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Legal Barriers to Supply Chain Connectivity in ASEAN

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ASEAN at 50: Overview of the Legal Landscape

The Association of Southeast Asian Nations (ASEAN) was formed in 1967 by five founding states – Indonesia, Malaysia, the Philippines, Singapore, and Thailand – with a view to promoting regional peace and stability.¹ With this goal still in mind, ASEAN has evolved over the past decades towards the promotion of greater integration. In the economic sphere, formal integration treaty-making began in earnest in the 1990s, with an agreement to form an ASEAN Free Trade Area to promote trade and investment liberalisation, with efforts to eliminate tariff and non-tariff barriers to intra-ASEAN trade.² The legal process to realise these objectives took place in 1992 with the introduction of a Common Effective Preferential Tariff (CEPT) system for the then members.³ Plans for an ASEAN Investment Area were established in 1998.⁴ In 2009, ASEAN members signed a landmark ASEAN Comprehensive Investment Agreement (ACIA).⁵ In 2008, aiming to strengthen the legal architecture of the Association, ASEAN members adopted the ASEAN Charter, setting out the Association’s purpose and objectives, the legal framework of its institutions, and provisions for dispute settlement.⁶

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¹ The founding document is the ASEAN Declaration, also known as the Bangkok Declaration, signed on 8 August 1967, available at: <http://www.asean.org/news/item/the-asean-declaration-bangkok-declaration>

² See Framework Agreement on Enhancing ASEAN Economic Cooperation, signed on 28 January 1992, and Framework Agreement on the ASEAN Investment Area, signed on 7 October 1998; texts of these and other related agreements and protocols are available at: <http://www.asean.org/communities/asean-economic-community/category/asean-trade-in-goods-agreement> and <http://www.asean.org/communities/asean-economic-community/category/overview-14>. See also generally ASEAN website at: <http://www.asean.org/communities/asean-economic-community/category/asean-free-trade-area-afta-council>

³ The members in 1992 were Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore, and Thailand. Cambodia, the Lao PDR, Myanmar, and Viet Nam subsequently joined ASEAN in 1999, 1997, 1997, and 1995, respectively.

⁴ See Framework Agreement on the ASEAN Investment Area, <http://www.asean.org/storage/images/archive/7994.pdf>

⁵ The text of the ACIA is available at: http://www.asean.org/storage/images/2013/economic/aia/ACIA_Final_Text_26%20Feb%202009.pdf; the treaty came into force on 29 March 2012. It superseded two earlier, more limited, investment treaties. See generally: <http://www.asean.org/communities/asean-economic-community/category/asean-investment-area-aia-council>

⁶ See Charter of the Association of Southeast Asian Nations, available at: <http://www.asean.org/asean/asean-charter/asean-charter>

Apart from the increasing use of binding legal instruments in ASEAN, there has also been an increase in explicit references to good governance and rule of law in the region's documents. These developments demonstrate a growing emphasis on the role of law in ASEAN members' economic relations. Over the past 2 decades, ASEAN has also made greater use of binding treaties in its economic relations with external partners.

ASEAN integration has proceeded through three pillars: the ASEAN Economic Community (AEC), the ASEAN Socio-Cultural Community (ASCC), and the ASEAN Political-Security Community (APSC).⁷ In recent years, ASEAN has accelerated economic integration to establish the ASEAN Economic Community (AEC) by 2015 to establish ASEAN as a single market and production base.⁸

To advance the AEC goals, ASEAN has taken a number of specific trade facilitation actions. For example, ASEAN Member States agreed in 2005 to work towards the establishment of an 'ASEAN Single Window' (ASW)⁹ to increase trade facilitation in the ASEAN Economic Community, by integrating national customs windows for goods clearance. An intra-ASEAN certificate of origin supports the operation of the ASW. As of September 2015, five ASEAN members had joined the initiative – Indonesia, Malaysia, Singapore, Thailand, and Viet Nam.¹⁰ Over the past several years, ASEAN has established various legal instruments to facilitate trade in goods, trade in services, and the flow of investments into and within ASEAN.

In tandem with these developments, members of ASEAN also engaged in bilateral and regional trade liberalisation and integration initiatives, by way of free-trade agreements (FTAs) and bilateral investment agreements (BITs). ASEAN's major regional trade partners include China, India, Japan, the Republic of Korea, Australia, and New Zealand. ASEAN has pursued trade and investment liberalisation arrangements with each of these partners, and is currently negotiating a pan-region Regional Comprehensive Economic Partnership (RCEP) agreement with all six partners.

As ASEAN looks to the next 10 years, the new Economic Blueprint for 2025 aims to chart the course for new targets in trade and investment. While this is an important

⁷ See Roadmap for an ASEAN Community 2009–2015, ASEAN, available at: <http://www.asean.org/resources/publications/asean-publications/item/roadmap-for-an-asean-community-2009-2015>

⁸ The original target for the AEC was 2020; the members decided in January 2007 at the 12th ASEAN Summit in Cebu, Philippines, to bring forward this date to 2015. The ASEAN Economic Community Blueprint (2008) is available at: <http://asean.org/wp-content/uploads/archive/5187-10.pdf>. In 2015, the ASEAN Economic Community Blueprint 2025 was adopted; see <http://www.asean.org/storage/images/2015/November/aec-page/AEC-Blueprint-2025-FINAL.pdf> (accessed 18 October 2016).

⁹ See ASEAN, at <http://asw.asean.org/> (accessed 4 March 2016).

¹⁰ See ASEAN, at <http://asw.asean.org/news/item/vietnam-officially-joins-asean-single-window-customs-system> (accessed 4 March 2016).

guide, it will be necessary to view the targets against the wider context of evolving geopolitical developments, advancements in technology and financial instruments, and other regional and global economic alignments/re-alignments. Examples of the last category of developments will be other significant trade and investment coalitions such as the Trans-Pacific Partnership agreement (TPP),¹¹ the RCEP,¹² and possibly, a Free Trade Area of the Asia-Pacific (FTAAP).¹³ Another example will be the changing economic relationships resulting from the United Kingdom's expected departure from the European Union (popularly known as 'Brexit').

Supply Chains and Production Networks in ASEAN and Beyond

Businesses in ASEAN Member States play a role in regional and global supply chains and production networks.¹⁴ Realising the need to enhance connectivity to further promote such participation, the AEC Blueprint 2025 makes explicit mention of this, setting aims such as the following:

'6.iii. Foster robust productivity growth through innovation, technology and human resource development, and intensified regional research and development that is designed for commercial application to increase ASEAN's competitive edge in moving the region up the global value chains (GVCs) into higher technology and knowledge-intensive manufacturing and services industries;

A.1

4. Explore alternative ways to addressing NTMs such as sectoral or value chain approaches to deal with NTMs.

¹¹ Singapore, Brunei Darussalam, Malaysia, and Viet Nam signed the TPP agreement in February 2016. This agreement is awaiting ratification and implementation. Another trade arrangement which Singapore – as a member of APEC – may participate in is the Free Trade Area of the Asia-Pacific. See APEC, http://www.apec.org/Groups/Other-Groups/FTA_RTA.aspx (accessed 6 March 2016). See also generally President Obama's meeting with ASEAN leaders in the United States in early 2016: <http://asean.usmission.gov/factsheet02172016.html> and the President's remarks at the US-ASEAN Press Conference, Sunnylands, California, United States, 16 February 2016, at: <https://www.whitehouse.gov/the-press-office/2016/02/16/remarks-president-obama-us-asean-press-conference> (accessed 24 March 2016).

¹² The 15th round of RCEP negotiations was held in China in October 2016; see <http://fta.mofcom.gov.cn/list/rcepen/enrcepenews/1/encateinfo.html>

¹³ See APEC, http://www.apec.org/meeting-papers/leaders-declarations/2014/2014_aelm/2014_aelm_annexa.aspx

¹⁴ See ASEAN and UNCTAD, *ASEAN Investment Report, 2013-2014, FDI Development and Regional Value Chains*, 2014.

A.2

11. The objective is to further broaden and deepen services integration within ASEAN, ASEAN's integration into the global supply chains in both goods and services, and enhance ASEAN Member States' competitiveness in services. A strong services sector facilitates industrial development, innovation, and efficiency. The end result is the maximisation of potential contribution of the services sector to economic development and growth.

A.6. Enhancing Participation in Global Value Chains

D.1

69. iii. Enhance market access and internationalisation by extending and developing support schemes for market access and integration into the global supply chains including promoting partnership with multinational corporations (MNCs) and large enterprises to increase market access and opportunities; promote the use of e-Commerce; and enhancing measures to promote exports through mechanisms such as export clinics, advisory services and ROO utilisation...'

These objectives should be viewed against the broader context of a recent Chinese initiative to promote economic cooperation between China and its neighbours. In 2013, President Xi Jinping of China announced the One Belt, One Road Initiative, comprising a land-based connectivity plan based on the ancient Silk Road route linking Europe, Central Asia, China, South Asia, and ASEAN countries, and a maritime 'Belt' connection linking South Asia, North Asia, ASEAN, and Eastern Africa. ASEAN countries have since been exploring possible roles in this evolving new configuration for economic and cultural collaboration. This initiative, which places emphasis on developing infrastructure and connectivity within the Belt and Road region, offers opportunities for ASEAN participation in infrastructure improvement, new supply chains, production networks, investments, and markets. ASEAN will therefore need to actively study and address legal barriers not only within ASEAN, but also in the wider region where these new opportunities will lie.¹⁵

¹⁵ ASEAN already enjoys a trade and investment relationship with China through its Framework Agreement and Investment Agreement. The parties are in the process of reviewing and improving these agreements. The ASEAN-China economic relationship could form a building block within the One Belt, One Road structure as it evolves. The One Belt, One Road initiative has been further elaborated upon by the Chinese government. The plan has significant implications for ASEAN businesses, particularly in the areas of infrastructure (including transport, logistics, customs processes, and distribution of goods), maritime commerce, e-commerce, investment, energy, and other collaborative ventures. Given its broad economic and geographical scope it will also encompass issues requiring clear policies, such as security, privacy, sustainability, and other cross-cutting matters. In the near term, the priority placed within the initiative on physical connectivity is expected to dovetail with the ASEAN Master Plan on Connectivity and its national implementation actions; see <http://asean.org/storage/2016/09/Master-Plan-on-ASEAN-Connectivity-20251.pdf>

Legal Obstacles

The AEC Blueprint and the 2025 version contain specific target outcomes for each member to address trade and investment legal obstacles. Some general observations on such obstacles are apposite here.

First, the barriers to trade and investment activity may take the form of existing laws and legal processes that pose challenges, or a lack of laws. Existing laws may be impediments because of a lack of clarity. For example, the pre-establishment or pre-investment laws and requirements may be unclear in some countries, leading to avoidance or delays in investor activity.¹⁶

Secondly, existing laws may also provide for exclusion of, or high thresholds for, foreign investor activity or capital ownership. For example, while the ASEAN Comprehensive Investment Agreement (ACIA) provides for liberalisation of foreign investment rules in a ‘built-in agenda’, member states still have a significant number of barriers preserved in their Reservation Lists.¹⁷ The AEC Blueprint 2025 recognises the need to address these reservations, and the member states aim to:

[‘i]dentify appropriate approaches or mechanisms for the phasing out and/or reduction of the ACIA Reservation Lists’.¹⁸

For trade in goods, non-tariff measures (not all of which are illegal trade barriers) continue to exist. Examples exist in the form of legal requirements as to product standards, customs requirements, and transport-related requirements.

¹⁶ See e.g. ASEAN: AEC, *One Belt, One Road, to be Growth Drivers for Frontier Markets*, 4 May 2016, Asia Insurance Review, at: <http://www.asiainsurancereview.com/News/View-NewsLetter-Article?id=35820&Type=eDaily> (accessed 7 July 2016):

‘The CLMV markets are revising insurance and related regulations to enable faster sector growth. For example, a new insurance Law in Cambodia took effect from February 2015. In Myanmar, where the insurance market has been in state hands since 1963, 12 private companies were in 2013 granted conditional approval to provide insurance services. While all CLMV markets allow foreign participation, *there is lack of clarity over establishment rules.*’ (CLMV refers to Cambodia, the Lao PDR, Myanmar, and Viet Nam. *Italic emphasis added.*)

¹⁷ See ASEAN, <http://investasean.asean.org/index.php/page/view/acia-reservation-list>. See also, for example, legal barriers in the Philippines: <http://www.sec.gov.ph/wp-content/uploads/2015/08/EONo.-184-The-Tenth-Regular-Foreign-Investment-Negative-List.pdf>, <http://www.rappler.com/business/economy-watch/95385-aquino-list-foreign-investments-limitations> and <http://www.rappler.com/nation/politics/elections/2016/132477-duterte-foreign-ownership-limit>

¹⁸ At para. 15.ii.

Efforts to remove those that have been identified as barriers have been made, but much remains to be done. Relevant initiatives include the ASEAN Single Window, the ASEAN Customs Transit System (ACTS) pilot project,¹⁹ and the ASEAN Trade Repository.²⁰

Thirdly, while ASEAN has established agreements to facilitate transport of goods in the region, the participation and implementation has been uneven. These are:

- the Framework Agreements for Transport of Goods (AFAFGIT, in force from 2000, Protocols at various stages of ratification);
- the ASEAN Framework Agreement on Multimodal Transport²¹ (AFAMT; signed in 2005, in force in C, P, T, V); and
- the ASEAN Framework Agreement on the Facilitation of Inter-State Transport (AFAFIST; signed in 2009, in force in C, L, P, T, V).²²

For air and maritime transport integration, there are two further agreements – the *ASEAN Roadmap for Integration of Air Travel Sector (RIATS)* and the *Roadmap Towards an Integrated and Competitive Maritime Transport in ASEAN (RICMT)*.²³

Fourthly, there is a diversity of legal systems and laws in ASEAN. This will be discussed further below, in the context of issues of cross-border dispute settlement of ASEAN businesses.²⁴ Generally, there is a need to help businesses reduce transaction costs through clear and certain laws. For instance, harmonisation of certain commercial laws within ASEAN can contribute to ease of understanding and application of such laws by the business community. An example of a useful instrument for such harmonisation, which has been adopted by some ASEAN countries, is the United Nations (UN) Convention on Contracts for the International Sale of Goods (CISG).²⁵

¹⁹ See <http://asean.org/asean-to-pilot-customs-transit-system/> and <http://arise.asean.org/asean-customs-transit-system-acts-2/>. See also generally, <http://asean.org/asean-economic-community/sectoral-bodies-under-the-purview-of-aem/customs/agreements-declarations/>

²⁰ See ASEAN, at: <http://atr.asean.org/>

²¹ See ASEAN, <http://asean.org/wp-content/uploads/images/archive/17877.pdf> (accessed 7 July 2016).

²² See ASEAN *Master Plan on Connectivity*, note 15 above, at page 20 and ASEAN instruments at: <http://asean.org/asean-economic-community/asean-transport-ministers-meeting-atm/agreements-and-declarations/> (accessed 7 July 2016).

²³ *Ibid.*

²⁴ See e.g. Simon Pettmen, *Standards Harmonisation in ASEAN: Progress, Challenges and Moving Beyond 2015*, November 2013, ERIA Discussion Paper Series, at <http://www.eria.org/ERIA-DP-2013-30.pdf>; Melli Darsa, *Critical Issues in Investment Law Harmonization in ASEAN – An Indonesian Perspective*, at <http://www.aseanlawassociation.org/11GAdocs/workshop3-indo.pdf>; ASEAN: *Harmonization in Competition Law*, Jakarta Post, 8 March 2016, at <http://www.thejakartapost.com/news/2016/03/08/asean-harmonization-competition-law.html>

²⁵ See <https://www.uncitral.org/pdf/english/texts/sales/cisg/V1056997-CISG-e-book.pdf>

E-Commerce: Gaps in Laws and Harmonisation

E-Commerce is an area of strong interest for ASEAN as electronic business levels certain inequalities, such as geographic ones. Due to the rapidity of changes in technology, forms of user access and availability to even small and medium-sized enterprises (SMEs) to tap into, e-commerce holds much economic promise. However, ASEAN members do not presently have a common set of laws and regulations governing cross-border e-commerce. The legal gap needs to be filled with clear and effective laws to provide the business community with certainty and confidence, allowing e-commerce to grow further. A suite of laws is required to properly address this area, including those raised in the AEC Blueprint 2025, part C.3. The aim under the Blueprint is to develop an ASEAN Agreement on e-Commerce, which includes implementing the following strategic measures:

1. Harmonisation of consumer rights and protection laws;
2. Harmonisation of legal framework for online dispute resolution, taking into account international standards;
3. Development of inter-operable, mutually recognised, secure, reliable, and user-friendly e-identification and authorisation (electronic signature) schemes; and
4. Development of a coherent and comprehensive framework for personal data protection.²⁶

Instruments that promote harmonisation include the UN Convention on the Use of Electronic Communications in International Contracts,²⁷ which provides a system of regulating electronic communications in international commerce (such as the use of electronic mail for offers and acceptances of contracts), and the UNCITRAL Model Law on Electronic Commerce,²⁸ which provides guidance to countries wishing to enact new laws to regulate electronic commerce. Not all ASEAN members have signed the Convention or adopted the Model Law. This means that within ASEAN a diversity of laws still exists in the area of electronic communications and e-commerce.

²⁶ At para. 53.

²⁷ See http://www.uncitral.org/pdf/english/texts/electcom/06-57452_Ebook.pdf

²⁸ See http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/1996Model.html

In the area of supply chain security, efforts are being made to address this through initiatives such as the Safe Authorised Economic Operator (AEO) laws in ASEAN and through the use of mutual recognition agreements. The AEO programme is already operational in Indonesia, Malaysia, Singapore, Thailand, and Viet Nam, and in the Philippines new rules were recently enacted to implement it.²⁹

In other areas affecting e-commerce, there is presently no common, ASEAN-wide legal approach on important matters such as e-transactions security, applicable law, and dispute resolution mechanism in case of a dispute arising from an e-transaction between ASEAN parties, personal data protection, taxation of incomes derived from e-commerce activities, the import and export of dual-use goods, use of drone technology in cross-border trade, and the use of crowd-funding.³⁰

Dealing Effectively with Cross-border Commercial Disputes in the AEC

The diversity in legal systems and laws in ASEAN Member States poses certain challenges to businesses. While such diversity represents a rich legal heritage, it can also mean added transaction costs for businesses. Differences in laws and legal processes in each member state translate into legal and time costs, since it is necessary to navigate through the differences, whether in individual transactions or in case of a dispute. Taking one example, enforcement of contracts – particularly the ease and speed of doing so – is a matter that interests business parties everywhere. A related matter is one of certainty of the law, which assists businesses in the planning of their economic dealings. If a business has to enforce a judgment given in one ASEAN member in another, differences in legal requirements and procedures, and uncertainty in laws of another member state, can lead to delays and added costs. Cross-border arbitration, which has flourished in Asia in the last few decades, provides some advantages that some domestic court systems may not offer, such as speed, efficiency, cost-effectiveness (sometimes), and privacy. More pertinently, arbitration awards are also relatively easily enforced across borders where the venue for enforcement is a signatory to the New York Convention. However, within ASEAN, while all member states are party to the

²⁹ For the four core elements of the SAFE AEO system, see World Customs Organization, Safe Framework of Standards, June 2015, at p. 2 (available at: <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/~/media/2B9F7D493314432BA42BC8498D3B73CB.ashx>).

See also e.g. <http://www.portcalls.com/customs-issues-rules-on-philippine-aeo-program/> and on the new Regulations of May 2016, see: <http://www1.intercommerce.com.ph/wp-content/uploads/2016/06/CMTA-RA-10863.pdf>

³⁰ See e.g. Singapore's agreements with Canada and the Republic of Korea: <http://www.customs.gov.sg/~/media/cus/files/insync/issue09/index.html>. For a discussion on legal and other issues relating to the use of drones, particularly in supply chains, see e.g. <https://channels.theinnovationenterprise.com/articles/105-5-problems-with-using-supply-drones>

New York Convention, not all members have adopted the UNCITRAL Model Law on International Commercial Arbitration, which provides a set of harmonised arbitration rules to promote greater clarity and ease of operation for businesses.³¹ To complement the role of arbitration, specialist courts – such as the Singapore International Commercial Court (SICC) – now exist to handle cross-border commercial cases.³² As part of a court structure, such specialist courts provide published judgments and an opportunity to appeal. This presents ASEAN business parties with another useful option for dispute resolution.

The ASEAN Secretariat also provides avenues for resolving trade/investment problems of commercial parties. An example of a recent initiative is the ASEAN Solutions for Investments, Services and Trade (*ASSIST*) mechanism, to be launched in August 2016.³³ *ASSIST* is intended to be a non-binding, online problem-solving avenue for commercial parties registered in ASEAN, which may wish to submit a complaint regarding particular measures or laws of another ASEAN country. The system will be administered by the ASEAN Secretariat as its Central Administrator and the system provides for clearly published timelines for responses and actions. The country against which a complaint is made may ‘accept’ or ‘reject’ a complaint. If it accepts the complaint, it will generally have 30 working days to find and provide a solution (by way of an online response). This may be a good first stop for commercial parties; how effective and how frequently it will be used remains to be seen. The success of such newer, relatively faster dispute settlement systems would assist smaller businesses. Other means of cost-saving dispute settlement mechanisms are likely to emerge, even as the AEC Blueprint 2025 calls for consideration of online dispute settlement systems.³⁴

³¹ For signatory states of the New York Convention, see <http://www.newyorkconvention.org/countries> and for countries which have adopted the UNCITRAL Model Law, see http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1985Model_arbitration_status.html. Within ASEAN, the Lao PDR, Indonesia, and Viet Nam, for example, have not adopted the UNCITRAL Model Law.

³² The SICC was set up in January 2015; see generally, www.sicc.gov.sg. As of September 2016, four written judgments had already been delivered by the SICC; the judgments are available online at <http://www.sicc.gov.sg/HearingsJudgments.aspx?id=72>. Separately, the enforcement of judgments across borders in ASEAN is another area where more work can be done, since businesses would benefit from greater ease and efficiency in such enforcement of their contract-related judgments. In this context, Singapore adopted the Hague Convention on Choice of Courts Agreement in 2016 to promote greater ease of enforcement of judgments amongst Convention parties; see <https://www.mlaw.gov.sg/content/minlaw/en/news/press-releases/singapore-ratifies-hague-convention-on-choice-of-court-agreement.html>

³³ See <http://assist.asean.org/>

³⁴ Para. 53 of the Blueprint on E-commerce provides for the following possible strategic measure to be put in place in ASEAN:

‘ii. Harmonised legal framework for online dispute resolution, taking into account available international standards ...’.

Conclusion

Looking ahead, ASEAN policymakers will not only have to ensure steady and incremental implementation of AEC 2025 goals within set time frames, but will also have to consider a myriad of new issues, as the regional and global geopolitical landscape evolves and as technological advancements march forward. They will need to keep abreast of the complex amalgam of new technologies, new business models, and new trade and investment opportunities – and possibly, new barriers that develop along with these – to design and implement timely and effective laws and regulations, and explore new legal and policy areas of cooperation and harmonisation.

More specifically, it is recommended that a set of priority actions be targeted in addressing various legal issues and gaps to further facilitate ASEAN trade and investment. These include the following:

1. Full implementation of national Single Window arrangements with a view to full implementation of the ASEAN Single Window;
2. Full implementation of the various transport facilitation agreements;
3. Prompt establishment of modalities and timelines for achieving the goal in the AEC Blueprint 2025 to eliminate/reduce existing investment reservations under the ACIA;
4. Implementation of AEO programmes in all ASEAN Member States;
5. In the area of commercial law harmonisation and enforcement, promotion of:
 - ▶ adoption of international instruments promoting commercial law harmonisation, such as the CISG, the UNCITRAL Model Law on Commercial Arbitration;
 - ▶ instruments promoting more efficient cross-border enforcement of commercial judgments and arbitration awards;
 - ▶ knowledge of newer systems (such as the SICCC) and more established systems (such as regional dispute settlement centres and their services) within ASEAN, which can help promote coherence and uniformity in commercial law principles, and systems which may help resolve disputes speedily (such as *ASSIST*);
6. Establishment of timelines and implementation steps to provide a transparent and coherent set of policies and ASEAN-wide rules on e-commerce transactions.³⁵

³⁵ These need, of course, to be considered in tandem with ongoing ASEAN efforts to promote inter-connectivity and internet penetration in the region. See further discussion below.

In this regard, priority should be placed on the areas set out in the AEC Blueprint 2025, as follows, and with attention being paid to the

necessary precursor steps identified below:

- a. harmonisation of consumer rights and protection laws
 - recommended step: promptly study existing national consumer protection laws **in the area of e-commerce** in all ASEAN Member States, with a view to such harmonisation;
- b. harmonisation of a legal framework for online dispute resolution, taking into account international standards
 - recommended step: promptly undertaking a study of existing international mechanisms and standards on online dispute settlement, to identify and consider the features, systems, and rules most suited to ASEAN e-commerce dispute settlement;
- c. development of inter-operable, mutually recognised, secure, reliable, and user-friendly e-identification and authorisation (electronic signature) schemes
 - recommended step: prompt undertaking of a comprehensive study of existing national laws and bilateral/regional system linkages within ASEAN to develop robust, secure, and efficient schemes;
- d. development of a coherent and comprehensive framework for personal data protection:³⁶
 - Recommended steps: prompt undertaking of a comprehensive study of existing national data protection laws, particularly insofar as they affect electronic transactions, in all ASEAN Member States, to develop a common ASEAN legislative template for protection of personal data.
 - Two related issues are cyber-security, and the regulation of collection and use of 'big data' in ASEAN Member States, both areas of intense interest to businesses and government.³⁷
 - A possible starting point for consideration, which could help accelerate action in this area, would be the negotiation and preparation of a Framework Agreement on ASEAN personal data protection for e-commerce transactions. Such a framework agreement can spur the crystallisation of thought, prioritisation of areas of work, and negotiation of a timetable for concerted, concrete action.

³⁶ See also the ASEAN ICT Masterplan Completion Report (2015) at <http://www.asean.org/storage/images/2015/December/telmin/ASEAN%20ICT%20Completion%20Report.pdf> and the ASEAN ICT Masterplan 2020 (especially pages 23, 26, 29, and 36) at <http://www.mptc.gov.kh/files/2016/03/499/1.pdf>

³⁷ See for example the concerns outlined in 2015 by the Chairman of the Singapore Personal Data Protection Commission, at <https://www.pdpc.gov.sg/news/press-room/page/0/year/All/opening-address-by-pdpc-chairman-at-the-data-privacy-asia-conference-2015-tuesday-25-august-2015-8.45-am-at-the-grand-hyatt-singapore>

In addition to these four areas identified in the Blueprint, it is suggested that a fifth be studied – security issues in cross-border e-commerce, in which the AEO schemes, import and export policies on dual-use or strategic goods, with a view to formulating a common ASEAN policy on trade in such goods.

Some of the above areas are already being addressed in greater specificity and with more speed than others. For example, the ASEAN ICT Masterplan 2020 already sets a number of relevant timelines for the harmonisation of ICT regulations (scheduled for implementation in 2017), while information security (comprising data security, network security best practices, critical information infrastructure coordination, and cyber incident collaboration) are scheduled to be implemented in 2017–2018. An Open Data, Big Data Framework is also scheduled for 2018 under the Masterplan.³⁸

The above are some priority steps that may be taken to address both the existing gaps in ASEAN-wide law and policy, and the lag in implementation of existing initiatives, both of which will go some way to provide traders and investors with greater legal certainty and security.

Beyond intra-ASEAN integration, the next 10 years will also require the bloc to consider – in the face of new, large regional trade alliances and initiatives – how best to leverage on ASEAN’s existing economic integration initiatives, systems, and instruments to ‘plug into’ the wider regional (and global) context so as to generate even more trade and investment for the member states. An example is the Belt and Road initiative, which shares many of ASEAN’s economic and developmental aspirations. Balancing the member states’ prerogative to regulate with investor-protection guarantees offered to foreign investors will also be a matter of keen interest.³⁹ In the global context, developments in the World Trade Organization, the UN’s Sustainable Development Goals, and the Paris Agreement on Climate Change are areas which need to be continually considered in formulating trade and investment policy formulation and updating, as ASEAN moves towards its next decade, and indeed, its next 50 years.

³⁸ See ASEAN ICT Masterplan 2020, note 36 above, at page 29.

³⁹ See, for example, the tone and emphasis in the recent G20 *Guiding Principles for Global Investment Policymaking*, requiring a balance of protection and regulatory powers, at: <http://www.oecd.org/investment/g20-agrees-principles-for-global-investment-policymaking.htm>. Although not an ASEAN document, the issue of balance is increasingly on the minds of policymakers and treaty negotiators in various Asian countries.