

AANZFTA



ASEAN - AUSTRALIA - NEW ZEALAND FREE TRADE AREA (AANZFTA)
ECONOMIC COOPERATION SUPPORT PROGRAM (AECSP)



Investment Policy for Sustainable Development in the AANZFTA Region

BACKGROUND

In the current geopolitical and social environment, sound investment reforms are essential to the development of resilient and inclusive economies. In such a context, divergence in investment regulatory regimes may hamper the development of regional value chains by creating barriers to regional foreign direct investment (FDI) projects. ASEAN's decades of increasing economic integration has been driven by a desire to put the region more squarely into global and regional supply and value chains. Thus, investment policymakers in ASEAN Member States (AMS) need the capabilities to design and implement reforms that respond adequately to their national, regional and global challenges and objectives.

The free flow of services and investment are cornerstones of the ASEAN Economic Community (AEC) as well as ASEAN's engagement with dialogue partners through agreements like the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA). While AMS have increasingly adopted measures that attract FDI as a priority to achieve economic growth and fulfil national development objectives, differences across countries remain. Therefore, facilitating foreign and domestic investment requires domestic investment climate reforms in AMS that contribute to policy harmonisation across ASEAN.

Among the key objectives of the AANZFTA Agreement is to enhance trade and investment flows between the Parties. More specifically, Article 13 - Transparency of AANZFTA's Investment Chapter requires parties to publish all relevant investment measures of general application. The AANZFTA Economic Cooperation Support Programme (AECSP) aims to facilitate the flow of trade and investment across the Parties, by deepening and broadening linkages and assisting Parties to address impediments to expanding trade and investment in response to the opportunities created by the AANZFTA.

To strengthen ASEAN's investment climate and to operationalise and complement services commitments under the AANZFTA, the AECSP has supported the development of six Investment Policy Reviews (IPRs) and a series of investment policy workshops and forums that have strengthened the processes of investment policy formulation and adjustment across AMS and increased AMS understanding and knowledge exchange of key investment issues.



PROJECT INFORMATION

The AECSP has supported six IPRs that were undertaken by the OECD for Malaysia (2013), Myanmar (2014), the Philippines (2016), Lao PDR (2017), Viet Nam (2018) and Cambodia (2018).

Each IPR process involved frequent interaction between the OECD and AMS government officials and the implementation a multi-year and multi-stakeholder research, review and dissemination process that often included:

- i. The establishment of a government inter-agency task force to implement the IPR.
- ii. Detailed analysis involving OECD experts working with government officials.
- iii. Preparation of a draft report and stakeholder workshops to review the report.
- iv. Examination of the draft report by the AMS and OECD Investment Committee.
- v. Finalisation, publication and launch of final IPR report.
- vi. Dissemination activities that include roadshows, stakeholder workshops and the presentation of the IPR at regional and international investment forums.

AMS	Cambodia	Lao PDR	Malaysia	Myanmar	the Philippines	Viet Nam
Supported by:	AANZFTA Economic Cooperation Support Programme					
Timeline	Jul 2015 – Dec 2018.	Apr 2015 – Jul 2017.	Sep 2011 – Nov 2013.	Jul 2012 – Mar 2014.	Dec 2012 – Apr 2016.	Mar 2015 – Dec 2018.
Implementer	OECD and respective AMS					

Regional Forum on Investment Disputes, Resolution and Prevention, 27-28 Nov 2018, Manila, the Philippines.



In addition, the AECSP has developed resources and workshops that have strengthened the relevance and impact of the IPR process and increased AMS awareness of best practices to address investment-related challenges. These include:

- Regional Forum on the IPRs and an Investment Policy Workshop in 2019.
- Technical Workshop on Investment Disputes, Resolution (including Arbitration) and Prevention in 2013.
- Regional Forum on Investment Disputes, Resolution and Prevention in 2018.

Supported By AANZFTA Economic Cooperation Support Programme			
Events/ Activities	Investment Policy Workshop for ASEAN Policymakers	Regional Forum on Investment Policy Reviews	Technical Workshop on Investment Disputes, Resolution and Prevention
Dates	7–8 November 2019	6 November 2019	29–30 July 2013
Location	Kuala Lumpur, Malaysia.	Kuala Lumpur, Malaysia.	Bangkok, Thailand.
Proponents / Implementers	ASEAN Secretariat	OECD and ASEAN Secretariat	ASEAN Secretariat
Participating AMS	All 10 AMS.	Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Singapore, Thailand and Viet Nam.	All 10 AMS.
Number of Participants	53	56	48

*Regional Forum on Investment Policy Reviews,
8 Nov 2019, Kuala Lumpur, Malaysia*



IMPORTANCE OF INVESTMENT POLICY AND GOVERNANCE FOR REGIONAL TRADE IN AANZFTA

Southeast Asia has long been a magnet for international flows of Foreign Direct Investment (FDI). The region owes its success in part to continuous and progressive reforms of investment policies as well as improvements in the ASEAN investment climate over time. Such improving conditions for FDI are the result of progressive and innovative policies across ASEAN's economic integration strategy that have been reinforced by ASEAN agreements with key Dialogue Partners through the ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA). Given the dynamism of the changing world economy and technologies shaping global competition for FDIs and changing industries, ASEAN must remain vigilant and keep updated on the latest best practices in investment policymaking.

With increasing global economic integration, individual AMS can no longer design their investment policies in isolation. The free flow of services and investment are cornerstones of the ASEAN Economic Community (AEC), together with the integration of ASEAN into the global economy, as laid out in the 2025 AEC Blueprint. Achieving these goals requires domestic investment climate reforms in many Member States to facilitate foreign and domestic investment and to contribute to policy harmonisation across ASEAN.

The OECD's IPR is a well-established international tool which provides detailed advice to governments on areas of investment and related policies in order to improve the attractiveness of countries as an investment destination. IPRs provide the necessary impetus for countries to work towards an ever-progressive investment regime that manages to be resilient, inclusive, people-oriented, and integrated

with the global economy. The IPRs also provide indirect benefits to the wider ASEAN and AANZFTA community, including greater transparency and understanding of the investment regimes across ASEAN.

OUTCOMES OF THE PROGRAM

The AECSP-supported IPRs, investment forums and workshops have produced positive and sustained individual, organisational and institutional outcomes for participating AMS. The IPR projects aims, as a longer-term objective, to strengthen national policies and institutions, create a sound investment environment, and facilitate investment flows among the AANZFTA Parties.

1. Improved Investment Reform Governance

The IPR process has provided a platform for continuous efforts to strengthen national policies and public institutions. The establishment of cross-government task forces and the development of an IPR-strengthened AMS investment legislative reform program has empowered national coalitions of reform-minded officials. The IPR process has thus contributed to enhanced inter-agency collaboration and developed groups of officials with the capacity to drive informed investment for development reforms.



The OECD added a voice in areas that needed to be liberalised. It is a credible reference, and its recommendations are given great weight. Because of this book, we can say it will be easier to recommend reforms. That is a key takeaway. The IPR serves as a credible book to be used for our legislative reforms.

Atty. Marjorie O. Ramos-Samaniego, member of the Board of Governors of the Philippine Board of Investments (BOI); the Philippine Investment Lead Negotiator for Investment Agreements

II. Increased Transparency in Inter-Agency Dialogue in the Development of Investment Policies

IPRs have provided comprehensive and detailed reviews of a country's past and current policies and institutions that can affect the investment climate. The project increased transparency, provided valuable information and clarity to policymakers from different ministries and agencies. It also improved engagement with private sector stakeholders, who benefitted from information on the country's overall economic policies as well as on more specific investment policies and procedures.



We joined the IPR to learn more about the OECD best practices, diagnosis and benchmarking. One of the challenges was trying to put all of the implementing agencies under one roof and having the same mindset on the need for reform and improved competition. There were so many inter-agency meetings and follow-ups as the nature of a review require full co-operation to make it happen. The takeaway was that we now have a common goal because of IPR. The key agencies that participated now have a full understanding of the investment environment of the country. Now we work as one to make the reform happen. The OECD IPR review stimulated a dialogue between the government and relevant stakeholders.

Atty. Marjorie O. Ramos-Samaniego, member of the Board of Governors of the Philippine Board of Investments (BOI); the Philippine Investment Lead Negotiator for Investment Agreements

III. Strengthened Partnerships with Other Development Partners

IPR recommendations and the support provided by the AECSP increased donor interest in supporting reforms. The OECD has been working with development partners on the ground to ensure support for the recommendations in areas which are a priority for specific governments. Examples include:

- The IPR for Cambodia included a section on what development partners were doing to support private sector development to allow for dialogue at an earlier stage in the review process.
- In Myanmar, one of the key recommendations was taken up by the World Bank/IFC, which supported the drafting of unified investment law.
- The OECD also liaised closely with the World Bank/IFC during the update of the Lao investment promotion law. The Ministry of Planning and Investment in Lao PDR has since reportedly asked New Zealand for support in implementing one of the recommendations to improve governance at the provincial level.

IV. Increased Understanding of Latest Developments and Best Practices that Addressed Investment Related Challenges in AMS

The workshops: raised awareness of ASEAN officials concerning modern investment policymaking; familiarised them with the latest thinking and research on investment policies; drew lessons learned in individual OECD IPR's conducted over the past decade; disseminated good international practice on key investment issues; discussed good international practice around key investment issues, and; provided examples of successful country cases.



The workshop for policymakers provided insight into investment policies of other AANZFTA parties and updated the participants of the latest thinking on investment issues. The forum had great speakers who were able to share investment best practices and provide examples of successful case studies.

Eric Peh - Assistant Director, ASEAN Division, Ministry of Trade & Industry, Singapore

For instance, the Technical Workshop on Investment Disputes, Resolution (including Arbitration) and Prevention addressed AMS investment-specific needs against the backdrop of increased Investor State Dispute Settlement (ISDS) cases and negotiations of Bilateral Investment Treaties (BITs) and Free Trade Agreements (FTAs) with ISDS commitments.



It was useful for us when they spoke on the importance of managing risks, and negotiating investment agreements under ASEAN and ASEAN+1, because negotiating within or outside of ASEAN is quite challenging due to our limited resources - not only in terms of human resources but also financial resources and timing. The experts' messages have been overall conclusive and important to our understanding.

Cahyo Purnomo - Deputy Director at Indonesia Investment Coordinating Board



After attending the regional forum on Investment Disputes, Resolution and Prevention, I have gained a broader understanding of the issue. The way to prevent a dispute between the government and the investors does not only depend on the negotiation process but also on how to draft Bilateral Investment Treaty text to reduce the risk of dispute. I highly appreciated the fact that the workshop had representatives from Indonesia, which also has a similar economic status as Viet Nam. As developing countries, we have similar concerns related to investment disputes. We have learned a lot and shared information among the AMS to resolve our common issues.

Nguyen Hong Van - Official at the Department of Legislation Ministry of Planning and Investment, Viet Nam (MPI)

V. Policy Adjustments

The IPR's concrete policy recommendations have, in several cases, led to legislative or institutional reforms, or the implementation of new measures. The IPRs provided an objective view of necessary reforms and contributed to the implementation of solutions according to international best practices and domestic objectives.

Myanmar Case Study:

Myanmar underwent its first IPR in 2013 and is currently undergoing a second IPR with the OECD. The IPR process has shaped and led to considerable reforms in the Myanmar market.

This OECD Investment Policy Review of Myanmar in 2013 represented the first international co-operation with the Government of Myanmar on investment

climate reform. After undergoing a significant political transition from a military regime in 2012, the Myanmar government launched an ambitious agenda to strengthen the economy, tackle poverty and promote sustainable and equitable growth. Building an appropriate framework for investment, could help the country attract the type of investment that may contribute to Myanmar's development.

Myanmar faced a series of **key challenges** in the implementation of investment reform.



In 2014, the transparency and the investment approval process were weak and the approval time for investment took too long. There was a lot of discretion of the investment approval agency and two separate investment laws applied for the investment sector. At the time, our challenges included a fragmented investment framework, compliance procedures, complicated screening process, many FDI restrictions, limited investor protection, blanket incentives, no-obligation, multiple land-related challenges, and limited stakeholder consultation.

Phyu Hnin Wutyi - Deputy Director of Directorate of Investment and Company Administration, Myanmar

The IPR process—which included the development of Myanmar's IPR Report, a Roadshow in Yangon and a regional Forum on IPR in 2014—led to significant reforms in Myanmar's investment policies. These included:

Myanmar Investment Law – Until 2016, Myanmar had two separate investment laws—the Foreign Investment Law of 2012 and the Myanmar Citizens Law of 2013. The Myanmar IPR recommended consolidation into one law.



A very significant reform we have done is that we have revised our investment law. Until 2016, we had two investment laws in Myanmar; one is for foreigners and the other one is for local national investors. According to the IPR of Myanmar, we tried to unify two laws into one. Not only did we unify the law, but we also upgraded the law to be consistent with international best practices.

Aung Naing Oo - Permanent Secretary of the Ministry of Investment and Foreign Economic Relations

Myanmar Company Law – Most of Myanmar's legal framework were enacted in the early 20th century, this meant that by 2012 Myanmar lacked any corporate governance framework. The IPR recommended the enactment of new company law.

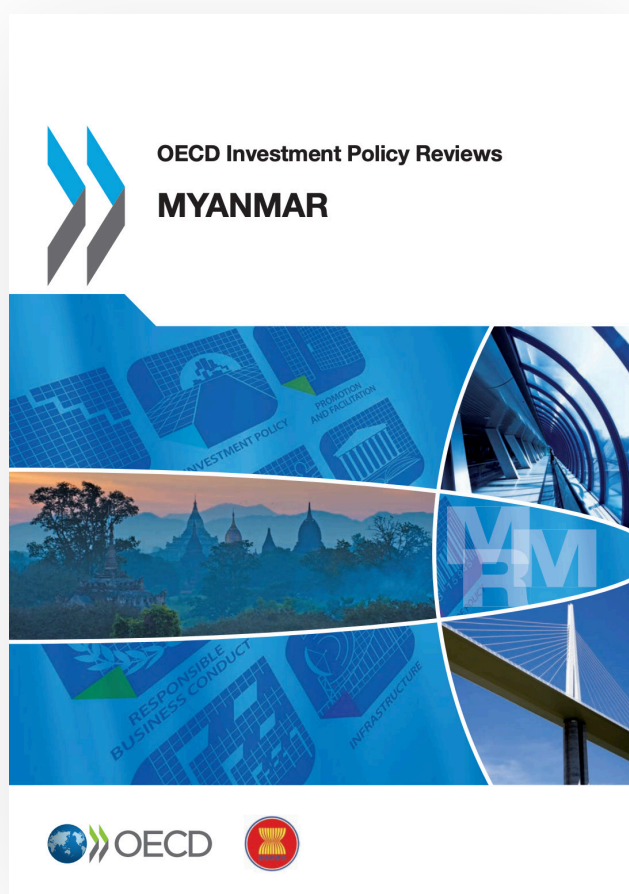


The process for drafting new Company Law started in 2014 after the launch of the OECD investment policy review on Myanmar. It took about three years. In 2017, we enacted the new Companies Law. This is as part of the OECD IPR policy option recommendation. We implemented a new company law. Now, our new Companies Law is one of the most modernised laws in ASEAN because we tried to make our law to be the best one in the region. In addition to the revision of the new Companies Law, we have established an electronic registry in the country.

Aung Naing Oo - Permanent Secretary of the Ministry of Investment and Foreign Economic Relations

Based on these and other investment regulatory improvements, Myanmar has experienced a significant improvement in its investment climate. For instance, in 2014, Myanmar was ranked last (189 out of 189) in starting a business in the World Bank Ease of Doing Business Index Report. But by 2019, Myanmar ranked 70.

After implementing most of the recommendations in the OECD's IPR, Myanmar officials have continued to work to find ways to improve their investment environment. Under the current IPR, Myanmar is finding ways to align its investment policy with new development priorities under the Myanmar Sustainable Development Plan (MSDP).



SUCCESS FACTORS

I. Whole of Government and Modular Approach to Assessing Investment Climate

The Policy Framework for Investment (PFI), developed by the OECD in collaboration with over 60 governments, is the most comprehensive and systematic multilaterally-backed approach for improving investment conditions. The PFI is non-prescriptive and emphasises policy coherence. It eschews one-size-fits-all solutions and encourages policymakers to ask appropriate questions about their economy, their institutions and their policy settings.

To see the benefits of this system, the PFI allowed Myanmar to use a modular approach to address land specific concerns in Myanmar. Myanmar requested the OECD add an additional sector, agriculture and land, to its 2014 IPR. The report, therefore, proposed some policy options for managing land reform in the country.



We started some actions of implementation for land reform. The previous government adopted a National Land Use Policy. After a number of consultations, we eventually adopted the National Land Use Policy. Based on the national land use policy, now we are in the process of drafting a National Land Law. This is one of the policy recommendations made by the OECD and we are trying to improve it.

Aung Naing Oo – Permanent Secretary of the Ministry of Investment and Foreign Economic Relations

II. AECSP Enabled High-Level Political Engagement

High-level political engagement has been critical in undertaking the OECD IPRs. The participation of multiple ministries and key government figures has allowed for an effective whole-of-government approach. Such engagement and buy-in were facilitated by the ASEAN Secretariat and necessary for a successful IPR process.



The team at the ASEAN Secretariat and AECSP programme is very helpful for an international organisation like ours, with limited membership and no country offices or strong networks in some AMS. For instance, in 2012, with the support of the ASEAN Secretariat, we had the opportunity to sit with CLMV countries and tell them the value of undertaking the IPR. For us, it is an essential partnership that broke down barriers.

*Stephen Thomsen - Head of Investment Policy Reviews at
OECD*

III. Benchmarking Tools and Activities

The IPRs allowed for country comparisons and benchmarking of policies against peers in the region and elsewhere. This benchmarking exercise provided an opportunity for AMS to better visualise and understand where they stood in various policy areas vis-à-vis their peers. It supported transparency and provided AMS with the basis to review their policies in light of both their national objectives and the performance and policy choices of other countries.



I consider the experience of OECD countries associated with the prioritisation of investment projects as a key takeaway. As an official who is in charge of conducting investment promotion and facilitation strategy, I can recommend priority sectors of Cambodia's investment projects based on the lessons learned from OECD countries. This knowledge helps me to better assess Cambodia's National Development plans and develop strategies to promote Cambodia's FDI.

*VANN Sereyrath - Deputy Director of the Private Investment
Strategy Analysis Department, Cambodian Investment Board,
Council for the Development of Cambodia*

IV. Increased Dialogue and Learning

Intra-ASEAN exchanges of best practices and lessons learned were also key to AMS continued engagement with investment policy issues. The lessons from completed IPRs were used in the OECD-ASEAN Training on Investment Policy Making. Presentations and documents outlining the process and challenges in completing the IPR and enacting investment reform were extremely informative for other AMS and strengthened regional investment policy dialogues.



I think the workshops are a useful complement to conclude the IPRs. IPRs, by definition, are with individual countries, tailored to the specific needs of those countries. If you want this to be useful from a regional perspective, it's important that countries talk to each other based on the OECD tools, frameworks and recommendations.

*Alex De Crombrughe - Economist and Project Manager at
OECD*

For instance, in the Investment Forum that took place in 2019, discussions on the current investment policy developments across AMS contributed to increasing participants' awareness and understanding of policy options for addressing concerns related to foreign investment.



There are some topics that have been discussed in our government regarding investment policy, such as the negative list of investment. In the workshop, we learned that some countries in ASEAN are more open towards investment. Therefore, this has also become one of our considerations when formulating the upcoming negative list of investment so that Indonesia could be more competitive to attract investment.

Haryo Yudho - Section Head for Agriculture, Fishery, and Maritime at Indonesia Investment Coordinating Board

CONCLUSION

Through the support of six IPRs and investment policy workshops and forums, the AECSP has improved the governance and transparency of investment policy formulation and adjustment across AMS and increased AMS understanding and knowledge exchange of issues relevant for their investment needs. The project has increased AMS capabilities to respond proactively to their national, regional, and global challenges and objectives.

This Case Study shows connections between improvements to investment governance and reforms across AMS, and AECSP supported IPRs, benchmarking tools, and specific resources and activities. The Case Study findings also highlight the contribution of the IPRs to the implementation of the AANZFTA Investment Chapter by deepening and broadening cross-country linkages and assisting AMS to address impediments to expanding trade and investment. Continued support for future IPRs and other investment-related initiatives will ensure that AMS continue to work towards an ever-progressive investment regime that is resilient, inclusive, people-oriented, and integrated with the global economy.

Regional Forum on Investment Disputes, Resolution and Prevention, 27-28 Nov 2018, Manila, the Philippines





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