

Book Review

A BOOK REVIEW OF “THE ASEAN COMPREHENSIVE INVESTMENT AGREEMENT: THE REGIONALISATION OF LAWS AND POLICY ON FOREIGN INVESTMENT” BY JULIEN CHAISSE AND SUFIAN JUSOH

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The Association of Southeast Asian Nations (hereinafter “ASEAN”) Economic Community, the integrated market between the South East Asian nations, is probably one of the most dynamic region in the world from an economic perspective. One just needs to walk the busy streets of Ha Noi, visit the suburbs of Kuala Lumpur, or fly into Singapore’s Changi Airport to see that ASEAN is where things happen. It is not surprising, then, that ASEAN countries receive around 16% of the world’s foreign direct investment (hereinafter “FDI”) flows. With a growing population and an emerging middle class, ASEAN is entering the world stage as a new key economic player. What makes the ASEAN region so special from an economic perspective is not simply the vast investment opportunities, but also the sheer diversity of each country’s economic fabric. ASEAN is indeed one of the few areas where speculative portfolio flows can coexist with greenfield FDIs in automotive or resource-seeking FDIs in palm oil. The constant growth of the national economies has also propelled intra-ASEAN investment, which as of 2015, is the main source of FDI flows.

The complexity of ASEAN’s regional economy coupled with its immense growth potential, however, requires establishing a regulatory

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framework that protects the rights of investors and, at the same time, facilitates their operations. The ASEAN Comprehensive Investment Agreement (hereinafter “ACIA”) adopted in 2009 is one pillar of the region’s investment regime, as it provides a comprehensive legal discipline that covers all the most important issues from the right to repatriate capital to the right of non-discrimination. Chaisse and Jusoh’s analysis of ASEAN’s approach to investment regulation is an essential and very timely read for anyone who wants to navigate the complexity of investment law in the ASEAN region and understand how investment policy may evolve in the near future. The book indeed covers most important aspects of ASEAN investment law, from the complex standards of protection of investment to the external dimensions of ASEAN investment relations. Moreover, this book will provide useful guidance for the future, given the desire of ASEAN nations to cooperate further on the economic and political fronts. As the two authors suggest, this desire will inevitably lead to a progressive regionalization of investment law: an “ASEAN way” to international investment regulation.

Showing how ASEAN’s approach to investment regulation is different from other previous experience and how it reflects the political and industrial dynamics of South East Asia is, perhaps, the greatest merit of this book. For instance, the two authors demonstrate very clearly how the removal of administrative and regulatory barriers in critical sectors—such as cross-border exploration and extraction of natural resources, investment and harvesting in agriculture, and textile production—actually serve to increase the particular cross-border economic and supply-chain dynamics among Members. Moreover, the increased protection offered by the ACIA to business persons obviously reflects the need of ASEAN countries to progressively encourage the regionalization of local firms. In addition, the two authors aptly analyze how the various policy mechanisms embedded in the ASEAN investment framework—such as the ASEAN Investment Policy Review—ultimately serve to enhance the competitiveness of the region to foreign investors and level the regulatory playing field among ASEAN countries.

The analysis in the book is not limited to the analysis to how investment law enters the ASEAN legal framework. On the contrary, it offers a comprehensive legal analysis of how ASEAN’s principles of investment law are sometimes interpreted differently from the classical international investment law approach or from other regional approaches such as the North American Free Trade Agreement (NAFTA). In each of the six chapters dedicated to the substantive regime of the ACIA, the two authors offer an introduction to the legal origins and jurisprudential evolutions of the various standards of protection in investment law, and then compare them to the equivalent provisions in the ACIA, in order to show similarities as well as

points of divergence. This exercise is particularly useful for those without previous exposure to the complex jurisprudence of international investment law.

Another important feature of this book is its analysis of the external dimension of ASEAN’s investment law and policy. When it comes to international relations, ASEAN has very ambitious plans, which rely on adopting Free Trade Agreements (hereinafter “FTAs”) with strategic partners—the so-called ASEAN+ Dialogue Partners. This regulatory framework and approach on investment is, not surprisingly, a fundamental element of the broader economic deal with those partners. However, it often overlaps with the ACIA, and so untangling the regulatory overlaps and the complex interactions between the ACIA and the ASEAN+ FTAs is another important feature of this book.

If there is any possible shortcoming in the structure of the book is that it fails sometimes to engage with the more academic themes in investment law such as the debate on the right to regulate, which is becoming an increasingly contentious issue in investment law and policy. This is probably a reflection of the authors’ approach, which focused more on the actual development of the ASEAN investment framework and how this fits within the broader regional economic system, rather than its broader tensions with other regulatory objectives. However, this is a relatively small weakness in a book that already provides very useful guidance to a wide audience of lawyers, policymakers, business people, and anyone with an interest in the region; a weakness that could be probably addressed in a future research project by the two authors.

Overall, this book constitutes a fundamental piece of research and a useful tool to understand a complex region like ASEAN. This reviewer is glad to have had the opportunity to read it.

