some issues. Overall, the ACIA mandates countries to periodically review their Schedule and continue to further liberalise it.⁴

ASEAN work and regulations on investment in Services Sectors: The ASEAN Framework Agreement on Services (AFAS)

Dr. Souphaphone Saighaleuth, International Investment Cooperation Division, IPD, MPI

Investment in services sectors is governed by the ASEAN Framework Agreement on Services (AFAS). In order to emphasize this distinction and to offer guidance as to how open services sectors are for investment, Dr. Souphaphone Saighaleuth from IPD presented the state of negotiations under AFAS.

Services are becoming an important driver of growth and development in Lao PDR. The services sector contributes more to GDP growth than manufacturing or agriculture. Services now account for around 40% of GDP and the sector as a whole is growing faster than any other sector. The biggest commercial services sectors in Lao PDR are wholesale, retail and repairing services, followed by transport, warehousing and telecommunications. In 2013 Lao PDR exported USD 781 million worth of commercial services and imported USD 534 million. Tourism accounts for almost three quarters of Lao services exports. FDI in services is still low. In recent years only between 10% and 20% of total FDI went into services – a similar share as manufacturing. The rest is mostly split between mining and electricity generation. Within the service sector, most FDI goes into the financial sector.

Free flow of services among ASEAN member countries is one of the key features of the upcoming AEC. The ASEAN Framework Agreement on Services (AFAS) has been concluded in 1995 to provide a framework for negotiations. The main objective of AFAS is to liberalise trade in services in the ASEAN region, i.e. to reduce or eliminate restrictions on providing services and establishing a commercial presence for service suppliers across

³ The ACIA Schedule of each Member State can be accessed here: <http://www.asean.org/news/item/asean-comprehensive-investment-agreement-reservation-list>

⁴ The Headnote of the ACIA Schedule can be found online on the following page: [http://www.asean.org/images/2012/Economic/AIA/Agreement/01%20-%20Headnote%20-%20Final%20\(2nd%20Special%20CCI,%20Sept%202010\).pdf](http://www.asean.org/images/2012/Economic/AIA/Agreement/01%20-%20Headnote%20-%20Final%20(2nd%20Special%20CCI,%20Sept%202010).pdf)

the region. AFAS, in conjunction with the AEC Blueprint, which countries adopted in 2007, sets clear targets and timelines for negotiations. It prevents back-loading of commitments, while also allowing for pre-agreed flexibilities. AMS concluded 9 rounds of negotiations and are currently preparing the 10th package of commitments under AFAS, which is intended to meet the requirements set in the AEC Blueprint, in time for the establishment of the AEC. Services negotiations under AFAS are coordinated by the Coordinating Committee on Services (CCS), which reports to the ASEAN Economic Ministers. The exceptions are air transportation and financial services that are dealt with by separate working groups.⁵

Box 3. Key Terminology: Negotiating Liberalisation of Trade in Services

How to trade services in the AEC

Modes of supply

Mode 1: Cross-border supply via tele-communications infrastructure, mail, transport services, call centres, among others.

Mode 2: Consumption abroad through citizens travelling abroad to consume for example tourism, healthcare, or education services, provided by foreign suppliers based abroad.

Mode 3: Commercial presence of the foreign services provider, through which it supplies services (foreign investment).

Mode 4: Temporary physical movement of natural persons across borders to supply a service in the other country.

What will be liberalised?

In the AEC, ASEAN countries will gradually allow foreign services providers to supply services through one, two, three or all four modes of supply. At the moment, Mode 4 is not being liberalised in ASEAN.

Market Access and National Treatment

For each Mode of Supply in each sector, ASEAN countries will remove restrictions to Market Access and National Treatment.

Market Access (MA): allowing foreign providers to enter and supply services in the domestic market.

National Treatment (NT): promising to regulate, to tax, to license, (etc.) foreign providers the same way as domestic suppliers.

Liberalisation of Trade in Services means to gradually grant Market Access (MA) and National Treatment (NT) to foreign services providers across four Modes of Supply. Services negotiations cover four modes of supply, namely cross-border supply, consumption abroad, commercial presence (foreign investment in services sectors) and temporary physical movement across borders (see Box 3). Liberalisation under AFAS aims predominantly at granting unconditional MA and NT in Modes 1 to 3 of services supply, while Mode 4 (movement of natural persons) is 'out of question' for the time being as countries chose to retain multiple restrictions on migration. For modes 1 and 2, AMS agreed to eliminate all restrictions on Market Access and National Treatment by 2015, in time for the AEC to be established – an objective that has largely been met.

Negotiations under AFAS cover 128 services sub-sectors within 11 main groups: 1. Business services; 2. Telecommunication; 3. Construction and Engineering; 4. Distribution; 5. Education; 6. Environmental Services; 7. Financial Services; 8. Healthcare; 9. Tourism; 10. Recreation, Culture and Sports; and 11. Transport Services.

Liberalising investment in services sectors (Mode 3) is at the centre stage of AFAS negotiations. Mode 3 governs investment in services sectors: allowing a foreign supplier to establish a commercial presence in another AMS. Multiple restrictions remain for Mode 3. With the final package of commitments under AFAS,

⁵ The legal texts relevant for Trade in Services may be found under the following address:
<http://www.asean.org/communities/asean-economic-community/category/agreements-declarations-12>

expected to be concluded early 2016, foreign ownership restrictions will raise to 70%. Mode 3 limitations (restrictions on foreign investment in services) that countries are allowed to implement include the following:

Limitations to market access (MA)*	Examples of limitations to national treatment (NT)**
<ul style="list-style-type: none"> • Limitations on the number of service providers • Limitations on the total value of service transactions • Limitations on the total number of service operations / total quantity of service output (products) • Limitations on number of natural persons to be employed • Specific requirements regarding the type of legal entity or joint venture • Maximum percentage limit on foreign shareholding. 	<ul style="list-style-type: none"> • Limitations on land ownership • Determination of minimum amount of capital investment • Tax requirements • Licensing requirements • Requirements regarding technology transfer.
<p>*Note: These are the only limitations that may be applied (hence only clear quantitative restrictions are allowed).</p>	<p>**These limitations may either apply to individual services sectors as detailed in the schedule of specific commitments or (frequently) apply to all sectors in the schedule, as so called 'horizontal commitments'</p>

Mutual Recognition Arrangements (MRAs) represent a first step towards freer movement of natural persons in services provision (Mode 4). MRAs pave the way towards mutual recognition of skills and qualifications of professional services suppliers and thereby facilitate trade in services. They set certain standards and joint understanding of skills and outline a process for recognizing qualifications and skills gained in another member country. Being able to obtain necessary licences and accreditation is a prerequisite for the movement of natural persons to another ASEAN country to provide services in their speciality. Negotiations on MRAs started in 2001 and so far, MRAs have been concluded for 8 professions, namely:

1. Engineering Services
2. Nursing Services
3. Architectural Services
4. Surveying
5. Accountancy Services
6. Medical Practitioners
7. Dental Practitioners
8. Tourism Professionals

Sessions 2 and 3: ACIA in depth – Liberalisation, Facilitation, Protection and Promotion

Dr. Sufian Jusoh, Senior Fellow, Institute of Malaysian and International Studies, National University of Malaysia, and External Consultant, World Trade Institute

Over two sessions, Dr. Jusoh explained the four pillars of investment liberalisation, facilitation, protection and promotion, as mandated under the ACIA. The objective was on the one hand to raise awareness among public sector representatives of the obligations arising from the ACIA and the remaining implementation challenges. On the other hand, the sessions aimed to inform the private sector of potential benefits and opportunities arising from the ACIA. Dr. Jusoh also discussed how the ACIA can be used for investment promotion at the regional and national level.⁶

A modern investment policy is about getting the mix of policies, investments and investors right. Modern investment policy encourages both foreign and domestic investment. It understands that not all types of investments have the same impact on economic development. Often the first type of investment a country may attract is natural resource-seeking investment. Once a country is further developed, with a larger and growing economy, market seeking-investment as well as efficiency-seeking investment and strategic asset-seeking investment may follow. Different types of investment are desirable at different stages of development. They re-enforce and interact with each other and vary in their impact on growth and poverty reduction. In addition, targeting different types of investment requires specific policy mixes. When it comes to incentives, for example, they often matter more to efficiency-seeking investors than to natural resources or market-seeking investors. And finally, foreign investment is not a transaction; it is a relationship: investment policy needs a vision and a strategy of how to manage this relationship, from investment attraction, to establishment, to retaining investment and to managing linkages and spill-overs.

ACIA is a multilateral investment treaty between ASEAN Member States that addresses liberalisation, facilitation, protection and promotion of investment in ASEAN. The ACIA is highly relevant and beneficial for investors interested in doing business in ASEAN. ACIA liberalises FDI in key sectors of the economy through the negative list approach – meaning there is a single reservation list which countries are committed to further reduce/liberalise over time (investment liberalisation). ACIA also provides a basis for streamlining, unifying and harmonizing investment policies and procedures across ASEAN and overall making them more transparent (investment facilitation). In addition, protection of investors and their investment follows international best practices. Clear provisions regarding investor-state dispute settlements allow for increased reassurance of investors (investment protection). Finally, ASEAN (through ACIA) welcomes both ASEAN and third-country investors under certain conditions, which is a key argument for AMS as well as ASEAN as a whole to step up their investment promotion.

ASEAN is establishing itself as a global investment hub and the ACIA can help Lao PDR to benefit from ASEAN FDI inflows. Inflows of Foreign Direct Investment (FDI) into ASEAN reached USD 136.2 billion in 2014, corresponding to 160 percent of the pre-crisis inflow levels in 2007. Intra-ASEAN FDI is currently 17.9 percent of total FDI (USD 24.4 billion in 2014), compared to only 11.3 percent in 2007. This strong growth of intra-ASEAN investment reflects the positive impact of ASEAN economic integration on stimulating investment within the region. FDI inflows into Lao PDR are increasing, albeit from a low level. ACIA offers several benefits to Lao PDR: ACIA provides Lao PDR with a blueprint of international best practices in investment policy (e.g. regarding investor protection and dispute settlement), which should facilitate the implementation of modern investment policy. The ACIA is also one of the tools to accelerate the overall integration of Laos into the AEC. ACIA will allow Lao PDR to particularly attract ‘intra-ASEAN’ FDI from both ASEAN and non-ASEAN investors.

⁶ More details on the topics touched upon in these sessions can be found in the comprehensive ACIA Guidebook for Business and Investors which ASEAN launched in 2013. The Guidebook can be downloaded from the following page: <http://www.asean.org/news/asean-secretariat-news/item/asean-launch-a-guidebook-for-businesses-and-investors>

Currently, 3rd country investors mostly establish regional headquarters in ASEAN hubs such as Singapore, where they enjoy an ideal investment climate. However, the advantage of ACIA is that these investors (even if the company in Singapore is fully foreign owned) will be treated as ASEAN-based investors and enjoy full ACIA benefits and coverage once reinvesting in another AMS. This is how Lao PDR will benefit from increased investment in ASEAN hubs.

ACIA applies to ASEAN-based investors, as well as to all types of investment in manufacturing, agriculture and mining. ACIA can be invoked by ASEAN citizens and permanent residents (natural person in any AMS) and ASEAN companies (juridical person in any AMS) investing in another AMS. In addition, 3rd country nationals and companies may also benefit from the ACIA: by establishing a company in one AMS, they become ASEAN-based investors. When reinvesting in another AMS, they benefit from the ACIA being a juridical person, controlled by a 3rd country national. The juridical person controlled by a 3rd country national is treated as an ASEAN investor even if the company in the first AMS is fully foreign owned. ACIA covers investments that were established/acquired/expanded after 29th March 2012 and that were admitted according to the law and policies of the host ASEAN AMS. Investment includes every kind of asset, owned and controlled by an investor. For example, investments may be

- a physical asset (tangible such as infrastructure, plants, factories, property and property rights);
- an intangible asset such as a service (financial, legal...);
- shares, stocks, bonds, sovereign debt;
- intellectual property rights (patents, trademarks, industrial designs...);
- claims to money or any contractual performance related to a business;
- rights under contracts including construction, management, revenue-sharing (...) and
- business concessions required to conduct economic activities (e.g. right to collect toll, mining contract)

Key measures to enhance liberalisation are non-discrimination principles such as national treatment and most-favoured nation (MFN) treatment. Liberalisation provisions apply to investment in manufacturing, agriculture, fishery, and forestry, mining and quarrying, as well as services sectors incidental to these sectors⁷. National treatment (Article 5) means that an investor from AMS A in AMS B shall be treated in the same way as local investors in AMS B. National treatment applies to all sectors and measures – except any reservations mentioned in the ACIA schedule. MFN treatment (Article 6) refers to the obligation to treat ASEAN investors no less favourable than each other or any other investor from a 3rd country, who is not a member of ASEAN. Exceptions are possible for sub-regional arrangements between and among AMS, for example the Indonesia-Malaysia-Thailand Growth Triangle. These arrangements or other agreements need to be notified by AMS to the AIA Council. Liberalisation is also achieved through the single reservation list, in which countries list their current exceptions to liberalisation. No backtracking or derogation of liberalisation commitments is allowed. Finally, ACIA grants free choice of Senior Management and Boards of Directors (appointments may be made independent of their nationality; however, one resident director needs to be citizen or permanent resident of the AMS in question), as well as the freedom to operate without any performance requirements. Performance requirements include for example the requirement to export a certain percentage of the production or to employ a certain percentage of domestic workers.

Multiple articles of the ACIA refer to increased transparency and facilitation of investment processes and procedures in AMS. Facilitation was seen as a key ingredient of the ACIA given the diverging investment policy management in AMS: while Malaysia, Singapore and Brunei have no law dealing especially with investment, Lao PDR, Cambodia, Indonesia and (soon) Myanmar have dedicated investment laws that spell out basic procedures and processes in a more transparent manner. ACIA seeks more transparent, consistent and predictable investment rules, regulations, policies and procedures. This includes harmonised investment policies; streamlined and simplified procedures for investment applications and approvals; and dissemination of information on rules, regulations, policies and procedures (at a regional and national level). In order to achieve

⁷ These are very specific services sectors and classification is based on the UN's Central Product Classification List (CPC) – hence not any services sector may classify as incidental.

this, AMS agreed on various facilitation mechanisms. For example, AMS agreed to widely publish ASEAN agreements and measures relating to investment, but also establish ASEAN and national enquiry points to attend to investors and stakeholders that need more information. Strengthening the ASEAN investment database is another step in the process towards more transparency. Investment policy peer reviews are intended to lead to a harmonization of investment processes and procedures in AMS even though certainly there will be no unification of investment policies across the region.

In the ACIA, AMS came to the agreement to jointly promote ASEAN as one of the world's most attractive investment areas. Usually, promotion is a sensitive topic since everyone wants investment and FDI attraction is seen as a competition with little room for joint manoeuvre. However, in the ACIA, countries are recognizing the need for joint promotion of FDI in ASEAN. ACIA in itself is a promotion tool as it provides AMS with a modern and state-of-the-art investment treaty that will reassure investors of the opportunities, benefits and security to invest in AMS. A liberal, transparent, predictable and harmonized investment environment across 10 countries is a strong argument for investors. In addition, AMS with the coordination of the ASEAN Secretariat have carried out concrete promotion activities. This includes for example the ASEAN investment website or joint investor missions to CLMV countries.

ACIA offers four main protections: fair and equitable treatment, full protection and security, free transfer of funds and no unlawful expropriation. Fair and equitable treatment means that (in case of any legal action of the host country against an investor) investors have the right to access to justice, the right to be heard and the right to reply and appeal (Article 11). Host countries are obligated to make decisions according to their laws and legislation and not to make arbitrary decisions. Full protection and security mandates the host government to provide reasonable security for an investor and his/her investment (Article 11). For example, in case of a riot and rioters attacking manufacturing facilities, the police needs to be present and guard factories to a reasonable level – the government cannot simply leave foreign investors on their own. Related to this are the provisions mandating compensation in cases of strife (Article 12), i. e. for losses suffered as a result of armed conflict, strife or similar events. Free transfer of funds means that any type of earnings and profits can be transferred freely out of the country (Article 13). Capital controls are forbidden, except for some serious unforeseen events. In this case capital controls need to be approved by the IMF; they need to be non-discriminatory, temporary, non-arbitrary and follow transparent procedures. Unlawful expropriation is also forbidden: both direct and indirect expropriations are only allowed in specific cases. When implemented, they need to be non-discriminatory, follow the due process of law and compensate investors with the full market value of the investment (Article 14).

ACIA contains provisions regarding access to Investor-State Dispute Settlement mechanisms. In case of a conflict, affected parties may choose between three different tracks of dispute settlement. One possibility are alternative dispute resolutions such as mediation, conciliation, consultation & negotiation. If these methods are not successful, the investor may still chose between going to domestic courts or going for arbitration. Investors cannot simultaneously bring a case in domestic courts (or tribunals) and before an arbitration panel. In addition, the investor may only choose one of several arbitration options, i.e. The International Centre for Settlement of Investment Disputes (ICSID) or The United Nations Commission on International Trade Law (UNCITRAL).

Investment Policy and Promotion in Lao PDR

Mr. Phouvang Phaophongsavath, Investment Promotion Division, IPD, MPI

Mr. Phaophongsavath provided an overview of the Lao investment policy and recent reforms in the investment environment. This served to illustrate in how far investment liberalisation, facilitation, promotion and protection requirements from the ACIA were applied in Lao PDR.

In the past two decades, FDI in Lao PDR came mainly from neighbouring countries and went mostly into mining and electricity generation. Lao PDR FDI inflows in the period from 1988 to 2015 came mostly from

China (830 projects with a total value of USD 5.3 billion), Thailand (746 projects and USD 4.5 billion) and Vietnam (421 projects and USD 3.4 billion). In the same period of time, 27% of investment was in the mining sector, 25% in electricity, 12% in agriculture, and 8% in manufacturing and handicraft. Services sectors also received a lot of FDI, with 5% of total FDI going into hotels and restaurants, 4% to telecommunication, 3% to construction, 2% to banking and 10% to other services sectors not explicitly mentioned.

Lao PDR has made significant efforts to improve the business and investment environment. In 2015, Lao PDR improved its ranking in the World Bank's Doing Business survey by 7 ranks, up to 148 (out of 189 countries). Multiple reforms have been implemented in recent years to shorten procedures in view of opening new businesses, e.g. in terms of registering for taxation. Other significant reforms include improved access to credit through a modern, unified, notice-based collateral registry; improved protection of minority investors; and lower corporate income tax rates. Following Mr. Phaophongsavath, Lao PDR also reduced the time to export and import by implementing the ASYCUDA electronic interchange system at the Thaneleng-Friendship Bridge border crossing. Mr. Phaophongsavath also outlined that one stop services for investment licenses have been established at the Ministry of Industry and Commerce (for enterprise registration and licenses for general business), at the Investment Promotion Department in the Ministry of Planning and Investment (for concession licenses and other licenses) and at the Government's Office Lao National Committee for Special Economic Zones (for licenses related to investment in Special Economic Zones). Nevertheless, challenges remain in making permission and approval processes more efficient, and access to qualified labour remains a concern for investors.

Mr. Phaophongsavath presented investment opportunities in sectors such as agriculture, manufacturing, tourism, energy and services sectors. Lao PDR has a high ratio of forest area and plenty of productive land, suitable for agriculture or tree plantations. The agro-processing industry is becoming stronger, e.g. with exports of tea, rubber and maize to China, soybeans, peanuts, cassava, bananas and sesame to Thailand and Vietnam, coffee, sweet corn and vegetables to Europe, and okra and cotton indigo products to Japan. Abundant water resources make Lao PDR the ideal place to invest in hydro-electric facilities. With low utility and labour costs, as well as political and economic stability, Lao PDR is ready to become a manufacturing base. Special Economic Zones have been established along economic corridors, where investors can make use of multiple benefits, such as export and import tax exemption. In the tourism sector, foreign ownership of up to 70% is now allowed, which makes investment in under-developed natural and cultural tourist sites highly rewarding. Investment incentives exist for example in the form of corporate income tax exemption for up to 10 years (15 years in education and health sectors).

Box 4. Overview of investment-related legislation in Lao PDR

Investment-related Legislation in Lao PDR

- Investment Promotion Law, last revision in 2009, with implementation decree (2011)
- Law on Minerals (2008), revised in 2011
- Environmental and Social Impact Assessment Decree (2010)
- Land Law (2003), Decree on the Implementation of the Land Law (2008) and Decree on Land Concessions (2009)
- National Land Policy, currently under revision
- Law on Forestry (2007)
- Agricultural Law (1998), revised 2012
- Law on Electricity (2011)
- National Policy on Environmental and Social Sustainability of the Hydropower Sector
- Current initiative on Public-Private Partnerships (PPP): PPP Decree is being drafted; expected to be approved by the end of 2015; two pilot areas will be health and education.

Session 4: Panel Discussion: Experiences of businesses in investing in Lao PDR and other ASEAN countries

In this session, representatives of foreign companies discussed their experiences investing in Lao PDR and ASEAN. In particular, they explained obstacles of investing in ASEAN and in making use of the ACIA. They also shared their expectations for further investment liberalisation, facilitation, protection and promotion in the AEC.

Panel participants:

- **Mr. Martin Forsen**, CEO/COO, Burapha Agroforestry Co., Ltd
- **Mrs. Kate Baillie**, Legal Advisor, Arion Legal
- **Mr. Singhalath Phonethavong**, Director, Investment Promotion Division, MPI
- **Mr. Tan Tai Hiong**, ASEAN Secretariat
- Moderated by Dr. Sufian Jusoh

The Experiences of a Foreign Investor in Lao PDR: Mr. Martin Forsen, CEO/COO, Burapha Agroforestry Co., Ltd

Burapha Agroforestry is one of the oldest foreign companies in Lao PDR, co-owned by a Lao partner. It was one of the first companies to get a permission for foreign investment after 1975. It started with eucalyptus plantations and moved into furniture production in the early 2000s. The majority share is now owned by a Swedish investor specialized in pulp mills. The company aims to build multiple plantations and to start a pulp mill industry in Lao PDR. Intended investments into a pulp mill factory are around USD 4 million. However, as Mr. Forsen explained, this new potential investment is in question by a recent memorandum on the establishment of new forest plantations in Lao PDR. Without the permission to build plantations, the pulp mill factory may be built in Paraguay.

Would ACIA help in this case? This is not entirely clear, since ACIA indeed allows exceptions to free investment e.g. on the grounds of environmental protection, human or animal health. Hence the government might indeed be allowed to limit the investment in (establishment of) new plantations on any of the grounds mentioned above. However, such restrictions need to be non-discriminatory (they need to apply to all companies in the sector, domestic and foreign, small and large) and the restrictions cannot be arbitrary (unreasonable short time before announcement and enforcement).

New developments in Lao investment policy: Mr. Singhalath Phonethavong, Director, International Investment Cooperation Division, Ministry of Planning and Investment

Lao PDR will move to update its Investment Promotion Law (IPL) in the coming months, after an initial screening by the IFC/World Bank, which uncovered various inconsistencies with the ACIA. There is a need to make the IPL more comprehensive and detailed to keep up with other modern investment laws in the region, e.g. the new law in Myanmar. Cooperation with line ministries in charge of the individual sectors is also seen as very important and should be improved in the future. Currently the Lao competition law is in the process of adoption and will further contribute to an improved business and investment climate in Lao PDR. Finally, the work on Special Economic Zones (SEZ) continues. Zones and locations are developed for foreign investment.

Lessons learned from advising foreign companies seeking to invest in Lao PDR: Mrs. Kate Baillie, Legal Advisor, Arion Legal

Clients usually first inquire about the precise steps of setting up a business and registering a business. The problem is that there is no straight forward answer to this as the process is different for each type of business. Often Arion Legal is approached by very innovative types of business, where it is not immediately clear, in which category they belong. So the procedures and costs of the registration process need to be clarified (in an

often lengthy process) with different Ministries. Other issues that come up from clients are importing and exporting of goods and services, as well as repatriation of capital. A very recent legal issue, on which many companies need advice, is the new Labour Law and the new Social Security Law. It is far from clear yet how these laws will be implemented and how clients need to adjust and amend their contracts and internal regulations.

The AEC is a topic that people sometimes ask about but currently it is not a huge issue. The reason is that it is simply not clear what the immediate effects will be, if any. Investors are making business plans for maybe the next 5 years. Currently, it is absolutely not clear, what exactly will happen due to the AEC and which AEC-related provisions will have been implemented in Lao PDR by then. Hence investors are reluctant to base their decisions on something that 'might happen' and prefer to calculate more carefully, assuming a continuation of the status quo. Many things in the AEC blueprint may not be implemented in Lao PDR anytime soon – and the lack of information and transparency surrounding the AEC implementation is making predictions more complicated. However, to improve the Lao investment environment, a first step would be to tackle bureaucracy and obstacles in the registration and licensing processes as most processes take a very long time.

Currently the client structure of companies seeking legal advice on investing in Lao PDR is changing. Requests from mining companies have decreased because of a Decree that affects the ability to start new explorations. The amount of services companies coming in is increasing, in particular services companies that cater to the growing Lao middle and upper class.

What does the ASEAN Secretariat do to move forward with the Free Flow of Investments in the post-2015 agenda: Mr. Tan Tai Hiong, ASEAN Secretariat

ASEAN Member States with the support of the ASEAN Secretariat will continue to work and implement the build-in agenda of the ACIA. The implementation of the ACIA in individual member states needs to continue. CLMV countries might be offered additional support from the ASEAN Secretariat. In addition, ASEAN has already signed multiple Investment Agreements with Dialogue Partners that will also be implemented and create further value for member countries and investors. Most important at the moment are the negotiations on the Regional Comprehensive Economic Partnership Agreement (RCEP).

Information Seminar on the ASEAN Comprehensive Investment Agreement (ACIA) in Lao PDR

‘Towards Free Flow of Investment in the ASEAN Single Market’

Organised by the Investment Promotion Department (IPD), Ministry of Planning and Investment (MPI)

Supported by the Regional Economic Integration of Laos into ASEAN, Trade and Entrepreneurship Development (RELATED) Project of the Lao-German Development Cooperation

Date: 11th September 2015

Venue: Landmark Mekong Riverside Hotel, Vientiane Capital, Lao PDR

AGENDA		
Time	Topic	Speakers
08:30-09:00	Registration	
09:00-09:30	<p>Opening Remarks</p> <ul style="list-style-type: none"> Mr. Outakeo Keodouangsinh, Deputy Director General, Investment Promotion Department, Ministry of Planning and Investment Dr. Hartmut Janus, Project Director, Regional Economic Integration of Laos into ASEAN, Trade and Entrepreneurship Development (RELATED) Project, GIZ 	
09:30-10:30	<p>Session 1: Introduction to the ACIA</p> <p>The first session introduces the ACIA and will give an overview of the topics that will be discussed in depth later during the day. The speaker will present the context and development of the ACIA, and explain sectoral coverage (manufacturing, mining and quarrying, agriculture and forestry), the four pillars (liberalisation, facilitation, promotion and protection) and key benefits for investors.</p> <p>The status quo with regard to investment in services sectors (which are not covered by the ACIA) will also be presented to allow an overall understanding ‘Free Flow of Investments’ in the AEC.</p>	<p>Mr. Tan Tai Hiong, Director, Services and Investment Division, AEC Department, ASEAN Secretariat</p> <p>Dr. Souphaphone Saighaleuth, International Investment Cooperation Division, Investment Promotion Department (IPD), Ministry of Investment and Planning (MPI)</p>
10:30-10:45	Coffee Break	

<p>10:45-12:15</p>	<p>Session 2: Investment liberalisation, facilitation and protection under ACIA</p> <p>This session will explain investment liberalisation, facilitation and protection as mandated under the ACIA. It aims to raise awareness among public sector representatives of the obligations arising from the ACIA and the remaining implementation challenges. It also serves to inform the private sector of what to expect from the ACIA in terms of benefits and opportunities.</p>	<p>Dr. Sufian Jusoh, Senior Fellow, Institute of Malaysian and International Studies, National University of Malaysia, and External Consultant, World Trade Institute</p>
<p>12:15-13:15</p>	<p><i>Lunch</i></p>	
<p>13:15-14:45</p>	<p>Session 3: Investment Promotion and Opportunities for Business – at the ASEAN level and in Lao PDR</p> <p>This session explains how the ACIA can be used for investment promotion at the regional and national level and will go into the details of potential opportunities that businesses may encounter through the ACIA.</p> <p>IPD will present on investment policy and promotion in Lao PDR (investment opportunities, investment incentives, special economic zones and how the ACIA benefits Lao PDR).</p>	<p>Dr. Sufian Jusoh</p> <p>Mr. Phouvang Phaophongsavath, Investment Promotion Division, Investment Promotion Department (IPD), Ministry of Planning and Investment (MPI)</p>
<p>14:45-15:00</p>	<p><i>Coffee Break</i></p>	
<p>15:00-16:00</p>	<p>Session 4: Experience of business in investing in Lao PDR and other ASEAN countries</p> <p>In this session, representatives of foreign and Lao companies will discuss their experiences investing in Lao PDR and ASEAN. In particular, they will explain opportunities and obstacles of investing in ASEAN and making use of the ACIA; as well as their expectations for further investment liberalisation, facilitation, protection and promotion in the AEC.</p>	<p>Panel participants:</p> <ul style="list-style-type: none"> • Mr. Martin Forsen, CEO/COO, Burapha Agroforestry Co., Ltd • Mrs. Kate Baillie, Legal Advisor, Arion Legal • Representative of KP Lao Group • Mr. Singhalath Phonethavong, Director, International Investment Cooperation Division, IPD, MPI • Mr. Tan Tai Hiong, ASEAN Secreteriat <p>Moderated by Dr. Sufian Jusoh</p>
<p>16:00-16:15</p>	<p>Closing remarks</p>	

B. List of Participants

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11	Michael Harris	Geological Director / Vientiane	Minevex Lao Co. Ltd.	admin@minevexlao.com	20 5965 5604
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No.	Full Name	Position	Organisation	E-mail	Contact Number
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31	Dr.Souphaphone SAIGHALEUTH	Officer	Investment Promotion Department, Ministry of Planning and Investment	x	x
32	Mr. Phouthasack SOUVANNASAO	Deputy Director	Investment Promotion Department, Ministry of Planning and Investment	x	x
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35	Ms. Sengduen SAYASONE, Director IPD2	Director	Investment Promotion Department, Ministry of Planning and Investment	x	x
36	Mr. Phoungern HOUNGBOUNGNANG	Officer	Investment Promotion Department, Ministry of Planning and Investment		020 29865868
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No.	Full Name	Position	Organisation	E-mail	Contact Number
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47	Vilack		LNCCI	x	020 29804379
48	Steue Jacob			x	020 76101030
49	Khammuan		LLC	x	x
50	Lasoy Sengvongdeuan		Ministry of Justice	x	20 97133369
51	Martin Forsen		Burapha Agroforestry	x	20 96603600
52	Robert Winca		Planet Communication	x	020 55521650
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54	Prachit Sayavong		LIFFA	x	x
55	Souksakhone Philavanh		Department of Energy Business	x	2022470697
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59	Vanhpheng		DGM	x	020 28177380

ANNEX

C. Presentation 'Introduction to the ACIA', Mr. Tan Tai Hiong



ASEAN Comprehensive Investment Agreement (ACIA) and Free Flow of Investment in ASEAN

Tan Tai Hiong – ASEAN Secretariat

**Information Seminar on
ASEAN Comprehensive Investment Agreement (ACIA)
11 September 2015, Vientiane, Lao PDR**

Development in ASEAN Investment Frameworks

ASEAN IGA, 1987 (amended 1996)

- ASEAN Agreement for the Promotion and Protection of Investments
- Provisions on Protection and Investor-State Dispute Settlement

AIA, 1998 (amended 2001)

- Framework Agreement on the ASEAN Investment Area
- Provisions on facilitation, promotion & liberalisation
- Temporary Exclusion List and Sensitive List

ACIA, 2009 (amended 2014)

- ASEAN Comprehensive Investment Agreement
- Section on Investor-State Dispute Settlement
- Reservation Lists for 5 sectors and services incidental to them

Objectives of ACIA

- ❑ The objective of ACIA is to create a free and open investment regime in ASEAN in order to achieve the end goal of economic integration under the ASEAN Economic Community (AEC), through the following:
 - progressive liberalisation of the investment regimes of Member States;
 - provision of enhanced protection to investors of all Member States and their investments;
 - improvement of transparency and predictability of investment rules, regulations and procedures conducive to increased investment among Member States;
 - joint promotion of the region as an integrated investment area; and
 - cooperation to create favourable conditions for investment by investors of a Member State in the territory of the other Member States.

3

ASEAN Comprehensive Investment Agreement (ACIA)

Legal Enforcement	Structure	Coverage
<ul style="list-style-type: none">• Signed on 26 February 2009• Came into force on 29 March 2012• Amended on 26 August 2014	<ul style="list-style-type: none">• 4 pillars of liberalisation, protection, facilitation and promotion• 49 Articles, 3 Annexes, and 1 Schedule of Reservation List	<ul style="list-style-type: none">• Direct & portfolio investment• Manufacturing, agriculture, fishery, forestry, mining and quarrying and services incidental to these sectors

4

Key Features

ACIA is based on international best practices

- ❑ Comparable provisions on liberalisation and protection
- ❑ Adopts a single negative list approach on reservations with provision for progressive liberalisation

ACIA has a balanced focus

- ❑ Covers the four pillars of liberalisation, protection, promotion and facilitation

Re-affirms, builds, and improves upon provisions of precursor agreements

- ❑ Re-affirms national treatment and most-favored-nation treatment obligations
- ❑ Comprehensive provisions on Investor-State Dispute Settlement (ISDS)
- ❑ Forward-looking new provisions (e.g. *Prohibition of Performance Requirements (PPR)* and *Senior Management and Board of Directors (SMBD)*)
- ❑ Other improvements (e.g. Transfer; Treatment of Investments)

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4 Pillars of ACIA

Protection

- Fair & Equitable Treatment
- Full Protection and Security
- Free Transfer of Funds
- No Unlawful Expropriation
- Investor-State Dispute Settlement

Facilitation

- Streamlined and simplified procedures
- One-stop centres
- Advisory services to business community
- More transparent, consistent and predictable rules and procedures

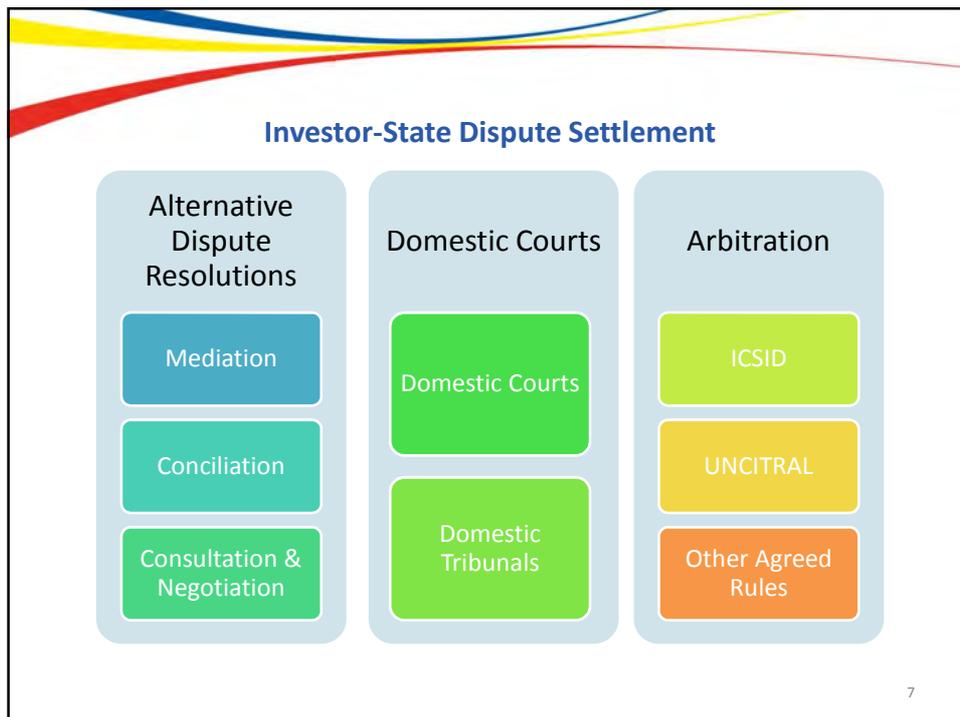
Promotion

- <http://investasean.asean.org/>
- Cross-linking of websites of investment agencies in ASEAN
- Enhancing production network & industrial complementation
- Joint investment missions
- Briefings and seminars on investment opportunities and investment policies

Liberalisation

- National Treatment
- Most-Favoured Nation
- Prohibition of Performance Requirements
- Senior Management & Board of Directors
- Schedule of Reservations

6



- ### Protocol to Amend ACIA
- ❑ Signed on 26 August 2014 in Nay Pyi Taw
 - ❑ It provides a mechanism to better facilitate AMS in modifying or amending their investment reservations in the ACIA Schedule
 - It adds a new Annex 3 that lays out a step-by-step process with prescribed timelines for the modification and amendment of ACIA schedule
 - ❑ The Protocol shall enter into force after all AMS have completed their internal procedures for the entry into force of this protocol
 - It enables AMS to amend their respective reservation lists in an expedient manner and better comply with their commitments under the ACIA
- 8

Benefits of ACIA to Business Sector

- ❑ ASEAN-based investors can enjoy non-discriminatory treatment when they invest in other ASEAN Member States.
- ❑ In case of disputes with host governments, investors have a choice to bring a claim in domestic courts (where applicable) or international arbitration
- ❑ Fair and equitable treatment and protection to investors and their investments
- ❑ Free transfer of funds, including capital, profits, and dividends
- ❑ Investments will not be expropriated, except for public purposes with compensation based on fair market value
- ❑ Non-discriminatory treatment for compensation for losses arising from civil strife
- ❑ Support from ASEAN governments in terms of promotion and facilitation of investment

9

Various Initiatives in line with ACIA Objectives

Liberalisation

- ❑ Modality to Eliminate Restrictions/Impediments and/or Improve Investment Regime in ASEAN, including Peer Review Mechanism
- ❑ Mechanism to Amend/Modify the ACIA Schedule (Reservations of AMS)
- ❑ Discussion on the build-in issues in the ACIA including in the Headnote of its Reservation Lists

Facilitation

- ❑ Updating of new Investment Rules and Regulations of AMS
- ❑ Updating of ACIA Focal Points and Investment Promotion Agencies officials
- ❑ ASEAN Investment Forum
- ❑ Investment Policy Reviews
- ❑ Workshops on Best Practices and Outsourcing

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Various Initiatives in line with ACIA Objectives (Cont.)

Promotion

- ASEAN Investment Publications (Brochures/Books/Reports)
- ASEAN Investment Website/Portal
- ACIA Promotion Forums and Seminars

Technical Assistance for Newer ASEAN Member States

- Outbound Investment Mission from ASEAN-6 to CLMV
- Investment Facilitation and Technical Assistance for Newer AMS
- Training on Investment Policy Making in the CLMV

11

ASEAN's Investment Agreements with Dialogue Partners

- ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) Chapter 11
 - Signed: 27 Feb 2009 in Cha-am
 - Enter into force: 1 Jan 2010 for AU, NZ, BN, MY, MM, PH, SG, VN; 1 Jan 2011 for LA; 4 Jan 2011 for KH; 10 Jan 2012 for ID
- ASEAN – Korea Agreement on Investment
 - Signed: 2 Jun 2009 in Jeju; Enter into force: 1 Sep 2009
- ASEAN – China Agreement on Investment
 - Signed: 15 Aug 2009 in Bangkok; Enter into force: 1 Jan 2010
- ASEAN – India Agreement on Investment
 - Signed: 12 Nov 2014 in Nay Pyi Taw
- ASEAN – Japan: Negotiations expected to conclude in 2015
- RCEP: Negotiations commenced in May 2013
- ASEAN-Hong Kong: Negotiations commenced in Nov 2014

12

Post-2015 Agenda for Investment

- ❑ ASEAN Leaders at the forthcoming 27th ASEAN Summit in November 2015 are expected to launch ASEAN Community Vision 2025
- ❑ The ASEAN Community Vision 2025 will include ASEAN Economic Community (AEC) Blueprint 2025, which is being finalised
 - It builds on the achievements and early gains of AEC 2015, while taking into consideration the evolving global context and relevant developments, to set a forward-looking direction for ASEAN for the next 10 years
- ❑ ASEAN aims to enhance further its attractiveness as an investment destination globally through the establishment of an open, transparent and predictable investment regime in the region.
 - The improvement in the investment environment in ASEAN is being achieved through the implementation of the ASEAN Comprehensive Investment Agreement (ACIA)

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Investment in the Services Sectors

- ❑ ACIA does not apply to services sectors and measures* undertaken by ASEAN Member States affecting trade and investment in services sectors
 - Except for services incidental to manufacturing, agriculture, fishery, forestry, mining and quarrying
 - Except for obligations stipulated in paragraph 5 of article 3 of ACIA
- ❑ Cross-border trade and investment in services sectors in ASEAN is subject to ASEAN Framework Agreement on Services (AFAS) and the subsequent Schedules of Commitments made under it
 - AFAS was signed by ASEAN Economic Ministers in Bangkok on 15 Dec 1995
 - Have completed 8 packages of commitments under ASEAN Economic Ministers (the 9th is expected within 2015), 5 additional packages of commitment in financial services under ASEAN Finance Ministers, and 5 additional commitments in air transport services under ASEAN Transport Ministers (the next one is expected within 2015)

*measure = law, regulation, rule, procedure, decision, administrative action, or any other form

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Investment in the Services Sectors (Cont.)

- ❑ Notwithstanding the different legal arrangement, protection provisions of ACIA applies to all sectors including to investments made in the services sectors
 - Articles 11 (Treatment of Investment), 12 (Compensation in Cases of Strife), 13 (Transfers), 14 (Expropriation and Compensation) and 15 (Subrogation) and Section B (Investment Disputes Between an Investor and a Member State) of the ACIA shall apply, *mutatis mutandis*, to any measure affecting the supply of service through commercial presence in the ASEAN territory
 - Only to the extent that they relate to an investment and obligation under ACIA regardless of whether or not such service sector is scheduled in the schedules of commitments made under AFAS.

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InvestASEAN Website

The screenshot displays the InvestASEAN website interface. At the top, there is a navigation bar with tabs for 'HOME', 'CONTACT US', and 'ABOUT'. Below this is a main banner for 'ASEAN' with a globe graphic and the text 'The ASEAN'. The website is organized into several columns of content:

- ASEAN ADVANTAGE:** Includes 'Robust Market' (ASEAN's market of more than 600 million people is 9% of the world's total) and 'Diverse ASEAN' (ASEAN is a region of diverse markets, varying economic developments).
- INDUSTRIES:** Includes 'Agriculture' (ASEAN is one of the most productive agricultural baskets in the world) and 'Tourism' (Tourism has been one of the key growth sectors in ASEAN and has grown).
- ENABLING ENVIRONMENT:** Includes 'Single Market and Production Base' (The ASEAN Economic Community (AEC)).
- SUCCESS STORIES:** Includes 'AirAsia' (AirAsia was launched in 2001 with the dream of making flying possible for).
- NEWS:** Lists recent news items such as 'ASEAN Comprehensive Investment Agreement (ACIA) Forum on Business Convergence' and 'ASEAN Investment Report 2015-2014'.
- SPECIAL FEATURE:** Includes 'ASEAN scales move to universal healthcare'.

The website footer shows the Windows taskbar with the time 6:08 PM on 07 Sep 15.

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ANNEX

D. Presentation 'Trade and Investment in Services in ASEAN', Dr. Souphaphone Saighaleuth



ASEAN Trade in Services Liberalization

International Cooperation Division
Investment Promotion Department
Ministry of Planning and Investment

ASEAN Trade in Services: Institutional Framework for Liberalization

- The ASEAN Economic Community (AEC) Blueprint: signed in 2007, this document sets objectives, targets and timelines for the Liberalization of Trade in Services in ASEAN. Member states committed to complete implementation of the Blueprint by 2015.
- The ASEAN Framework Agreement on Services (AFAS): signed in 1995, this agreement is the main tool to liberalize services trade; it stipulates the institutional mechanism, guidelines and procedures for negotiation and implementation towards liberalization of trade in services in ASEAN.
- Coordinating Committee on Services (CCS): CCS is an ASEAN body responsible for conducting negotiations on liberalization of (most) services sectors.
- In addition, there are specific working groups for certain sub-sectors:
 - Air Transport Working Group (ATWG)
 - Working Committee on ASEAN Financial Services Liberalisation under AFAS (WC-FSL/AFAS)

Objectives of ASEAN liberalization of Trade in Services

- Enable service providers from all member countries, to provide services or establish their business within any ASEAN Member State, without barriers.
- Eliminate barriers to Trade in Services across ASEAN in 128 sectors, in a step-by-step approach. The different sector groups to liberalize include:

❖ **Priority Integration Sectors (PIS), 29 sub sectors**

- Air Transport
- E-commerce
- Healthcare
- Tourism

❖ **Logistic, 9 sub sectors**

❖ **Non-PIS 90 sub sectors**

Targets for permitted foreign investment (foreign equity) for each group of services sectors

PIS		
Foreign equity share	49%	70%
deadline	2008	2010-2015
Non-PIS		
foreign equity share	51%	70%
deadline	2010	2015
Logistic Sector		
Foreign equity share	51%	70%
deadline	2010	2013-2015

The Four Modes of Supply for Trade in Services

Mode 1: Cross Border Supply

Mode 2: Consumption Abroad

Mode 3: Commercial Presence

Mode 4: the Movement of Natural Person

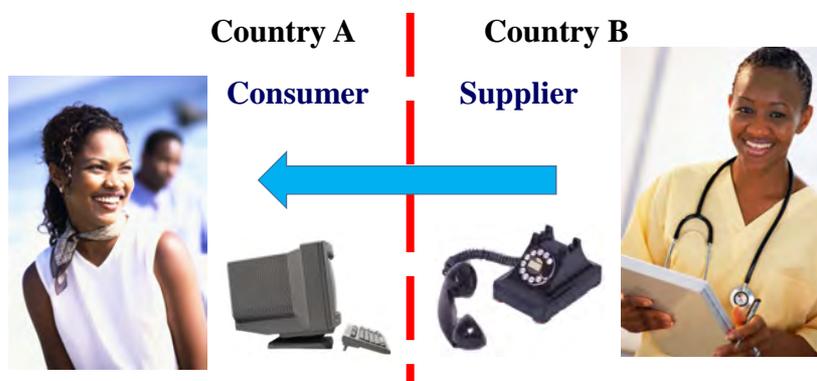
Mode 1: cross-border supply

Service is delivered from one Country to another Country

Neither consumer nor producer crosses the border

Example:

- Design service, programming, research service delivered through telecommunication
- Medical advice via distance



Mode 2 : Consumption aboard

Service provider remains abroad
Consumer travels across the border to consume a service

Example:

Tourism, Education, Health Care

Country A

Consumer



Country B

Supplier



Mode 3 : Commercial Presence

Service provider moves across borders and establishes an enterprise in the other country with the purpose to provide services

Possible forms of investment are: Branch, Co-Investment, Representative Office, etc...

Example:

Telecommunication Company

Foreign Bank

Country A

Consumer



Country B

Supplier



Mode 4: Movement of Natural Persons

Service provider moves across border temporarily to provide a service in another country

- Business visitors
- Manager, Experts, Technical experts
- Contractual Service Suppliers

Country A
Service Provider

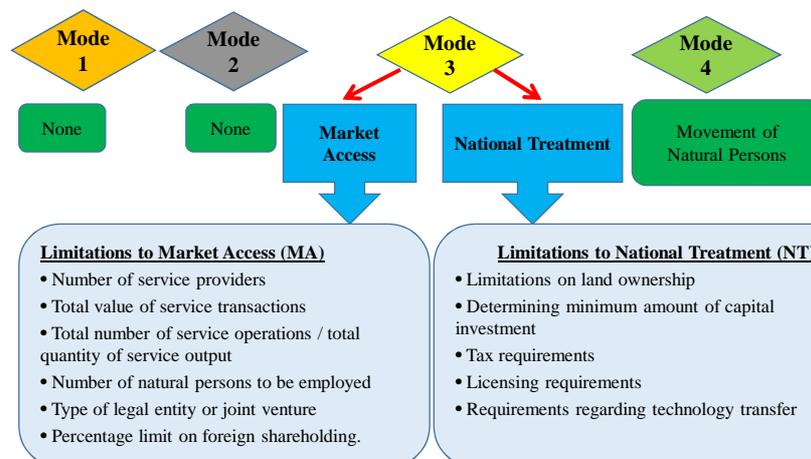
Country B
Skilled Labour



Objective of the liberalization of trade in services in ASEAN

Fully remove limitations to Mode 1 and 2 of Service Delivery

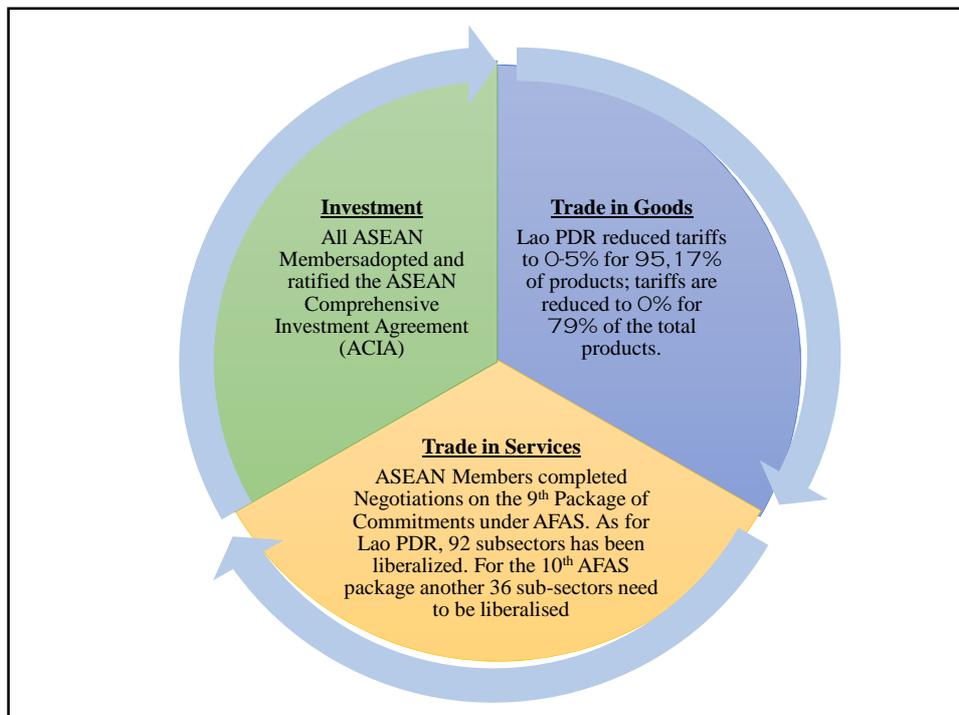
Reduce limitations to Market Access and National Treatment for Mode 3



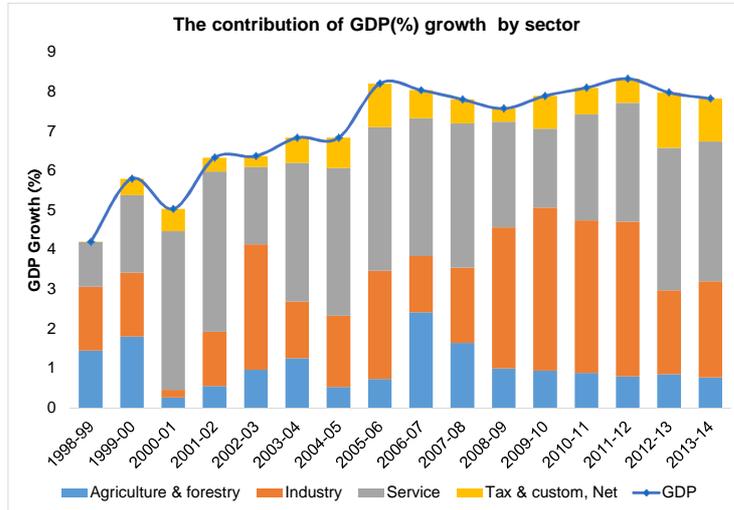
List of Services Sectors

1. **Business Services**
2. **Telecommunication Services**
3. **Construction and Engineering**
4. **Distribution Services**
5. **Education Services**
6. **Environmental Services**
7. **Finance**
8. **Healthcare Services**
9. **Tourism Services**
10. **Recreation, Culture, sport**
11. **Transportation Services**
12. **Others**

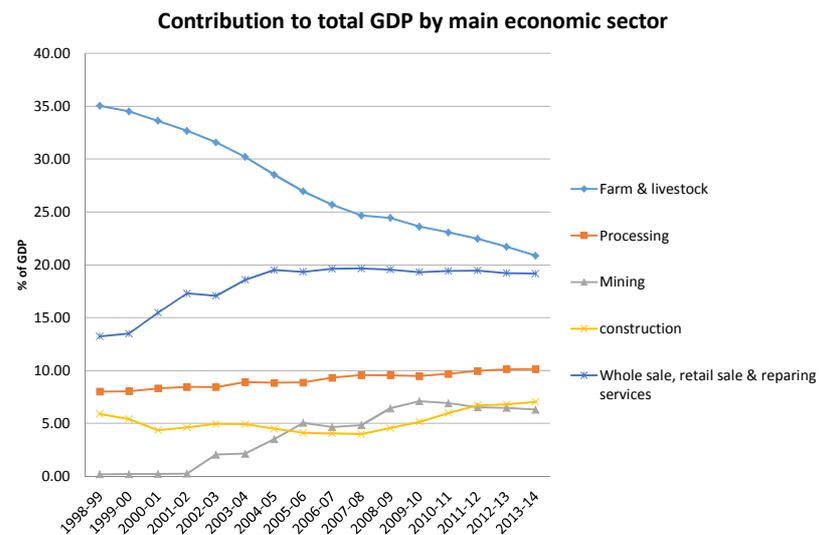
(A total of 128 Sub-sectors)



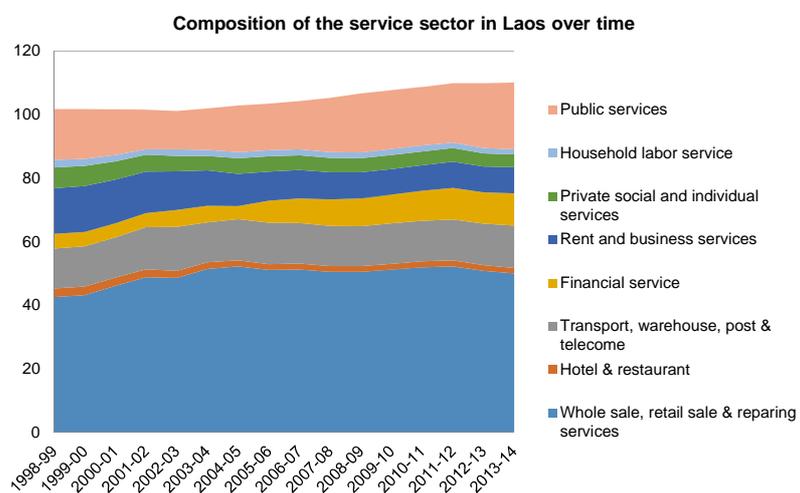
The contribution to GDP growth by sector, 1998-2014



Sector contribution to GDP (% of GDP)



Structure of the Service Sector



FDI by sub-sector

	2001-2005	2006-2010	2011-2013
FDI by sub-sector			
Agriculture (%)	2.72	11.46	10.28
Electricity (%)	63.94	34.97	29.94
Mining (%)	16.47	15.60	40.69
Manufacturing (%)	6.58	18.50	9.59
Services (%)	10.29	19.47	9.50
Financial Services (%)	0.46	1.29	2.25

Source : Investment Promotion Department

Difficulties and challenges of Trade in Services Liberalisation in Lao pDR

- Many services sectors in Lao PDR are not yet regulated and lack legal frameworks and rules
- Limited knowledge among officials and society on services liberalisation
- Lack of funding to disseminate information and to train and raise awareness among the private sector in Laos
- A particular challenge of AFAS 10 is to liberalize total of 128 sectors and to raise the share of foreign equity a foreigner is allowed to hold to at least 70%, for all 128 sectors. This is a problem as the Lao government would like to reserve some sectors for Lao nationals.

Outlook and next steps

- Preparation 10th and final AFAS package ongoing
- Consultations planned with line ministries: determining liberalization commitments and creating rules to protect local entrepreneurs
- Dissemination and awareness raising workshop for Lao business owners, in order to be better prepared and benefit from the establishment of the AEC in 2015 and liberalization in Trade in Services
- Each responsible sector oversight entity is recommended to review the table of commitments in order to ensure correct procedures in its sector
- Negotiations will follow on ASEAN Trade in Services agreement (ATISA) which will replace the ASEAN Framework Agreement on Services (AFAS) after the 10th AFAS package is concluded.

ASEAN Trade in Services Agreement (ATISA)

- AFAS was signed in 1995.
- After that, several ASEAN-plus agreements were signed with major trading partners of ASEAN
- Asian economies and world economy changed in the last 20 years
- ASEAN Trade in Services Agreement (ATISA) takes these changes into account and replaces AFAS in order to update and accelerate the process of services liberalization in ASEAN

Difference between AFAS and ATISA

AFAS

- The terms and definitions are those of the GATS; in fact, provisions not included in the AFAS may be directly referred to in the GATS (*Article XIV : Final Provision, para 1*)
- The modalities and process to create the table of commitments is based on GATS (positive-list approach)

ATISA

- Standalone Agreement which includes provisions from GATS, ASEAN-plus agreements, provisions from the Free Trade Area, and other new developments
- GATS, GATS annexes or a revised version of GATS may be included in ATISA
- Modalities of negotiations (creating the table of commitments) is still under consultation and may differ from AFAS

The latest draft of ATISA includes 10 Chapters and 42 Articles, still in process of negotiation :

1. General provisions
2. Obligations and Rules (MFN, MA, NT, etc.)
3. Modes of Liberalisation
4. Controls (transparency, domestic regulation, recognition, etc.)
5. Creation of tables of commitment
6. Issues across business sectors (supply chains, e-commerce, vocational services, etc.)
7. Financial Services
8. Trade facilitation and cooperation
9. Other provisions (payments and money transfer, monopoly policy, balance of payment, exemptions etc.)
10. Final provisions

There are currently 2 annexes being negotiated under ATISA

- a) Annex on Financial Services (negotiated separately by WC-FSL)
- b) Annex on Telecommunication Services (negotiated under CCS)

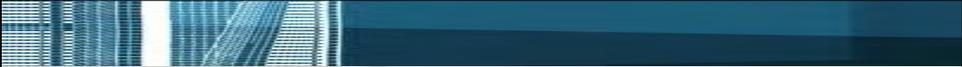
**Thank
you**

For more information :
<http://www.aseansec.org/>
<http://www.wto.org>

**International Investment
Cooperation Division Tel : 218
377, 219 568
Fax: 215 491**

ANNEX

E. Presentation ‘The four pillars of the ACIA’, Dr. Sufian Jusoh



ASEAN Comprehensive Investment Agreement (ACIA)

'Towards Free Flow of Investment in the ASEAN Single Market'

11 September 2015



FDI is the “cutting edge of globalization”

Foreign direct investment has been characterized as the “cutting edge of globalization.”

- Why? The rate of growth in FDI for the two decades prior to 2000 exceeded comparable growth rates for world economic output and trade over the same period.

In academic and international policy-making circles, the importance of FDI is often considered in connection with development and technology transfer issues.

- For businesses large and small, FDI represents a strategic option among alternatives for expansion into foreign markets
- to gain market share, out-source the manufacture of products or supply of certain services, or even locate new research and development (R&D) facilities.

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A Modern Investment Policy is Based on Three Key Ideas



Investment policy is not about choosing between foreign and domestic investment



Foreign investment is not a transaction; it is a relationship



Not all types of investment are the same

3

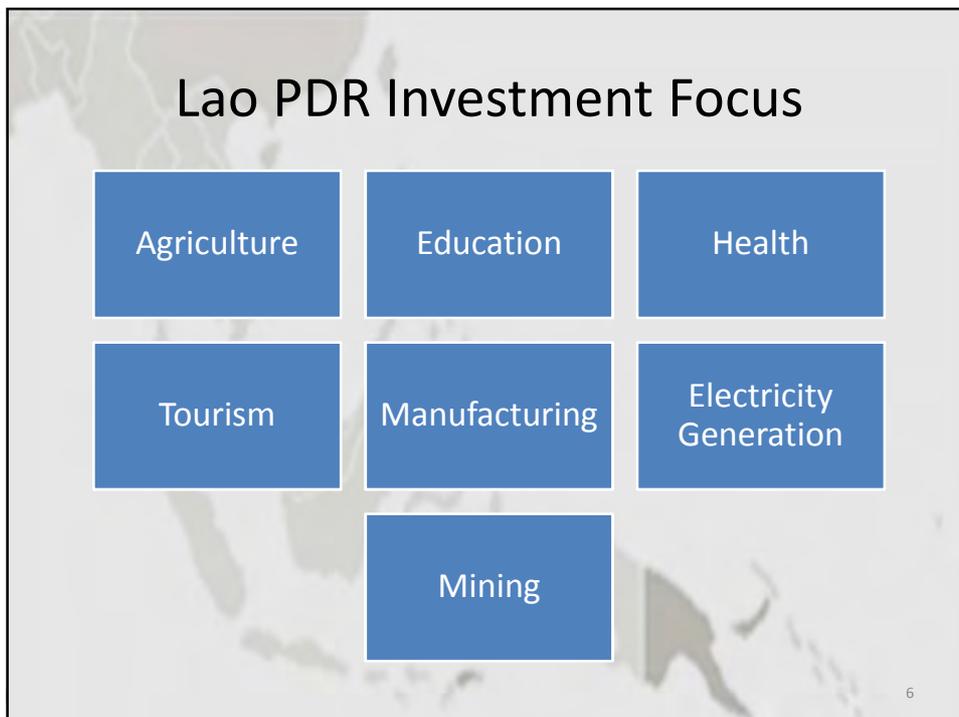
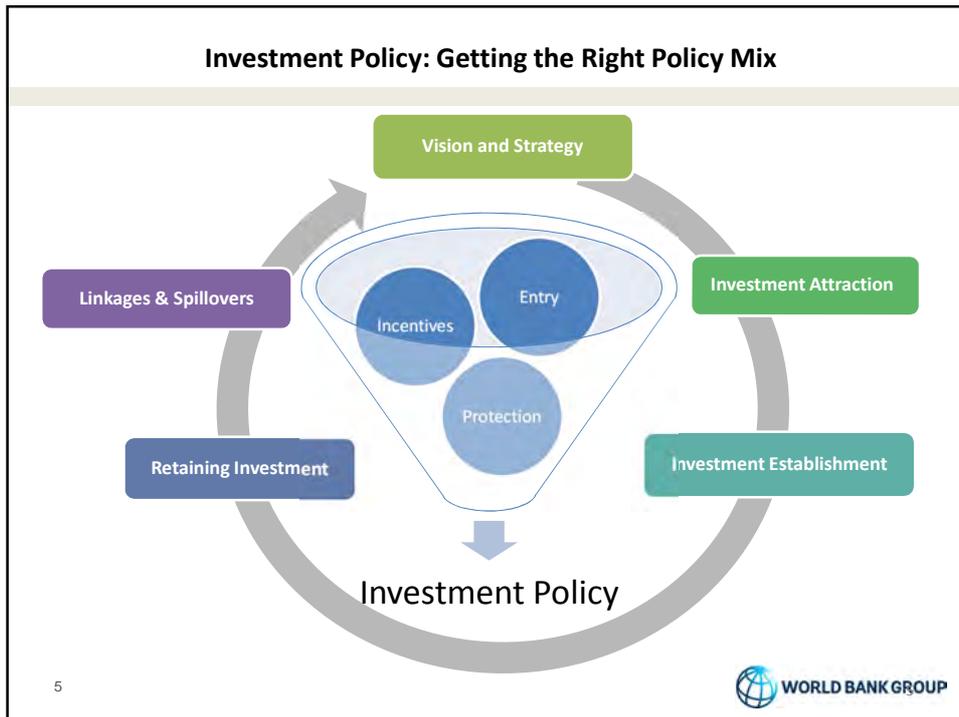


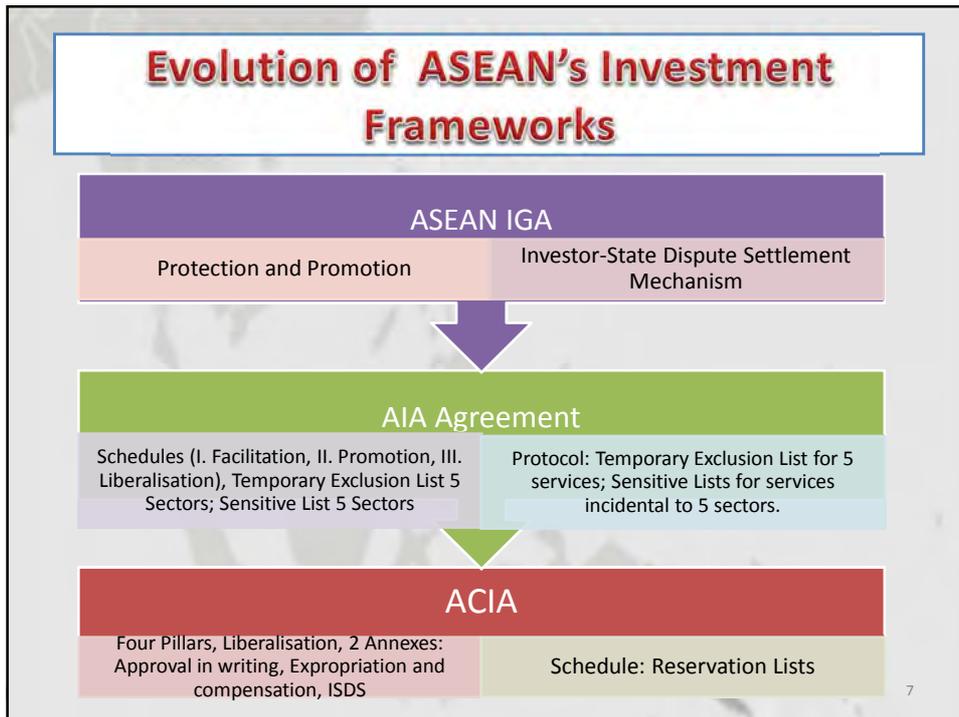
Not All Investments Are the Same, Nor Do They Have the Same Impact on Economic Development

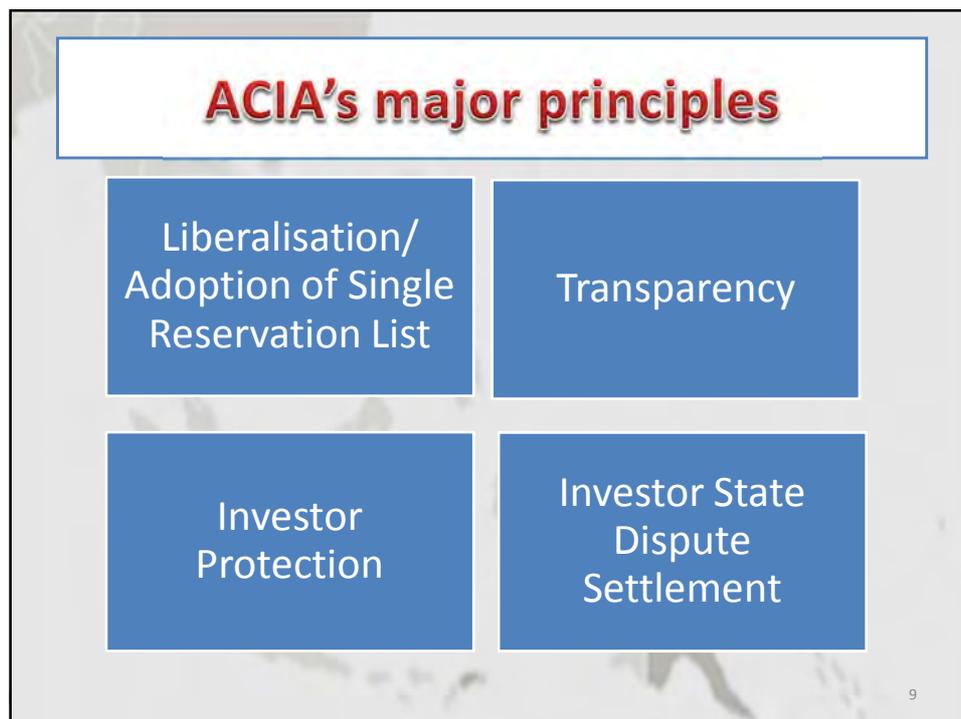


4









- ## ASEAN AS AN INVESTMENT HUB
- ASEAN as a whole remain a competitive and attractive destination for foreign direct investment.
 - Reasons for Investors' Interest:
 - Resource seeking, market seeking, efficiency seeking
 - Launching of the ASEAN Economic Community
- 10

ASEAN Comprehensive Investment Agreement: What is it for investors?

Liberalised investment sectors

Investor protections based on international best practices

Welcomes ASEAN and third-country investors

11

Investors

The diagram illustrates three categories of investors as interlocking gears:

- Natural person of AMS** (purple gear)
- Juridical person in AMS** (green gear)
- 3rd country national through juridical person in AMS** (red gear)

Arrows indicate that these categories are interconnected and can overlap. For example, a 3rd country national can be a natural person of AMS, and a 3rd country national can also be a juridical person in AMS.

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Nature of investors

Foreign investment was private until the late 90's

- System was designed for private investors...

Increase of public investments since 90's

- Developing countries (India, China, Russia but also Vietnam, Malaysia, Algeria...)
- State owned enterprise
- Sovereign wealth funds

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Any physical assets in which a foreigner has invested...



Chinese investment in Kenya to build a road



Novotel (France) investment in hotel HK



Siemens AG (German) investment in Nanjing

Tangible foreign investment = infrastructures, plants, factories...

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Investment can also be in intangible assets

unable to be touched; not having physical presence

Any service (financial, legal...)

Sovereign debt is another intangible asset!

IPR can be trade marks

Of course, any FDI in service industry...

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Opening of Following Sectors and Incidental Services

Manufacturing

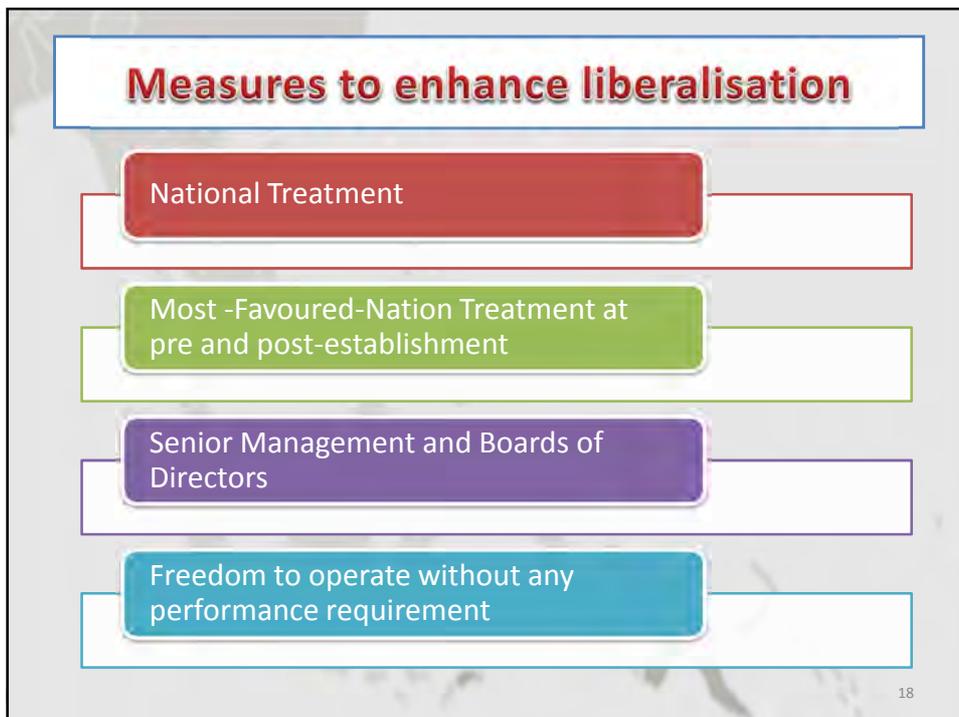
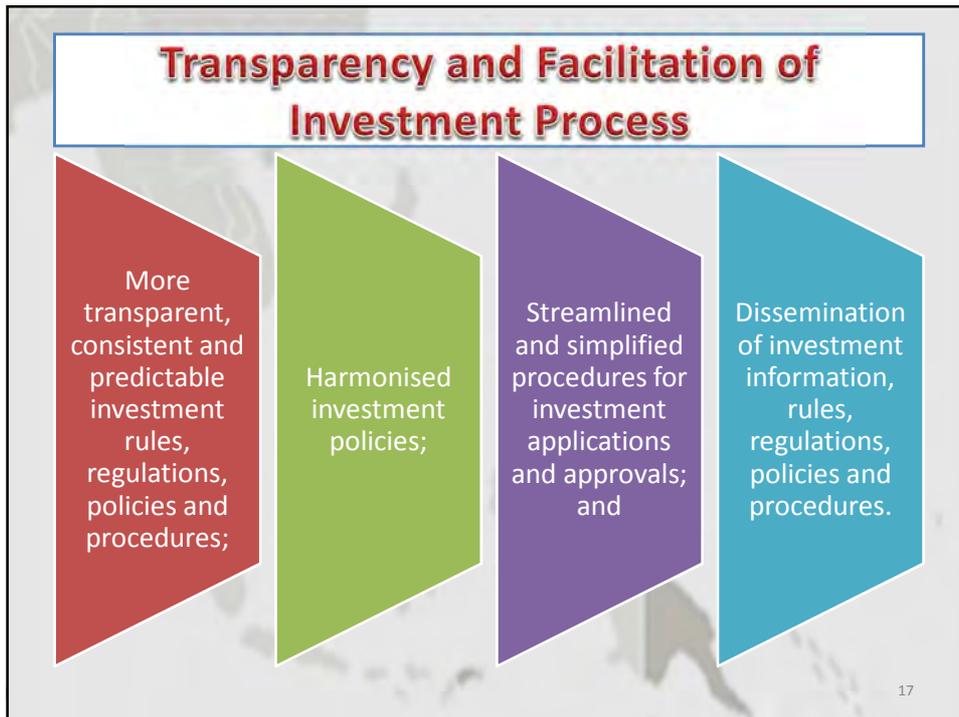
Agriculture

Fishery

Forestry

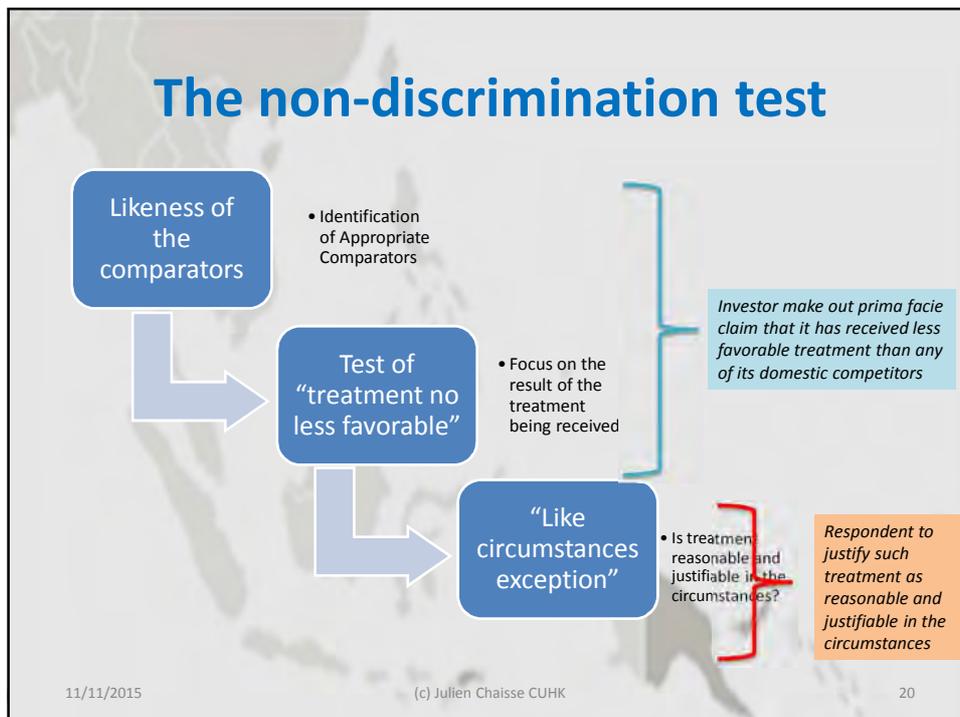
Mining and Quarrying

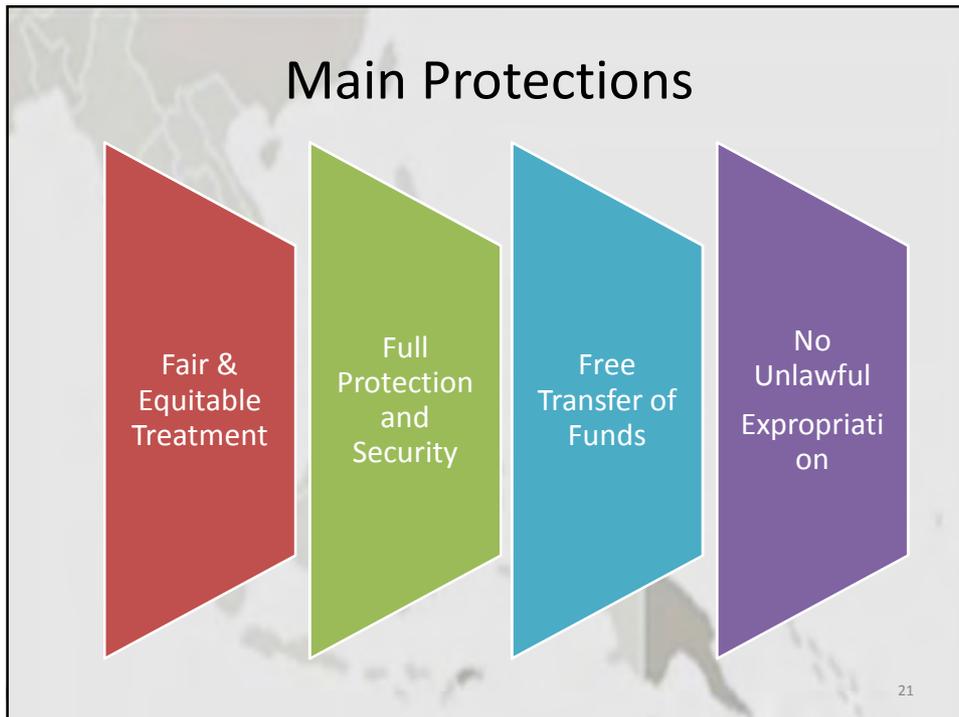
16



National Treatment (Art.5)	Most Favoured Nation (Art.6)
<ul style="list-style-type: none"> • An investor from ASEAN Member State A in ASEAN Member State B shall be treated in the same way as the local investors in Member State B. • Subject to reservation in the Schedule 	<ul style="list-style-type: none"> • ASEAN Investors should be treated no less favourable than each other or an investor from a 3rd country who is not a member of ASEAN. • Not construed as same treatment accorded under: <ul style="list-style-type: none"> • Any sub-regional arrangements between and among ASEAN Member States. For example Indonesia-Malaysia-Thailand Growth Triangle (IMTGT) • Any existing agreement notified by ASEAN Member States to the AIA Council.

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From practice... to theory “ACIA FET due process in a nutshell”

The image shows a cracked nut with a small white tag attached to the inner shell that reads "my life, in a nutshell".

FET due process has been repeatedly recognized by tribunals as an element of the FET standard.
ACIA codifies

Yet, to date, awards have been issued in favor of the claimant under this principle only when the host state provided no judicial review at all (*Middle East Cement case only*)

Most claims under the due process principle have alleged a denial of justice, and these all have been unsuccessful.

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Direct and Indirect Expropriation

Direct Expropriation	Indirect Expropriation
<ul style="list-style-type: none">• Formal transfer of legal title• Outright seizure of the investment of the foreign investors	<p>A measure or series of measures that has similar effect to direct expropriation even without formal transfer or outright seizure of the legal title over the investment.</p> <p>This is decided on a case-by-case basis.</p>

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Determining Indirect Expropriation (ACIA, Annex 2)

- The economic impact of the Government action;
- Whether the Government action breaches the Government's prior binding written commitment to the investor; and
- The character of the Government action, including its objective, and whether it is disproportionate to the public purpose.
- Some other non-discriminatory measures that are designed and applied to protect legitimate public welfare objectives do not constitute an indirect expropriation.

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Compensation for Expropriation

- Must be paid without delay;
- Equivalent to the fair market value of the expropriated investment immediately before or at the time when the expropriation was publicly announced or occurred;
- Not reflecting any change in value because the intended expropriation had become known earlier; and
- Fully realisable and freely transferable between the territories of ASEAN Member States.

25

Investor-State Dispute Settlement

Alternative Dispute Resolutions

Mediation

Conciliation

Consultation & Negotiation

Domestic Courts

Domestic Courts

Domestic Tribunals

Arbitration

ICSID

UNCITRAL

Other Agreed Rules

26

Resolving Investment Disputes

Domestic Courts:

- Host state: not seen as sufficiently impartial. Bound to apply domestic law. Lack the technical expertise required to resolve complex international investment disputes
- Investor's state or other states: lack territorial jurisdiction over investment operations taking place in another country.

Diplomatic protection

- Investor must have exhausted all local remedies in the host country
- Discretionary and investor has no right to it
- May lead to tensions in the relations of the States concerned

Negotiation, mediation, conciliation, etc

- May not be effective with the hosting state

Arbitration: an attractive alternative

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27

ICSID system puts diplomatic protection aside

The mechanism of Diplomatic protection **"was not superseded by the system of individual investor rights, but rather was diminished by such system"**

Archer Daniels Midland Company and Tate & Lyle Ingredients Americas, Inc. v. United Mexican States; ICSID Case No. ARB(AF)/04/5, Concurring Opinion of Arthur W. Rovine Issues of Independent Investor Rights, Diplomatic Protection and Countermeasures, 21 November 2007, at 23, 76-77, 80

The "ICSID system puts diplomatic protection aside"

AES Corporation v. Argentine Republic, ICSID Case No. ARB/02/17, Decision on Jurisdiction, 26 April 2005 at 99

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What is an investment treaty arbitration?

Dispute between a foreign investor and a State concerning alleged violations by the State of standards of protection provided for in the applicable treaty

The treaty can be a BIT (bilateral investment treaty) or a multilateral treaty (such as NAFTA, Energy Charter Treaty)

Most of the time foreign private investor...

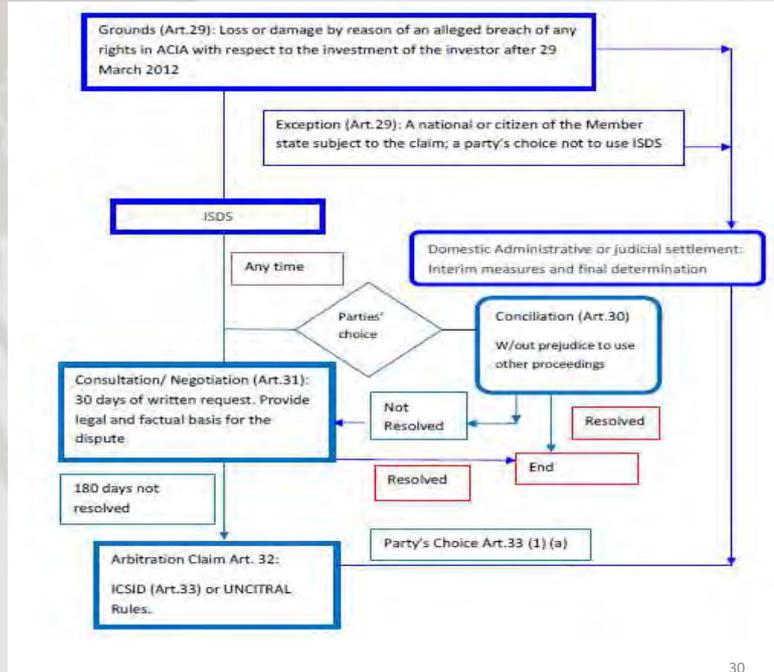
So great number of legal grounds...

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ISDS Flow chart



30

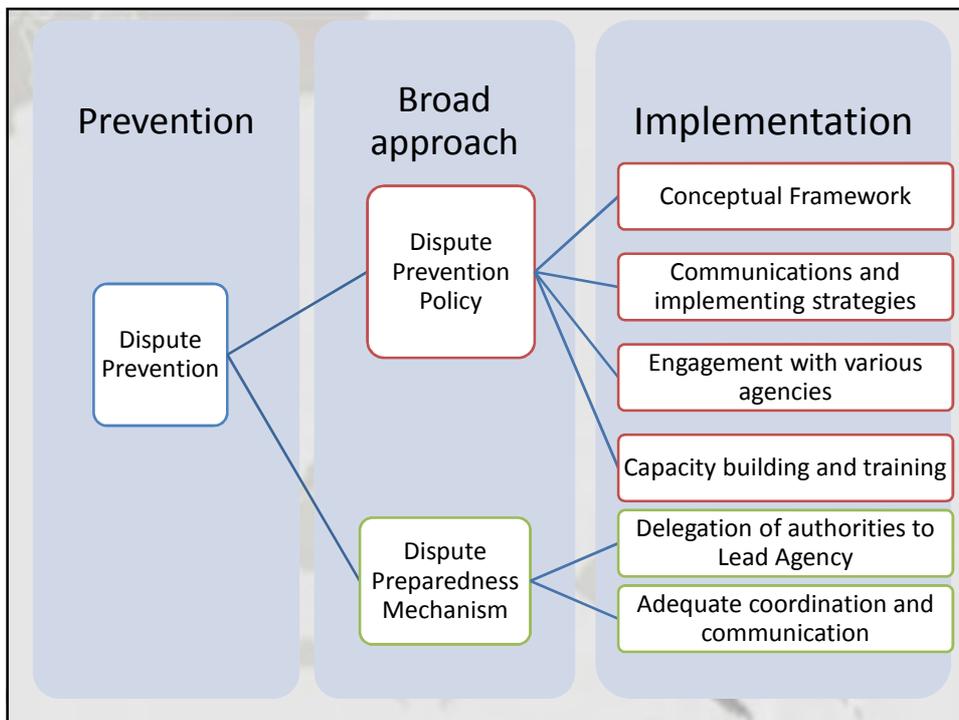
Dispute Prevention Mechanism

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Definition

- “minimising potential areas of dispute through extensive planning in order to reduce the number of conflicts that escalates or crystallise into formal disputes.”
- Dispute prevention is the act of reducing the number of conflicts that escalate into formal disputes.
- Dispute prevention promotes the notion that reduction in conflict escalation may be achieved through “extensive planning.”

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ANNEX

F. Presentation 'Investment Policy in Lao PDR', Mr. Phouvong Phaophongsavath

Investment Environment in Laos



LAOS: Land of Ample Opportunity and Success

Historical Event in 2012



LAOS: Land of Ample Opportunity and Success



Laos at Glance

LAOS: Land of Ample Opportunity and Success



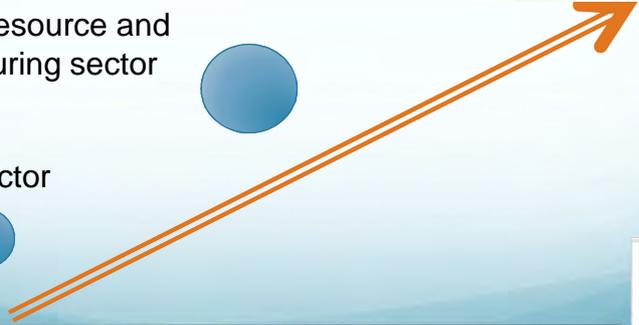
The slide features a light blue background with a faint mountain range. The title 'Laos at Glance' is centered in a large, bold, blue font. At the bottom left, the text 'LAOS: Land of Ample Opportunity and Success' is displayed in a smaller font, with 'LAOS' in red, 'Land of Ample' in blue, 'Opportunity and' in blue, and 'Success' in red. The WPMPI logo, consisting of a blue bar chart and the text 'WPMPI' in red and blue, is located in the bottom right corner.

Laos: Unique Development Path and Way Ahead

Non-natural resource, Sustainable manufacturing and service sector

Natural Resource and Manufacturing sector

Agriculture sector



LAOS: Land of Ample Opportunity and Success



The slide has a light blue background with a faint mountain range. The title 'Laos: Unique Development Path and Way Ahead' is centered at the top in a blue font. Below the title, three blue circles of increasing size are arranged along an upward-pointing orange double-line arrow. The text 'Agriculture sector' is next to the smallest circle, 'Natural Resource and Manufacturing sector' is next to the middle circle, and 'Non-natural resource, Sustainable manufacturing and service sector' is next to the largest circle. To the right of the largest circle is a green globe with a small plant growing on it. At the bottom left, the text 'LAOS: Land of Ample Opportunity and Success' is displayed in a smaller font, with 'LAOS' in red, 'Land of Ample' in blue, 'Opportunity and' in blue, and 'Success' in red. The WPMPI logo is in the bottom right corner.

ASEAN Economic Community 2015



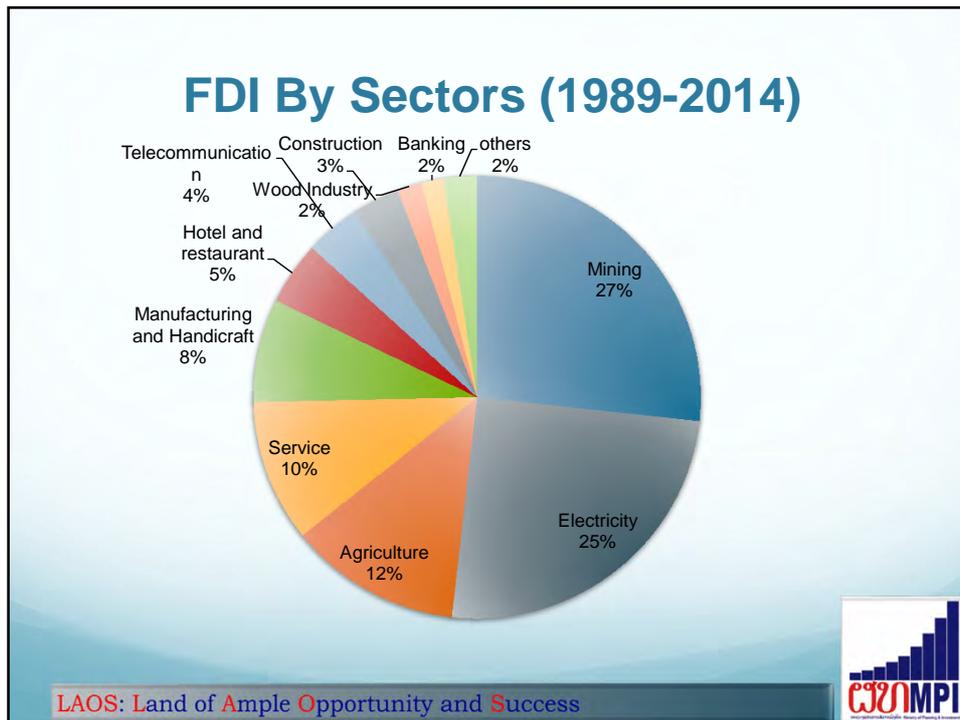
LAOS: Land of Ample Opportunity and Success



Top 10 FDI Countries (1988-2015 (March))

	No.	Country	Projects	Value (USD million)	
	1	China	830	5,396	
	2	Thailand	746	4,455	
	3	Vietnam	421	3,393	
	4	Korea, South	291	751	
	5	France	224	490	
	6	Japan	101	437	
	7	Netherland	16	434	
	8	Malaysia	101	382	
	9	Norway	6	346	
	10	Britain	52	197	

LAOS: Land of Ample Opportunity and Success



Why Laos?

Comparative & Competitive Advantages

- Political stability
 - High safety
 - Low risk from natural disasters
 - Low labor cost
- (Minimum wage: less than \$80/month)



Country of rich natural resources:

- Fertile land, Minerals, Water, and forest, giving development potential in agriculture, mining, and hydropower.

Doing Business 2015

Ease of Doing Business in

Lao PDR

This page summarizes *Doing Business 2015* data for Lao PDR. The first section presents the Ease of Doing Business rank (out of 189 economies) and the distance to frontier (DTF)** measure, overall and by topic. The second section summarizes the key indicators for each topic benchmarked against regional averages.

REGION	East Asia & Pacific	DOING BUSINESS 2015 RANK	DOING BUSINESS 2014 RANK***	CHANGE IN RANK
INCOME CATEGORY	Lower middle income	148	155	↑ 7
POPULATION	6,769,727			
GNI PER CAPITA (US\$)	1,460	DOING BUSINESS 2015 DTF** (% POINTS)	DOING BUSINESS 2014 DTF** (% POINTS)	CHANGE IN DTF** (% POINTS)
CITY COVERED	Vientiane	51.45	49.10	↑ 2.35

Business Reforms in Lao PDR

✓=Doing Business reform making it easier to do business. X=Change making it more difficult to do business.

DB2015:

- ✓ **Getting Credit:** The Lao People's Democratic Republic improved access to credit by implementing a modern, unified, notice-based collateral registry.
- ✓ **Protecting Minority Investors:** The Lao People's Democratic Republic strengthened minority investor protections by introducing requirements for directors to disclose in detail their conflicts of interest to the other board members and for companies to promptly disclose related-party transactions to the Securities Commission and to include the information in their annual reports.

DB2014:

- ✓ **Paying Taxes:** Lao PDR made paying taxes less costly for companies by reducing the corporate income tax rate—though it also introduced a new property transfer tax.

DB2013:

- ✓ **Starting a Business:** Lao PDR made starting a business easier by allowing entrepreneurs to apply for tax registration at the time of incorporation.
- ✓ **Paying Taxes:** Lao PDR made paying taxes less costly for companies by reducing the corporate income tax rate.
- ✓ **Trading Across Borders:** Lao PDR reduced the time to export and import by implementing the ASYCUDA electronic data interchange system at the Thanaleng–Friendship Bridge border crossing.

Improvement in Legislation

- Recently revised law on Investment Promotion 2009, and it's implemented decree in 2011
- Law on Minerals (2008), revised Law on Minerals (2011)
- Environmental and Social Impact Assessment Decree (2010)
- Land Law (2003), Decree on Implementation of the Land Law (2008) and Decree on Land Concessions (2009)
- National Land Policy, currently under revision
- National Policy on Environmental and Social Sustainability of the Hydropower Sector
- Law on Forestry (2007)
- Agricultural Law (1998), revised 2012
- Law on Electricity (2011)



LAOS: Land of Ample Opportunity and Success



Initiative on the Public and Private Partnership (PPP)

- Drafting the PPP Decree (expected to approve by 2015)
- 2 pilots areas: Health and Education

Infrastructure Development

LAOS: Land of Ample Opportunity and Success



Direct flights to Asian major cities

Laos-Japan Bilateral Aviation Agreement
January 16th 2015



LAOS: Land of Ample Opportunity and Success



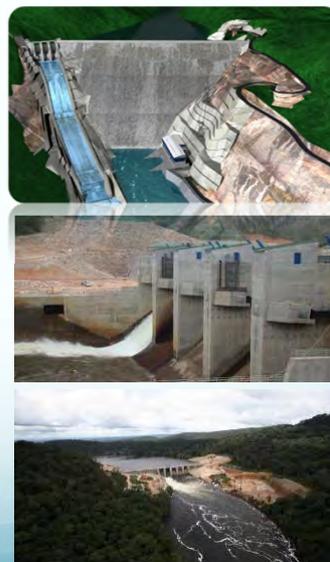
Investment Opportunities

- Agriculture
- Manufacturing
- Tourism
- Energy
- Education
- Healthcare
- Services

Sector Opportunities

Electricity Generation:

- **Abundant water resources** produced by tributaries of Mekong river
- Estimated electricity generation potential: over **23,000 MW**
- Investment in hydro-electric facilities will be substantial



Sector Opportunities

Agriculture Forestry

- Highest ratio of forest area
- Suitable land for various tree Plantation
- Large stands of tropical hardwoods including teak and rosewood
- Plenty of productive land

The government is now promoting the contract farming instead of granting concession over large area of land for agriculture and tree plantation



Processing

- **Agro-processing: North**
 - Organic tea to China
 - Rubber to China
 - Maize to China, Thailand, Viet Nam
 - Soybeans to Thailand
 - White sesame to Thailand
 - NTFPs to China, Japan, Korea



Core agribusiness sectors of economic interest: processing

- **Agro-processing: Central**
 - Maize to Thailand
 - Sweet corn to Europe
 - Vegetables to Europe
 - Peanuts to Thailand
 - Cassava to Thailand
 - Black glutinous rice to Europe, some organic



Core agribusiness sectors of economic interest: processing

Agro-processing: South

- Okra to Japan
- Coffee to Hong Kong, Europe, Thailand
- **Cabbages to Thailand, Viet Nam**
- **Bananas to Thailand, Viet Nam**
- **Cotton indigo products to Japan**
- **Peanuts to Thailand, Viet Nam**
- **Cassava to Viet Nam**
- **Rubber to Viet Nam**
- **Soybeans to Thailand, Viet Nam**



Sector Opportunities

Manufacturing Sector

- Lao PDR ready to be Manufacturing Base
- Logistic advantages from EWEC (Linked to the Sea)
- Low utilities and labor cost
- Special Economic Zone (Located along EWEC)
- Export – Import tax exemption



SEZA in Savannakhet

Sector Opportunities

Tourism Sector

1. Eco-Tourism
2. Cultural Tourism
3. Agro-Tourism

Tourism Business is now opened to FDI with **Foreign Equity of up to 70%**

Several **natural tourist sites** are welcoming FDI



World #1 for Tourism

- Top of “Places to Go” list in 2008 by *New York times*;
- “The best city in the world to visit” by the *Wanderlust*, a leading British travel magazine;
- “Top City” Award in 2006-2012 (except in 2009 being in top 10);
- “World Best Tourist Destination” in 2013 by *the European Council on Tourism and Trade*.
- “Wanderlust Travel Awards” in 2015 Laos is top 10 and LBP is No.1

The New York Times



Investment Policies

- Combined the domestic investment law and foreign direct investment law into one to create a “level playing field” for both domestic and foreign investors;
- Shorten procedures to open new businesses;
- No terms of investment for promoted activities;
- Extended Investment incentives: Corporate income tax exemption up to 10 years, additional 5 years for Education and Health care sectors as top priorities;
- Foreigners can have access to local financial sources;
- Foreigners can invest in the real estate sector;



Special Economic Zones (SEZ)



1. Savan-Seno Special Economic Zone 2003
2. Boten Beautiful Land Specific Economic Zone 2003
3. Golden Triangle Special Economic Zone 2007
4. Vientiane Industrial and Trade Area 2011
5. Saysetha Development Zone 2010
6. Phoukhyo Specific Economic Zone 2010
7. Thatluang Lake Specific Economic Zone 2011
8. Longthanh- Vientiane Specific Economic Zone 2012
9. Dongposy Specific Economic Zone 2012
10. Thakhek Specific Economic Zone 2012

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Challenges

- Permission and approvals
- Tax issue
- Labor issue

Key Mechanisms

- Review the existing regulations and policies
- Dialogues between Public and Private Sector the at the central and provincial levels

One Stop Service

MOIC

**Ministry of Industry and
Commerce**

**Enterprise Registration
License for General
Business**

www.moic.gov.la



**Ministry of Planning and
Investment**

**Concession License
&
Representative Office
License**

www.investlaos.gov.la



**Government's Office
Lao National Committee
for Special Economic Zone**

**Investment in Specific
Economic Zone**

**Enterprise Registration
License**

www.sncez.gov.la

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Many Thanks