

AEC BLUEPRINT 2025 ANALYSIS

LIBERALISATION IN THE INVESTMENT ENVIRONMENT

Foreword

The following report is part of a series which attempts to provide a detailed analysis on the ASEAN Economic Community (AEC) Blueprint 2025. Each report will cover a single element of the blueprint, providing a comprehensive look at past achievements, present problems, and the future plans of the AEC. Special attention will be placed upon the strategic measures outlined in the AEC Blueprint 2025. This report aims to provide insight into the viability surrounding regional economic integration under the AEC.

A. Past Plans

What were the targets in the AEC 2015 Blueprint?

The goal of free flow of investment is a key element in achieving the AEC's first pillar within the 2015 blueprint, which details the creation of a single market and production base. It should be noted that whilst the liberalisation of trade and other ancillary measures do impact the movement of investment, a stringent focus on direct policies regarding investment will be placed upon this paper. Since 1967, several key agreements and actions were adopted in an effort to remove barriers to investment and facilitate investment flows:

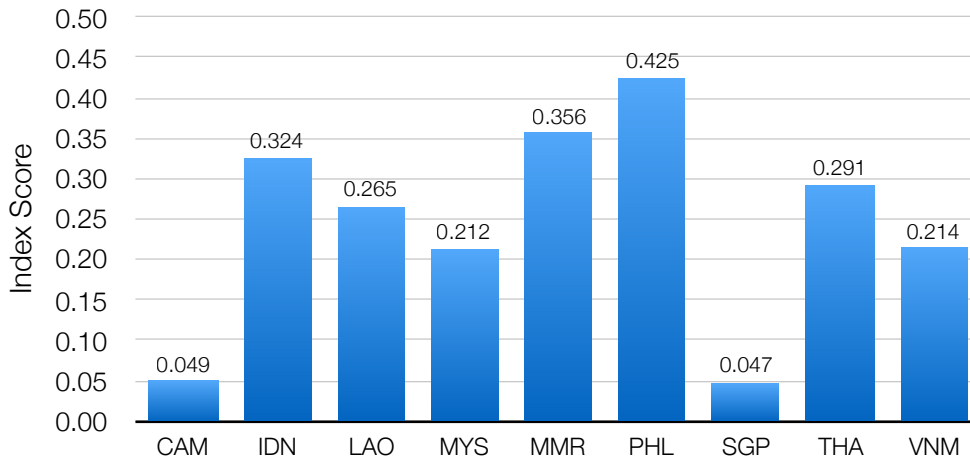
- Investment Guarantee Agreements (IGA)
Signed in 1987, the objective of the IGA was to promote greater investment flows between countries by providing a legal framework which defined investment norms and protection. The IGA introduced several basic principles:
 - Principle of non-discrimination, which standardised investment policy treatment across member states,
 - Compensation in the event of expropriation,
 - Free transfer of funds,
 - Investor state dispute settlement mechanisms.
- ASEAN Investment Area (AIA) Agreement
Endorsed in 1995, the AIA Agreement fostered cooperation, facilitation, and liberalisation within the investment environment of ASEAN. The AIA Agreement introduced reforms to specific sectors on a pre-agreed schedule:
 - Manufacturing, agriculture, fisheries, forestry, mining and quarrying and services incidental to these sectors were to be covered by the AIA by 2010 for the ASEAN-6 and 2015 for the CLMV nations,
 - Two separate lists, the Temporary Exclusion Lists (TEL) and Sensitive Lists (SL) were also introduced, with the TEL to be phased out over time and the SL to be reviewed periodically.
- ASEAN Comprehensive Investment Agreement (ACIA)
Coming into effect in 2012, the ACIA improved upon the AIA and IGA by means of several key measures:
 - Adopting international best practices in relation to investment protection
 - Defining portfolio investment, intellectual property, and other general ambiguities
 - Extending the coverage of previous agreements to third country nationals
 - Introducing Investor-State Dispute Settlement mechanisms (ISDS) and promoting other dispute resolution methods
- AEC Blueprint 2015
The AEC Blueprint solidified the commitments of previous agreements and regrouped policies into a four pronged approach to addressing the freedom of investment:
 - Investment Protection
 - Facilitation and Cooperation
 - Promotion and Awareness
 - Liberalisation

B. Past Achievements

What has been achieved?

- From a broad perspective, developing economies such as Cambodia and Vietnam have more open policies than developed ones such as Malaysia, Indonesia and Thailand. This is emphasised by Figure #1, which measures FDI restrictiveness on a scale of 0 to 1 with higher scores indicate more restrictive investment policies in a nation.

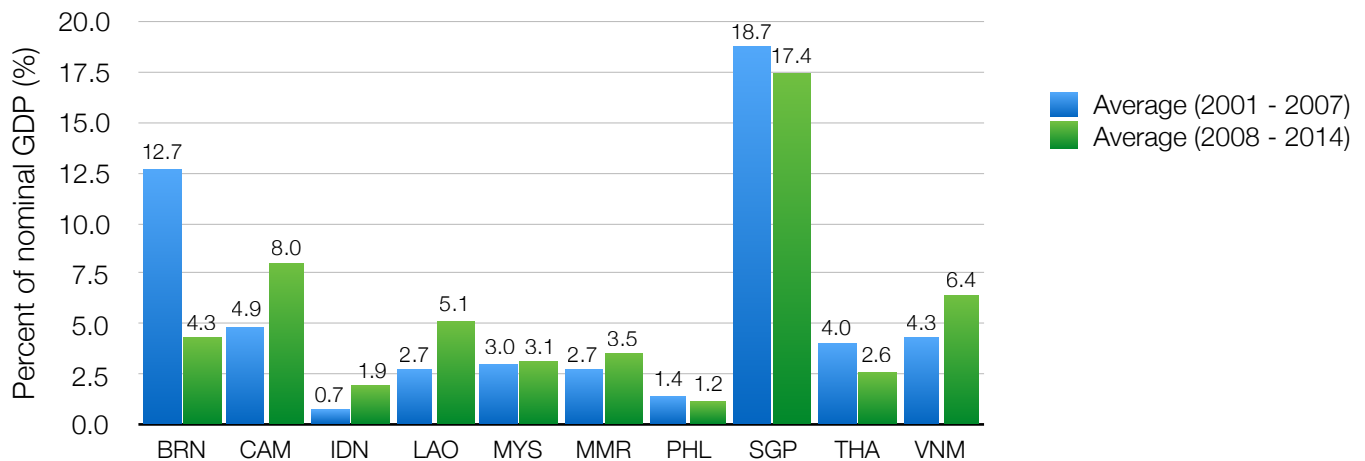
Figure #1: OECD FDI Regulatory Restrictiveness Index (2013)



Source: OECD FDI Regulatory Restrictiveness Index database (<http://www.oecd.org/investment/fdiindex.htm>). No available data for Brunei Darussalam.

- Following the adoption of the AEC Blueprint 2015 in 2007, the uptake for FDI in CLMV nations has been apparent due to market enabling policies. Figure #2 illustrates that a moderate negative correlation between high levels of FDI and low levels of regulatory restrictiveness.

Figure #2: FDI (% of nominal GDP, period annual average) (2001 - 2014)



Source: ASEANstats FDI data (May 2015) and GDP data (September 2015).

- In particular, it was observed that FDI restrictiveness was relatively higher within the communication and transport sectors. (Thangavelu, 2015)
- Since the introduction of the ACIA, the Reservation Lists (RL) for four member states has changed as of the AEM-18th AIA council Meeting in August 2015:
 - Brunei narrowed the scope of sectors on its RL,
 - Laos removed the manufacturing sector from its RL,
 - Myanmar shaved off restrictions on foreign investment in certain products,
 - Indonesia introduced more restrictive changes to its coal and mining sectors.

C. Present Challenges

What are the current issues?

- ACIA commitments do not necessarily match investment policy:
 - In particular, Indonesia's passing of Presidential Regulation No. 39/2014 meant that investment policies surrounding manufacturing, agriculture, mining, and services were more restrictive than ACIA commitments (Damuri et al, 2014),
 - The Philippines has severe constraints in the agriculture, fishery, forestry, and mining sectors; foreign equity limits of more than 40% are still present (Llanto et al, 2014),
 - Whilst Malaysia has followed through on liberalising foreign equity restrictions in its services industries, foreign equity restrictions in its goods sectors and megaprojects are still present (MIER, 2014),
 - Vietnam is currently rolling back its investment protectionist policies, and will not have issues in regards to completing the ACIA commitments if current trends continue.
- There is no standardised definition of sensitive industries, allowing for the ad-hoc classification of sectors which are not covered by the ACIA.
- Standardisation of investment policies across the region is still a long term challenge made harder by several factors:
 - A lack of concrete limitations, where nations such as Singapore and Myanmar do not give specific limitations on foreign equity ownership but rather decide limits on a case by case basis,
 - The Coordinating Committee on Investment (CCI) peer review system has not been used effectively, and most disputes have been settled outside the AIA,
 - A lack of unified commitments and set timeline.

D. Future Plans

What new measures are included in the AEC 2025 Blueprint?

As the ACIA does not possess a concrete timeline and set commitments, the logical step forward would be to formulate these elements in future action plans. This is reflected within the actionable clauses in the AEC 2025 Blueprint, whereby the focus is placed upon implementing previous commitments and sharpening existing mechanisms for investment liberalisation.

E. AEC 2025 Blueprint Analysis

What do the measures entail?

Strategic Measure	Analysis
1 Complete ACIA Commitments	<ul style="list-style-type: none"> • Currently, the ACIA's modality of elimination involves three components: <ul style="list-style-type: none"> - <u>Reservations not Subject to Elimination</u> Under this component, member states create a non-exhaustive list with justifications for RL sectors, - <u>Reservations Subject to Elimination</u> Member states self select RL sectors to phase out, - <u>CCI Peer Review Mechanism</u> Reporting of investment related policy changes and investment disputes so as to inform reform and the development of new policy, • This measure does not involve any new components, but rather focuses on completing commitments under the AEC Blueprint 2015.

2 Reduce ACIA Reservation List

- Identify appropriate approaches or mechanisms for the phasing out and/or reduction of the ACIA Reservation Lists
- In order for the ACIA's modality of elimination to become more effective, the RL of sectors under mode 1 reservations not subject to elimination will need to be narrowed in scope; this will likely be a key topic to be addressed by future CCI meetings,
- Currently, the ACIA lacks an agreed upon timeline and formula for investment liberalisation commitments under mode 2 reservations subject to elimination; the establishment of concrete commitments and a timeline are high priority items for future AEC measures.

3 Enhance CCI Peer Review Mechanism

- Enhance the Coordinating Committee on Investment (CCI) Peer Review Mechanism
- Two Investment Peer Reviews were undertaken in 2012 and 2015 to determine progress within domestic legislation reform in line with ACIA commitments,
- As noted in Section C, the reviews are largely for the reporting of current investment policy status rather than the settlement of any investment disputes (Areethamsirikul, 2008),
- The CCI's prerogatives and powers will need to be revisited and redefined in order to make the peer review mechanism a more effective avenue for investment disputes and policy discussion.

4 Promote ACIA

- Continue to undertake joint promotion of ACIA, as well as of ASEAN as an investment destination
- Between 2012 and 2014, four outbound investment missions from the ASEAN-6 to the CLMV nations were undertaken to promote intra-ASEAN investment,
- A trade and investment road show to the US was held in May 2010 to increase awareness of the ASEAN single investment region,
- Currently, most FDI promotional initiatives are unilateral efforts from ASEAN member states, it is however likely that joint future promotional undertakings such as those discussed above will be held to increase awareness and create opportunities for FDI into the region.

F. Conclusion

What does the AEC 2025 Blueprint mean in terms of the Investment Environment?

- ACIA has limited scope as its liberalisation provisions are limited to five sectors and services incidental to these sectors. The ACIA should broaden its breadth and depth to meet the demand of increasing cross-border investment not limited to the 5 sectors, as the vision of ASEAN gains prominence.
- The state of investment liberalisation ultimately depends upon the political capital available to ASEAN member states, where economic conditions, domestic issues, and foreign policy will dictate the success of the ACIA and future endeavours
- In comparison to ATIGA and the AFAS, the ACIA does not possess a definitive list of commitments nor a set timeline for the implementation of policy; this is reflected within the AEC Blueprint 2025 which calls for further clarification to existing modalities and mechanisms

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Contributing Writer: Ken Li Yee

Editors: Jukhee Hong
Soley Omarsdottir

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Contact Details:

Please contact the CARI for information about this paper: enquiries@cariasean.org

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