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A Comparative Study of Investment Regimes in ASEAN Economies

Abstract. For a long period, Southeast Asian economies have been export-oriented, mostly to Europe and North America. To earn foreign exchanges and speed their economic growth, ASEAN countries have moved to combine foreign and national capital to promote indigenous industrial development and native economic growth. For this purpose, ASEAN countries have set up enormous foreign investment incentives to attract foreign capital and enacted related foreign investment regulations many times to catch more foreign investors' eyes. However, the dissimilar economic developmental levels and the different political backgrounds, ASEAN countries have varied investment environment and regulations. Since both the formation of ASEAN and ASEAN members themselves are more focused on attracting foreign investment, one may ask what differences of foreign investment environment and regulations ASEAN member states have? The article hopes to analyze ASEAN member's investment environment and selected members' investment regulations in order to examine the interactions between national developmental demands and foreign investment regulations through a comparative study of ASEAN member states' laws on foreign investment.

Keywords: foreign direct investment, ASEAN, developing economies, investment incentives, investment guarantee

I. Establishment and Goals of ASEAN–Attracting more Foreign Investment?

Historically, Southeast Asia is a region rooted in cultural, ethnic, geographic and developmental diversity but generally transformed into a united bloc. Due to western imperialist invasions in the 19th century, regional conflicts such as territorial disputes and national unification aggravated distrust between neighbors and prolonged fragmentation of Southeast Asia.[1] The common experiences in this region were colonialism in 19th century and hegemonic encounter during the Cold War period. Because at that time the region was badly divided by ideological conflict and war, the emergence of a shared sense of security was extremely slow and difficult. Internal insurgencies and economic hardship forced Southeast Asian countries to waste their resources on defense and to rely on external powers for security and aid. Those factors restricted the opportunity to create a regional identity throughout the region. Guided by the U.S., a number of security arrangements were

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[1] The Sabah dispute between Malaysia and the Philippines led to the early demise in 1962 of the Association of Southeast Asia, which these two countries formed with Thailand just one year earlier. Diplomatic ties between Kuala Lumpur and Manila were severed between 1962 and 1966. There was the Confrontation between Indonesia and Malaysia; the separation of Singapore from Malaysia in August 1965; the escalating war in Vietnam and the Cultural Revolution in China where Chinese leaders openly espoused a policy to export revolutions to Southeast Asia. See Acharya, A.: *Constructing a Security Community in Southeast Asia: ASEAN and the Problem of Regional Order.* London, 2001.

gradually formed during the Cold War period, and the Association of Southeast Asian Nations (ASEAN) was also formed under such an atmosphere.[2] Most of the organizations created during the 1950s and 1960s were subject to a number of limitations including geographic, temporal, functional, and ideological ones. Even so, currently there are several potential advantages for future cooperation in this region. Firstly, there are billions of hard-working people constructing their nations after independence. It has also been fuelled by an "extraordinary growth in inputs like labor and capital rather than by gains in efficiency."[3] Furthermore, Southeast Asian economies have been export-oriented from the 1950s onwards.[4] They exported mostly to Europe and the U.S. but intra-Asian trade has always been relatively less dynamic.

The ASEAN was established with the signing of the "Bangkok Declaration" on 8 August 1967 in Bangkok, Thailand. The five original members were Indonesia, Malaysia, Singapore, Thailand and the Philippines. Brunei joined ASEAN in January 1984. Following with Vietnam's admittance, Laos, Myanmer, and Cambodia have become the new members of ASEAN sooner or later. The Bangkok Declaration united ASEAN members in a joint effort to promote economic cooperation and the welfare of the people in the region. The Declaration set up guidelines for ASEAN's activities and defined the aims of the organization. Under the Declaration, the ASEAN countries came together with three main objectives. First, ASEAN plans to promote economic, social and cultural cooperation in this region. Second, it strives to safeguard the political and economic stability in this region. Third, it aims to serve as a forum for the resolution of inter-regional differences. Within ASEAN, internal affairs between member states have emphasized economic, social, cultural, and security cooperation,[5] especially the progress in economic integration.

Indeed, except the security reason, the ASEAN had intended to increase the organization's international leverage and the region's economic prosperity at the beginning. When the world's economic structure moves toward regional economic cooperation such as the successful formations of the "European Union" (EU) and "North America Free Trade Area" (NAFTA), the future development of ASEAN had been deeply influenced by such a tend of regional economic integration. First, Southeast Asian countries feared becoming outsiders in a world increasingly divided into trading blocs and further sensed the need to create a fallback position, should the Uruguay Round collapse.[6] In addition, the ASEAN nations whose legitimacy depended heavily upon the high economic growth rates delivered to their electorate created the ASEAN Free Trade Area (AFTA) in the hope that it would bring in increased foreign investments to support the high growth rates.[7] Lastly, the ASEAN

[2] Romano, C. P. R.: Can You Hear Me Now? The Case For Extending The International Judicial Network. Symposium: Anti-Competitive Behavior and International Law. *Chicago Journal of International Law,* 10 (2009) 1, 233–267.

[3] Dale, R.: Debunking Myths of Modern Asia. *International Herald Tribune,* Nov. 4, 1994.

[4] Tan, G.: ASEAN Economic Development and Cooperation. Singapore, 2000, 6, 7–34.

[5] The ASEAN Declaration states that the aims and purposes of the Association are: (1) to accelerate economic growth, social progress and cultural development in the region and (2) to promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries in the region and adherence to the principles of the United Nations Charter. See ASEAN Declaration signed in Bangkok, 8 August 1967.

[6] Tan, L. H.: Will ASEAN economic integration progress beyond a free trade area? *International and Comparative Law Quarterly,* 53 (2004) 4, 935–967.

[7] *Ibid.*

members worried that their markets might begin to look less attractive to foreign investors due to the rise of neighbours, P. R. China and India.[8] This reasoning opened to the thinking that led of creation of AFTA by the leading members of ASEAN. Although ASEAN countries were hesitant at the beginning, they have since adopted the "Asia-Pacific Economic Cooperation" (APEC) cause as their own and made major progress for liberalization and facilitation for many years.[9] The most remarkable accomplishment in ASEAN economic cooperation was the creation of the AFTA scheme similar to NAFTA. AFTA is an agreement by the ASEAN member states concerning local manufacturing in the region and designed to lower intra-regional tariffs and put country-of-origin regulations in place.[10] The main reason for formation of AFTA is not to promote internal trade and investment within its members; rather, to group a strong block for international competitiveness and attract foreign investors.

Since the ASEAN leaders were keen on seeking economic gains from foreign investors, it seems that the future cooperation of ASEAN is more focused on attracting investment from within and from outside of ASEAN members, instead of internal trading. In October 2003, the ASEAN leaders gave impetus to the original thought by signing the Bali Concord II to realize the vision of an ASEAN common market by 2020.[11] These efforts are designed to facilitate the flow of goods within ASEAN so as to further AFTA's goals of deeper regional integration and attracting more investment from extra-regional sources. Although its position is one of the most successful examples of regional integration in the Asia-Pacific area, there is no doubt that ASEAN still has to deal with integration difficulties relating to developmental gaps between well-developed and less-developed members, in particular Cambodia, Laos, Myanmar and Vietnam. Acknowledging the need to narrow the developmental divide among member states, ASEAN leaders had reached an agreement to create an ASEAN Community by 2020, known as the Bali Concorde II, made up of three components including the ASEAN Political-Security Community, the ASEAN Socio-Cultural Community and the ASEAN Economic Community (AEC) under ASEAN Sectoral Ministerial Bodies.[12] It is believed that the Bali Concord II appears to map out a different course for ASEAN economic cooperation, namely deeper integration under regionalism.

[8] Haas, D. A.: Out of Others Shadows: ASEAN Moves toward Greater Regional Cooperation in the Face of the EC and NAFTA. *American University Journal of International Law and Policy*, 9 (1994) 3, 809.

[9] Rennie, J.: Competition Provisions in Free Trade Agreements: Unique Responses to Bilateral Needs or Derivative Developments in International Competition Policy? *International Trade Law and Regulation*, 15 (2009) 2, 57–71.

[10] See Agreement on the Common Effective Preferential Tariff Scheme for the ASEAN Free Trade Area, Singapore, 28 January 1992, available on http://www.aseansec.org/12375.htm (last visited on May 27, 2010)

[11] Sucharitkul, S.: Report on the Second China–ASEAN Expo. 18–21 October 2005, Nanning, Guangxi, China. *Chinese Journal of International Law*, 5 (2006) 2, 397.

[12] At the 11th ASEAN Leaders' Summit in December 2005, it was agreed to put forward the goal of realizing an ASEAN Economic Community by 2015. The establishment of ASEAN Economic Community (AEC) is spearheading ASEAN regional integration. The AEC is envisioned to create a single market and production base characterized by a free flow of goods, services, investment, capital and skilled labor by 2020. See Habito, C. F.–Aldaba, F. T.–Templo, O. M.: *An Assessment Study on the Progress of ASEAN Regional Integration: The Ha-Noi Plan of Action toward ASEAN Vision 2020*. REPSF Project No. 03/006b, by Ateneo Center for Economic Research and Development, Manila, the Philippines, Oct. 2004.

The ASEAN leaders are also aware that failure to integrate the diverse markets of ASEAN will mean the group will lose investment and economic opportunities to regional competitors such as P. R. China and India. Not only forming a strong trading bloc, ASEAN member states have adopted a series of measures to catch more foreign investors' eyes. For example, most ASEAN countries such as Singapore, Malaysia, Indonesia, the Philippines, Vietnam, and Thailand have enacted foreign investment laws or concluded investment guarantee agreements with main investor countries. These legislations provide legal protection for bilateral trade investments and ensure foreign investors' interests in those countries. Since both the formation of ASEAN and ASEAN members themselves are more focused on attracting foreign investment, strongly influenced by the establishments of the WTO, EU, and NAFTA, one may ask what differences of foreign investment environment and regulations ASEAN members have? In addition, ASEAN member states face different developmental situations, are their investment regulations similar with each other under a united structure of ASEAN? Or they have designed or adopted different investment measures to fit their national economic goals? This article hopes to analyze those questions from ASEAN member's investment environment and selected members' investment regulations and to examine the relationship between developmental demands and related regulations through a comparative study of ASEAN members' investment regulations.

II. Economic and Investment Environment within ASEAN's Members

For making the comparative study more efficiently, the author had divided the ten member states into three categories including developing economies, small economies and less developed economies depending on their economic developmental levels. Meanwhile, the small economies comprise Singapore and Brunei which are the richest and most advanced countries in this region. The less developed economies are so-called "CLMV" countries, named after the first letter in the following countries including Cambodia, Laos, Myanmar, and Vietnam. Those four countries are the poorest and least developed countries in the region. The rest of the member states all belong to developing economies according to database of International Monetary Fund (IMF) and United Nations (UN).[13]

1. Developing Economies–Four Original Members

a) Kingdom of Thailand

Thailand's economy has undergone dramatic changes over the last 25 years. The country has developed from an agricultural economy based on a narrow range of commodity-export into a newly industrialized country while agriculture still plays an extremely important role in Thailand's economy.[14] More than half of the population depends on the cultivation of

[13] The IMF uses a flexible classification system that considers "(1) per capita income level, (2) export diversification–so oil exporters that have high per capita GDP would not make the advanced classification because around 70% of its exports are oil, and (3) degree of integration into the global financial system." See IMF: *World Economic and Financial Surveys*. World Economic Outlook, Database–WEO Groups and Aggregates Information. Oct. 2009.

[14] Since the 1980s, Thailand's annual economic growth rate has averaged over 9% in real terms. See Central Intelligence Agency: *CIA World Factbook: Thailand.* Feb. 8, 2007, available on https://www.cia.gov/library/publications/the-world-factbook/geos/th.html (last visited on May 28, 2010).

rice for their livelihood.[15] Although the growth of the manufacturing and service sectors has reduced the dominance of agriculture, Thailand retains the leading position of rice exporters in the world. Textiles are the largest export item in Thailand. Thailand's major trading partners include Japan, the U.S., EU, Taiwan, and Singapore. Tourism is Thailand's single largest source of foreign exchange.[16] Thailand joined the establishment of ASEAN and has developed increasingly close ties with other ASEAN members in economic, trade, political, and cultural cooperation. The major foreign policy of Thailand is to support regional stability for ASEAN's interests and to stress a security relationship with the U.S. and other Western countries. Because manufacturing and related infrastructure have developed remarkably in recent years, Thailand attracts more foreign investments than other ASEAN countries. Besides, the Thai government always maintains favorable policies and a strong willingness to greet foreign investments. The major investors are Japan, the U.S., Taiwan, and Singapore. In order to reduce urban and rural citizens' income differentials, the government has tried to encourage the decentralization of economic activities out of Bangkok and also has provided more attractive investment incentives outside of Bangkok.

b) Malaysia

Since 1987, Malaysia has experienced remarkable economic growth averaging between 8% and 9% per year.[17] Malaysia is the world's leading producer of rubber, palm oil, tropical timber, and tin. The major products of Malaysia include electronic components, electronic goods, and textiles and apparel. Malaysia also is one of the largest exporters of semiconductor devices in the world.[18] This country holds abundant natural resources, well-educated workforce, a well-developed infrastructure, and a stable political environment to attract foreign investors. However, because this country is heavily dependant on foreign capital, the economy remains vulnerable to external strikes.[19] Therefore, industrial countries' economic depressions could cause severe repercussions to this country. Malaysia is a founding member of ASEAN and views regional cooperation, especially the relations with its Southeast Asia neighbors, as the most important foreign policy. The Former Prime Minister Mahathir had espoused the "Look East" policy, which emphasized the traditional Asian valuations and viewed Japan and Asia's Newly Industrialization Countries (NIC) as the economic developmental model. Malaysia still maintains traditionally close relations with the Western countries, especially with the British Commonwealth countries.[20]

[15] Pupphavesa, W.: *Globalization and social development in Thailand*. CAS Discussion paper, (2002) 39, paper presented at the Conference on Globalisation and Social Development: Perspectives from Asia and Europe Antwerp, 15–16 April 2002.

[16] *Ibid.,* the major tourists are from Japan, Taiwan and USA.

[17] Manufacturing is the Malaysian economy's largest sector, accounting for an estimated over 40% of GDP after 2000. See Mahbot, S.: *The Malaysian Economy: Challenges and Prospects in Asian Strategy and Leadership Institute, Malaysia Today: Towards the New Millennium*. London, 1997.

[18] Ariff, M.: The Malaysian Economic Experience and Its Relevance for the OIC Member Countries. *Islamic Economic Studies,* 6 (1998) 1, 2–40.

[19] *Ibid.*

[20] Mendl, W.: *Japan's Asia Policy: Regional Security and Global Interests.* London, 1997.

c) Republic of Indonesia

Indonesia is the world's largest archipelagic country, and has abundant natural resources, most of which remain undeveloped. The main exports of Indonesia are timber, petroleum products, and rubber. The agriculture sector still plays the major role in the economy and also employs about half of the population. The economy of Indonesia has been transformed during the past thirty years.[21] Before the 1960s, the economy suffered from serious inflation, and foreign exchange reserves were almost depleted. But changes in economic policies, rising foreign aids and investments, and the huge revenues from petroleum exports in 1970s till 1990s; all let Indonesia's economic growth become steady and brought the inflation under control.[22] Indonesia's major trading partners include Japan, the U.S., and the Asian NIC. Japan is the largest foreign aid lender and the biggest direct investor of this country.[23] Indonesia has made vigorous efforts to deregulate its economy and to attract foreign investment. Because of Indonesian government deregulation and encouragement of the foreign investments to move Indonesia's economy forward, the government recognizes the importance of foreign investments and foreign capitals to sustain Indonesia's economic growth. Foreign investments in Indonesia tripled during the period between 1990s and 2000s. The investments help this country's economy which has averaged growth of over 7% per year for the last decade. Economic indicators also show foreign investments continuing to increase with a remarkable rate.[24]

d) Republic of the Philippines

The Philippines is an archipelago country and located along the southeastern rim of Asia forming a land chain between the Pacific Ocean in the east and the South China Sea in the west. The Philippines principal exports include textiles, minerals, farm products, and electrical equipment, and imports are commodities, capital goods and petroleum products.[25] Major partners of the Philippines are the U.S., Japan, Taiwan and ASEAN countries. However, drought and power supply problems hamper production, while inadequate revenues prevent government pump priming. After adopting a more liberal economic policy followed by a gradually stable regime, rapid economic growth of the Philippines is expected.[26] Muslim separatists in the southern Philippines are still threatening to stall peace negotiations and abort a nascent economic recovery in the area.[27] As to foreign investment,

[21] Haseman, J. B.–Lachica, E.: The U.S.–Indonesia Security Relationship: The Next Steps. *USA–Indonesia Society Publications,* Jan. 2009, 55–87.

[22] Iwan, J.–Azis, I. J.: *Development and Sustainable Future: The Environmental Dimension of Indonesia's Socio-Economic Progress.* Paper presented at the International Conference on Sustainable Future of the Global System, United Nations University, Tokyo, May 24–28, 2000.

[23] *Ibid.*

[24] *Ibid.*

[25] The Philippines is the world's largest producer and exporter of coconuts. Agriculture accounts for over 22% of the GDP and industrial production of goods account for over 28%. See Balisacan, A.–Hill, H.: *The Philippine Economy: Development, Policies, and Challenges*. New York, 2003, 402–496.

[26] The currency speculation that hit the Philippines peso during July 1997 could result in some slowdown in GDP growth. See Balisacan, A.–Hill, H.: *The Dynamics of Regional Development: the Philippines in East Asia.* Cheltenham, 2007, 13–47.

[27] *Ibid.*

the Philippine government has taken different steps in recent years to attract foreign investment. These include foreign exchange liberalization and foreign ownership's relaxation for enterprises which have no investment incentives. Besides, specific economic zone plans like the Subic Bay project have provided more favorable incentives than other areas to attract foreign investments.

2. Small and Rich Economies–Singapore and Brunei

a) Republic of Singapore–As One of "Four Asian Tigers"

Singapore, as one of NICs, has the most advantage economic background over other ASEAN members including its abundant capital and advanced techniques. This small island become an independent country in 1965, and assumed full sovereignty over its territory.[28] Singapore does not have significant natural resources except its deep water harbor. However, it has an excellent geographical location with a well-developed infrastructure and communications system, political stability as well as a well-disciplined manpower. Singapore is a major transshipment hub, a global warehousing and distribution center in the Asia-Pacific area. It poses the leading position of financial and commercial activities in Southeast Asia area. There are many international companies including banks, insurance, shipping, transportation, communication, and services to set up operational headquarters or branches in Singapore. Traditionally, Singapore has adopted a free trade policy. The trade policies and regulations of Singapore are kept very liberal, with non-tariff barriers imposed to protect domestic industries.[29] There are minimum trade restrictions and regulations. As to foreign investment, Singapore also remains high-level attraction to foreign investors with its liberal foreign investment policies and economic growth potential. The investment incentives in Singapore aim to develop this country into an international commercial center, air and sea cargo center, as well as the regional operational headquarters for multinational enterprises and major exporter services. Foreign investors often use Singapore as their operational center to provide management services for their subsidiaries and associated companies or their branches in other Asia countries.

b) Negara Brunei Darussalam–Small and Rich Petroleum-Export Center

Brunei is located on the northern coast of Borneo Island, and is almost completely surrounded by Malaysia. The economy of Brunei is for the most part supported by exports of crude oil and natural gas, with revenues from the petroleum sector accounting for more than 50% of GDP.[30] The major customers for Brunei's petroleum products are including Japan, S. Korea, Taiwan, Singapore, and the U.S. The major suppliers of imports are Singapore, Japan, and the U.S.[31] Most of Brunei's food had to be imported. Agriculture and fisheries are among the industrial sectors which the government has selected for highest

[28] Singapore's port is one of the busiest ports in the world. See McDougall, D.: *Asia Pacific in World Politics.* Boulder (CO), 2007, 201–230.

[29] Over ninety percent of all imports enter into this country free from tariffs and other border measures. See Lin, Ch. H.: Critical Assessment of Taiwan's Trade and Investment Relationship with ASEAN Countries in the Past, Present & Future. *Miskolc Journal of International Law,* 7 (2010) 1, 61–82.

[30] Saunders, G.: *A History of Brunei.* London, 1994, 8–37.

[31] See Lin: *op. cit.*

priority in its efforts to diversify the economy.[32] Owning huge fortunes and the wealthy life, Brunei owns one of the finest social welfare policies in the world, providing all medical services and subsidizing food and housing to its civilians. The government of Brunei also actively encourages foreign investments. New enterprises which meet certain criteria can receive "pioneer" status, exempting profits from income tax for up to five years. There is no personal income tax or capital gains tax. Besides, there are no specific restrictions of foreign equity ownership, but local participation, both shared capital and management, is strongly encouraged. Owning companies in Brunei has to be incorporated locally or registered as a branch of a foreign company and must be registered with the Registrar of Companies. Brunei has joined ASEAN in 1984 and gives its ASEAN membership the highest priority in its foreign relations.[33]

3. Less-Developed Economies–CLMV Countries

a) Socialist Republic of Vietnam

In 1975, North Vietnam and South Vietnam unified and established a new country, "Socialist Republic of Vietnam."[34] Under prolonged wartime and huge military expenditures, Vietnam suffered a shortage of agricultural productions, and insufficient consumer goods. Badly deteriorated living conditions made the government attempt to start a new direction and trend into the international capitalistic system. Since the 1980s, the government adopted "New Economic Policy" and "Doi Moi" to restructure its society and economy.[35] Vietnam has made significant progress in recent years moving away from the planned economic model and toward a more effective market-oriented economic system. In addition, the scope for private sector activity has been expanded, primarily through de-collectivization of the agricultural sector and introduction of laws giving legal recognition to private business. Despite such positive indicators, the country's economic turnaround remains tenuous. Nearly three-quarters of export earnings are generated by only two commodities, rice and crude oil. Vietnam is heavily dependent upon exports such as coffee, tea, and rubber for the success of its future economic development. Since 1986, Vietnam has attempted to open and run its economy by a more rational manner, and adjusted its international relations to reflect the evolving international economic and political situation in Southeast Asia.[36] After withdrawal of its troops from Cambodia in 1989, Vietnam hopes to use the leverage for improved relations with ASEAN, the U.S., and Western countries.[37] In 1995, Vietnam became the seventh member of ASEAN and has stepped up its speed to attract foreign investments from industrial countries and to regularize relations with the global economic

[32] Statistics had showed that per capita of GDP in Brunei is $8,800 and is the highest among the third world countries. See Central Intelligence Agency: *CIA World Factbook: Brunei* (2009). Available on www.cia.gov/library/publications/the-world-factbook/geos/bx.html (last visited on May 28, 2010).

[33] See Lin: *op. cit.*

[34] McMahon, R.–Paterson, Th.: *Major Problems in the History of the Vietnam War: Documents and Essays.* 4th ed., USA, 2007, 5–18.

[35] Yamaoka, K.: The Feasibility of Cuban Market Economy: A Comparison with Vietnam. *Institute of Developing Economies Discussion Papers*, (2009) 189, 2–33.

[36] *Ibid.*

[37] See McMahon–Paterson: *op. cit.*

system.[38] Vietnam' resumption of diplomatic ties with the U.S. and getting its membership of ASEAN have reinforced Vietnam's economic development and made it become an ideal investment area.

b) Lao People's Democratic Republic

Laos is a landlocked country between Vietnam and Thailand. It is one of the poorest countries in the world with a grossly primitive economic infrastructure, and a largely uneducated workforce.[39] It has very limited railroads, a rudimentary road system, poor external and internal telecommunications, and electricity available only in a few areas.[40] Laos has had a communist centrally planned economy. However, the Lao government began to realize that their economic policies were inappropriate, and started some economic reforms with decentralizing control, encouraging private enterprises, and privatizing public enterprises. Laos also had signed related agreements with the World Bank and IMF in 1989 committing to turn itself into extending and deepening the economic reforms.[41] Traditionally, Laos had maintained close ties with Vietnam formalized in friendship and cooperation treaties. In recent years, however, Laos has started to reduce its dependence on Vietnam and to improve its relations with other countries especially P. R. China, Thailand, France, Japan, and the U.S.[42] Among those countries, Laos particularly has well-developed relations with Thailand, Laos' principal route of access to the sea and its primary trading partner. In July 1997, Laos has been admitted by ASEAN and became a formal member.[43] In recent years, the Lao government had enacted a more liberal foreign investment code to attract more foreign capital. However, the poor infrastructure and low-level technical skills still cannot attract foreign investors. In the foreseeable future, the economy of Laos will continue to depend on foreign aids as well as other international funds and sources.

c) Kingdom of Cambodia

The economy of Cambodia remains essentially rural, with the population largely living in the countryside and heavily dependent on subsistence agriculture. Economic recovery is still unexpected because of the continued political unrest and factional hostilities. Since 1994, the government of Cambodia had been open for business with a liberal new investment law offering foreign enterprises some of the most attractive incentives within Southeast Asian countries, including tax holiday for up to eight years, exemption from withholding

[38] See Lin: *op. cit.*

[39] *Ibid.*

[40] Agriculture still makes up the largest sector in Lao's economy, employing 85% of the population and producing 62% of the national income recently. See Central Intelligence Agency: *CIA World Factbook: Laos (2009)*. Available on https://www.cia.gov/library/publications/the-world-factbook/geos/la.html (last visited on May 29, 2010).

[41] Cuyvers, L.–De Lombaerde, P.–Verherstraeten, S.: From AFTA towards an ASEAN Economic Community and Beyond. *Centre for ASEAN Studies Discussion paper*, Jan. (2005) 46.

[42] Sheldon, W. S.: China, Vietnam, and ASEAN: The Politics of Polarization. *Asian Survey*, 19 (1979) 12, 1171–1188.

[43] See Lin: *op. cit.*

tax on dividends, and no nationalization and price control, etc.[44] With rich natural resources and abundant labor, Cambodia offers foreign investors many opportunities for producing or processing the wide variety of local products and consumer goods. Cambodia's low-cost labor, cheap land, and most advantageous investment incentives in Southeast Asia indeed attract many foreign investors' interests. However, Cambodia's political instability is a natural drawback for foreign investors.[45] Due to its long internal armed conflicts, the United Nations was given a mandate to enforce a ceasefire, and deal with refugees and disarmament known as the United Nations Transitional Authority in Cambodia (UNTAC) for a comprehensive peace settlement in October 1991.[46] However, another civil war between Hun Sen and Prince Ranariddh broke out in July 1997, and ASEAN countries delayed the admittance of Cambodia.[47] The civil war and delay of joining ASEAN in 1997 will seriously damage the fragile economy. In recent years, reconstruction efforts have progressed and led to some political stability under the form of a multiparty democracy under a constitutional monarchy. Since then, various international aid organizations had begun crop diversification programs to encourage farmers to grow other crops. Due to the support of foreign investment and tourism development, the recovery of Cambodia's economy has been steadily grown.

d) Myanmar Union

Burma had changed its official name into Myanmar in 1989 after the State Law and Order Restoration Council (SLORC) decided that the old name implied the dominance of Burmese, and the Burmese are just one of the many ethnic groups in the country.[48] Myanmar had suffered internal strife from a smorgasbord of dictators, rebels and guerrillas and most Western countries think it was synonymous with the suppression of democracy and the use of slave labor. Currently, the government of Myanmar is a military regime, led by the SLORC, which allowed a democratic election for a new government in 1990; however, the winner, National League for Democracy, was not permitted to take the reins of government.[49] Myanmar is a poor Asian country and the economy of this country is heavily dependent on the agricultural sector that generates about 40% of GDP and provides employment for 65% of the workforce.[50] The country is also unable to achieve any substantial improvement in export earnings due to falling prices for many major commodity exports. Myanmar had been heavily isolated from international economic forces and had been trying to encourage foreign investment. Myanmar is now cementing economic bonds with ASEAN, which

[44] Leakhena, Ch.: Tax Incentives in Cambodia: Regional Cross-Country Overview. *Journal Study Modern Society and Culture,* 37 (2006), 307–324.

[45] See Lin: *op. cit.*; since 1999, liberalization progress was made on economic reforms and economic growth resumed at 5.0% in recent terms. Also see Cambodia/Taiwan Investors-2: Attractive Incentives. *Dow Jones Asian Equities Report,* 26 Mar. 1997.

[46] *Ibid.*

[47] Vittal, N.: Piecing the Peace in Cambodia: Return of Politics. *Economic and Political Weekly,* 35 (2000) 15, 1283.

[48] Seekins, D. M.: The State and Statism in Burma (Myanmar). Meio University, *The Newsletter,* 52 (2009), 38.

[49] Guyot, J. F.–Badgley, J.: Myanmar in 1989: Tatmadaw V. *Asian Survey*, 30 (1990) 2, 187–195.

[50] See Central Intelligence Agency: *CIA World Factbook: Burma* (*2009).* Available on https://www.cia.gov/library/publications/the-world-factbook/geos/bm.html (last visited on May 29, 2010)

believes constructive engagement is a better form of diplomacy than sanctions.[51] Myanmar's relations with ASEAN had steadily improved since 1995 and officially become a member state of ASEAN in 1997.[52] ASEAN countries, especially Thailand and Singapore, had invested heavily in Myanmar. Myanmar and P. R. China have a traditionally intimate relationship. P. R. China also is the major arms and weapons supplier for the Myanmar regime.[53]

III. Regulations of Investment in Selected ASEAN Countries

As mentioned above, there are ten current member states within ASEAN. For making the comparative study more efficiently, the author had selected five member states into the comparative list. The selection criterion would be focus on the relationship between the economic developmental level and openness of foreign investment regulations, as well as the national demand and governmental attitude toward foreign investment, etc. Because the small economies, mainly Singapore and Brunei which are the richest and most advanced countries in this region, the author had deleted those two states from the comparative list. On the other hand, the less developed economies, especially Myanmar and Laos still adopt hostile measures against foreign investors and their developmental levels still far behind those developing economies in the region; therefore, the author only selected Vietnam from CLMV countries into the comparative list. There are five member states left on the comparative list including Thailand, Malaysia, Indonesia, the Philippines, and Vietnam.

1. Investment Promotion Laws of Thailand

a) Board of Investment and Industrial Estate Authority

The Investment Promotion Law of Thailand was amended in 1977 and follows the same general form of the first Investment Promotion Law enacted in 1963.[54] Both foreign and domestic investors may apply for incentives under this law. Most investment incentives and measures are administrated by the Board of Investment. The Board of Investment imposes ceilings on alien ownership, on a case-by-case basis, for most projects awarded promotional privileges. Conditions may be imposed on promoted projects including minimum capital investment, minimum Thai share participation, requirements to use local raw materials, nationality and number of employees, training of labor, and distribution, designation and quality of products, etc. Except for the Board of Investment, the Industrial Estate Authority of Thailand is authorized by the Industrial Estate Authority Act 1979 to establish and operate industrial estates.[55] It has authority to issue industrial operation permits as well as to provide other permits and facilities within its industrial estates. The Industrial Estate can be divided into four zones including general industrial estate, export processing zone, commercial

[51] Maung, M.: *Totalitarianism in Burma: Prospects for Economic Development.* New York, 1992; also see Wakeman, C.–Tin, S. S.: *No Time for Dreams: Living in Burma under Military Rule*. Lanham (MD), 2009, 25–47.

[52] Ba, A. D.: China and ASEAN: Renavigating Relations for a 21st-Century Asia. *Asian Survey*, 43 (2003) 4, 622–647.

[53] *Ibid.*

[54] Cusick, M.–de Mesa, S.: *The Asian Investment Law Directory*. Hong Kong, 1995.

[55] See Industrial Estate Authority Of Thailand Act B.E. 2522 (1979) Bhumibol Adulyadej, Rex., Given on 19th March B.E. 2522.

zone, and residential zone. Doing business in an export processing zone, there are incentives including exemption from import duty and VAT on imported machinery, equipment and materials under the Board of Investment Promotion Act.[56]

b) Choice of Investment Vehicle and Licensing

Foreign Investors can carry on business in Thailand through sole proprietorships, partnerships, private limited companies or public limited ones. In addition, joint ventures, branches of foreign corporations, representative offices and regional offices may be utilized. The most popular form of business organization is the private limited company. Foreign investors have to comply with the general business laws like domestic investors. In additional, there is no general licensing requirement for foreign investors in Thailand. The proper approach for foreign investors is to obtain a description of the proposed project and identify all applicable policies, laws and regulations. In some areas such as most manufacturing business, there are no restrictions for alien investments.[57]

c) Investment Incentives

To encourage alien companies investing in the remote provinces, the Board of Investment divided the whole Thailand into three zones. Those remote provinces that are far away from the capital-Bangkok enjoy special incentives. The three zones and related investment incentives are described as following.[58]
Zone 1 (Bangkok and five surrounding provinces)
Zone 2 (10 adjacent provinces to Zone 1)

- Exemption from payment of corporate income taxes for a period of from three to seven years.
- Reduction of 50% or up to exemption in import duties on imported machinery.
- Reduction of up to 90% of import duties on imported raw materials for a renewable one-year period.
- Exclusion of dividends from taxable income of shareholders.
- The right to own land and bring alien technicians and managers on the business.

Zone 3 (Other provinces as well as Laem Chabang and Map Ta Phud industrial estates)

- Corporate income tax holiday is eight years; after eight years, it will still enjoy a reduction of 50% for five years.
- Import duty on machinery is exempted.
- Import duty on raw materials used for domestic sales is reduced by 75% for 5 years, renewable annually.
- Import duty for priority activities is exempted.
- Greater than 49% foreign ownership may be allowed for manufacturing projects for the domestic market.

[56] Ratprasatporn, P.: *The Challenges of Foreign Investment In Thailand*. See www.tillekeandgibbins.com/publications/pdf/challenges_for_foreign_investment.pdf (last visited on May 29, 2010).

[57] *Ibid.*

[58] Nikomborirak, D.: *An Assessment of the Investment Regime: Thailand Country Report*. Paper submitted to the International Institute for Sustainable Development (IISD) by Thailand Development Research Institute, Mar. 31, 2004.

Meanwhile, it does not mean that alien companies corresponding with the requirements can enjoy those investment incentives. The Board of Investment controls the final decision of providing the incentives on a case-by-case basis.

d) Alien Business Law, Land Ownership and Foreign Exchange Controls

The Alien Business Law controls three broad categories of business. Categories A and B are closed to aliens, while Category C businesses are open to aliens subject to conditions. It still remains some businesses which do not fall within any of the three categories and are open to alien investments. Besides, there are restrictions on the percentage of alien ownership of commercial banks, finance companies, commercial fishing craft, commercial transportation, commodity export, mining and other enterprises under various laws, government policies, and trade association regulations.[59] In connection with seeking promotion by the Board of Investment, Thai participation will generally be recommended. Moreover, the Land Code of Thailand was amended to allow aliens to own up to 40% of the units in a condominium in 1992. For industrial purposes, a company promoted by the Board of Investment or Industrial Estate Authority may be granted the right to own land. Alien enterprises may lease immovable property and a registered lease of up to 30 years duration provides secure tenure.[60] As to foreign exchange, the Bank of Thailand has announced a number of relaxations of exchange controls since June 1990. The repatriate capital and profits were discretionary and have been increased in recent years. Presently, commercial banks are authorized to process most applications to purchase foreign currency. Foreign currency accounts may be established abroad and in Thailand.[61]

2. Promotion of Investments Act of Malaysia

a) Foreign Equity Distribution

Malaysian government emphasizes that indigenous Malaysians should be allotted a specified percentage of the equity. However, this requirement will be relaxed in favor of investments geared toward production of goods for export wholly or substantially.[62] In general, foreign equity participation in manufacturing projects is subject to the following guidelines:

– Projects that export 80% or more of production are not subject to any equity conditions.
– Projects not falling within the above category may have foreign equity participation of up to 79%, provided at least 51% of products are exported; and depending on

[59] *Ibid.*

[60] Land ownership in Thailand may be individual or shared with other Thais. Any Thai national may purchase land in the Kingdom. Land issues are governed primarily by the Land Code B.E. 2497 (A.D. 1954); Land Reform for Agriculture Act B.E. 2518 (A.D. 1975); Land Development Act B.E. 2543 (A.D. 2000); City Planning Act B.E. 2518 (A.D. 1975); Condominium Act B.E. 2522 (A.D. 1979), (No. 2) B.E. 2534 (A.D. 1991), (No. 3) B.E. 2542 (A.D. 1999), and (No. 4) B.E. 2551 (A.D. 2008); and Rules Relating to Land Allocation B.E. 2535 (A.D. 1992). Land regulations are determined by the Ministry of Interior.

[61] See supra note Nikomborirak 2004.

[62] Edwards, C.: East Asia and Industrial Policy in Malaysia: Lessons for Africa. In: Stein, H. (ed.): *Asian Industrialization and Africa: Studies in Policy Alternatives to Structural Adjustment*. New York, 1995, 245–255.

various factors such as size of the investment, technology involved value-added, utilization of local raw materials and spin-off effects.

- Projects exporting between 20% and 50% of production will generally be allowed between 30% and 51% foreign equity participation, while those exporting less than 20% of production are allowed only a maximum of 30% foreign equity participation.

b) Investment Incentives

Under the Promotion of Investments Act of 1986 and the Income Tax Act of 1967, various incentives are given including:

- Exemption from custom tax of raw materials and some machinery to the companies of which 100% production will be exported or whose production is principally for the domestic market.
- Exemption from income tax to new industrial enterprises for five years.
- Pioneer status, investment tax allowance and reinvestment allowance incentives.
- Double deduction for promotion of exports and incentive building allowance.
- Research and development and training incentives.
- Setting the operational headquarters incentives and the industrial adjustment incentives.[63]

c) Licensing, Foreign Exchange Controls and Land Ownership

A license is required of investors intending to engage in manufacturing activities.[64] The license is to be issued by the Licensing Office, the Ministry of International Trade and Industry (MITI). Malaysia's 1975 Industrial Coordination Act (ICA) governs manufacturing activities. Under the ICA, manufacturing companies with shareholders' funds of 2.5 million ringgit or more or engaging 75 or more full-time employees must apply for a license.[65] For foreign exchange, Bank Negara Malaysia (BNM), Malaysia's governmental bank, is responsible for exchange controls and in charge of supervision of Malaysia's banking system. For foreign investors, the BNM is liberal in regard to foreign exchange inflows and outflows.[66] Capital and profits can be freely repatriated when the remittances do not exceed a specified amount. Additionally, under the land code of Malaysia, foreign investors are not allowed to purchase lands that belong to Malaysian indigenous-reserved ones. However, most foreign investors own the lease rights to utilize lands.

d) Double Taxation Relief and Investment Guarantees

For attracting more foreign investment, the Malaysian government has signed double taxation relief agreements with many countries around Asia, Europe and the American. The government of Malaysia also has signed the Investment Guarantee Agreement with many

[63] See supra note Cusick–Mesa 1995.

[64] APEC: *Guide to the Investment Regime of the APEC Member Economies*. APEC Publications, Singapore, 1998.

[65] Thanadsillapakul, L.: *The Investment Regime in ASEAN Countries*. The Thai Law Forum, 2004. Available on http://asialaw.tripod.com/articles/lawaninvestment10.html (last visited on May 28, 2010)

[66] Sharma, S. D.: The Malaysian Capital Control Regime of 1998: Implementation, Effectiveness, and Lessons. *Asian Perspective*, 27 (2003) 1, 77–108.

countries including Austria, Canada, France, Germany, Italy, Taiwan, United States, United Kingdom (UK), and most ASEAN members.[67] Under the Investment Guarantee Agreement, foreign investors will be protected and provided with the following:

- Protection against nationalization and expropriation.
- Prompt and adequate compensation should the investment be nationalized or expropriated.
- Free outflow of capital, profits and other fees.
- Settlement of Investment disputes under the Convention on the Settlement of Investment Disputes, ratified by Malaysia in 1966.

3. Foreign Investment Law of Indonesia

a) Choice of Investment Vehicle and Foreign Equity

The Foreign Investment Law of Indonesia was amended in 1970 and controls most foreign investment in this country. This Law had been supplemented by numerous government regulations, the most recent of which was issued in June 1994 and is known as the "June Package."[68] The "June Package" fell in line with the government's promise to further deregulate foreign investment. There are two different ways for foreign investors to make equity investments in Indonesia's companies: 1. Establishment of an Indonesia limited liability company under the Foreign Investment Law. 2. Establishment of certain types of Indonesian limited liability financial companies under regulations issued by the Department of Finance.[69] There are other types of investment that do not fall under the Foreign Investment Law and these investments are regulated by various government departments. As a general rule, all business sectors are open for foreign investment unless specifically prohibited. The government publishes a Negative Investment List (DNI) to specify the business areas where foreign investment is prohibited, restricted or conditioned.[70] The restricted sectors include ports, public electricity industries, public transportation, nuclear power generation, drinking water, and media. Under the "June Package," a foreign investor may now form a PMA company (the Indonesian acronym for foreign capital investment) with 100% foreign equity with no minimum capital investment requirements. However, there is the requirement that some divestment take place within 15 years.[71] Although a foreign investor may own up to 100% in a PMA company, certain sectors of the economy exclusive of the DNI list are open only to PMA companies possessing at least 5% Indonesian equity. A PMA company may purchase shares in a domestic investment law company (PMDN) or a company which is neither a PMA nor PMDN company.[72] However, to invest

[67] *Ibid.*

[68] See supra note Thanadsillapakul 2004.

[69] Thomsen, S.: Southeast Asia: the Role of Foreign Direct Investment Policies in Development. OECD Publications, *Working Papers on International Investment*, (1999) 1.

[70] Maarif, S.: *Competition Law and Policy in Indonesia*. Paper presented to ASEAN Competition Law Project, Competition Law and Policy in Indonesia, Mar. 28, 2001, Jakarta, Indonesia.

[71] Adiningsih, S.–Murti, L.–Rahutami, A. I.–Wijaya, A. S.: *Sustainable Development Impacts of Investment Incentives: A Case Study of the Chemical Industry in Indonesia*. International Institute for Sustainable Development (IISD), Center for Asia Pacific Studies, Gadjah Mada University, Indonesia. Winnipeg, Manitoba Canada, 2009, 10–26.

[72] WTO Secretariat: *Trade Policy Review Mechanism Indonesia*. Report by the Government, C/RM/G/52, Nov. 1, 1994.

directly in these types of companies, the PMA Company must have at least 5% total equity. Even though the status of the acquired companies does not change, these acquired companies still may not engage in activities on the DNI list.

b) Investment Incentives

According to the Foreign Investment Law, the government of Indonesia provides a series of investment incentives.[73] These include that reductions or exemptions are granted from import duties and value added taxes for certain imports related to investment.

- Exemption on import duties for the approved projects and businesses.
- Reduction of 50% on import duties for support and auxiliary equipment.
- Exemption on import duties for consumable materials around one year's operations and raw materials around two year's production.
- Exemption on import duties in personal effects for expatriate personal, excluding liquor, tobacco and so on.

c) Licensing, Foreign Exchange Controls and Land Ownership

The foreign investment license granted by the Indonesia Capital Investment Coordinating Board (BKPM) is for a period of 30 years from the date of commencement of commercial production.[74] This term may be extended at the discretion of the government. On the other hand, under the FIL, the government guarantees the foreign exchange for the free remittance includes:

- Dividends proportional to foreign ownership
- Proceeds from the sale of shares to Indonesia nationals
- foreign loan payments including principal and interest
- Compensation in the case of nationalization
- Repatriation of invested capital in case of liquidation

In Indonesia, aliens do not have the right to land ownership but have the lease right. However, the government approves alien joint-venture enterprises owning the construction rights of land in term of between 20 and 30 years.[75] This term may be extended by government approval.

4. Foreign Investment Act of the Philippines

a) Foreign Equity Distribution

Under the Omnibus Investment Code, enacted in 1987, foreign ownership of enterprises was generally limited to forty percent.[76] However, in 1991, the Foreign Investment Act liberalized the entry of foreign investments into the Philippines. Under the 1991 investment code, there are no restrictions on the extent of foreign ownership of export enterprises (sixty percent of the production of which will be exported), or domestic market enterprises

[73] See: Adiningsih–Lestari–Rahutami–Wijaya: *op. cit.*

[74] *Ibid.*

[75] Manasan, R. G.: A Review of Investment Incentives in ASEAN Countries. *Philippine Institute for Development Studies Working Papers*, (1998) 27, 23–45.

[76] *Ibid.*

(enterprises whose production is intended principally for the domestic market).[77] In addition, up to 100% foreign ownership was allowed in areas of activities determined to be "pioneer enterprises" under the Investment Priorities Plan, subject to constitutional or statutory limitations. A 100% foreign equity is generally allowed, unless the enterprise is included in the Foreign Investment Negative List.[78] Moreover, foreign investors who invest in more than 40% of the equity of a Philippine corporation or a partnership must secure prior approval of the Securities and Exchange Commission.

b) Investment Incentives

Under the Investment Code, a wide range of benefits, fiscal, and non-fiscal, are granted to investors engaged in activities considered as "pioneer," or those which sixty percent of the production of which is exported.[79] It includes:

- Income tax holidays from four to six years.
- Preferential customs duty of 3% on imported capital equipment.
- Tax credit for taxes and duties on raw materials.
- Double deduction for labor expense.

Besides, the Export Development Act of 1994 entitles exporters to the following incentives:

– Duty free importation of machinery and equipment and accompanying spare parts until 1997.

– Exemption from deposit of duties at the time of the opening of the letter of credit covering imports.

- Tax credits for increase in current year export revenue within 30 days from export.
- Tax credits for imported ingredients and raw materials for five years.

c) Foreign Exchange Controls and Land Ownership

By the relaxation of the foreign exchange regulations, foreign exchange is freely sold and purchased outside the banking system. As to the capital repatriation and remittance of dividends and profits, foreign investors still have to show proof of inward remittance which must be registered with the Central Bank of the Philippines.[80] Only the citizens of the Philippines or the corporations at least sixty percent of the capital stock of which is owned by the Philippines nationals can own land.[81] The foreign investor is allowed to lease commercial lands up to seventy years, provided that the leased area will be used only for the purposes of the investment.

[77] Kajiwara, H.: The Effects of Trade and Foreign Investment Liberalization Policy on Productivity in the Philippines. *The Developing Economies*, 32 (1994) 4, 492–507.

[78] *Ibid.*

[79] *Ibid.*

[80] Romeo, A.: *Doing Business in the Philippines*. BDO Global Coordination B.V., 4th ed., May 2009, 13–15.

[81] *Ibid.,* 6–12.

d) Double Taxation Relief and Investment Guarantee

The Philippines has double taxation relief agreements with Australia, Canada, France, Germany, Indonesia, Japan, Malaysia, Singapore, Thailand, the U.K., the U.S., and so on.[82] These treaties generally allow the foreign investor to claim a credit for taxes paid to the Philippines government for income earned in the Philippines. The Philippines also has become a full member of the Multilateral Investment Guarantee Agency wherein foreign investments entered through this agency are now insured against risk associated with host government restrictions on currency conversion and transfer, expropriation law, revolution or civil disturbance.

5. Foreign Investment Law of Vietnam

a) State Committee for Cooperation and Investment (SCCI)

For most foreign businesses, the most important agency is the State Committee for Cooperation and Investment (SCCI), which has been established by the Vietnamese government to be a "one-stop shop" for investors.[83] The SCCI approves all applications for foreign investment and supervises the administration of the Foreign Investment Law (FIL). The Vietnam government relaxed restrictions on foreign investment in 1994, allowing overseas investors to hold a 100% share in their companies.

b) Choice of Investment Vehicle

The FIL allows foreign investors to invest in any sector of the Vietnamese economy, but encourages foreign investment in areas which are labor-intensive; generate exports and which utilize Vietnam's raw materials.[84] It also encourages infrastructural development and projects that can earn foreign exchange, like oil exploitation and tourism.[85] Under FIL, it provides four most important forms of foreign investment including:

- The "Joint Venture Company"
- The "Business Cooperation Contract"
- The "Enterprise with 100% Foreign – Owned Capital"
- The "Build – Operate Transfer" Project

Foreign investment projects are now categorized into two groups. Projects that are deemed strategic or vital to national interests are classified as "Group A" projects and are subject to the approval of the prime minister based on the recommendations of the SCCI

[82] *Ibid.,* 16–42.

[83] Trankiem, L.−Ahmed, Z. U.−Jevons, C.−Kiang, T. A.: Doing Business in Vietnam: Implications for International Investors. *Journal of Transnational Management Development*, 5 (2000) 4, 3–24.

[84] Jenkins, R.: Globalization, FDI and Employment in Viet-Nam. *Transnational Corporations*, 15 (2006) 1, 115–142.

[85] Schaumburg-Muller, H.: Rise and Fall of Foreign Direct Investment in Vietnam and Its Impact on Local Manufacturing Upgrading. *European Journal of Development Research*, 15 (2003) 2, 44–66.

and various concerned ministries. All other projects that do not fall within "Group A" category are considered "Group B" projects and are subject to the approval of the chairman of the SCCI.[86]

c) Taxation

The FIL Implementing Regulations specify that foreign investment enterprises will be subject to profits tax at a rate of 25% unless they fall with in specific categories which allow for lower tax rates of 20%, 15%, and 10% for investments.[87] Enterprises will also be eligible for consideration for tax holidays, with the length of the tax holiday depending on the tax rate which applies to the enterprise. Belonging to advanced technology, export-oriented, natural resource exploitation, and heavy industries or infrastructure projects may be applied to lower tax rates and better tax incentives. The Ministry of Finance has issued guidelines to clarify the concessions and the period of time for which they will be available for different types of projects.[88] Basically, investment in undeveloped areas and in priority industries will enjoy larger concessions for longer periods.

d) Import, Export and Foreign Exchange Controls

Foreign enterprises to business cooperation contracts are usually allowed to import equipment and materials related to the investment project. Foreign enterprises may also be exempted from import duties where the imported goods form part of the capital contribution to the enterprise or where raw materials, spare parts and accessories are imported for production of goods for export. Additionally, enterprises with foreign capital are required to deposit all foreign and Vietnamese funds with a government approved bank. All receipts and expenditure of the enterprises must be made through these accounts. The FIL provides that foreign investors have the right to transfer currency abroad when the currency belongs to the share of profit, the principal and interest on any loan, and any payment for provision of technology or services, etc.[89]

e) Property Control and Export Processing Zones

Under the revised Vietnamese Land Law, the land is state owned. Vietnamese organizations and citizens may be granted the right to use land, or may rent the right to use land. Foreigners are not permitted to hold the right to use land, but may rent the right to use land, the maximum duration of the lease being determined by the duration of their investment.[90] In most land use agreements, the rental fee for land use is revised every five years. With the

[86] Meske, W.−Thinh, D. D.: *Vietnam's Research and Development System in the 1990s–Structural and Functional Change*. Research project presented for the Volkswagen Foundation Transformation of Economic, Political and Social Systems, Discussion Paper P 00-401, Berlin Wissenschaftszentrum, Germany, 2000.

[87] Phap, Q. D.: Tax Policy on Foreign Direct Investment in Vietnam and Some Recommendations for Their Amendments and Additions. *Hai-Ha Nguyen Law Office Newsletter*, Oct. 1, 2007.

[88] Tam, L. M.: Reforming Vietnam's Banking System: Learning from Singapore's Model. *Visiting Researchers Series 5*, ISEAS Publications, Singapore, 2000.

[89] See supra note Trankiem–Ahmed–Jevons–Kiang, 2000.

[90] An, D. V.: Foreign Direct Investment in Vietnam–Current Situation and Prospects. *Hai-Ha Nguyen Law Office Newsletter*, Oct. 1, 2007.

growth of the Vietnamese economy, land rental costs will rise sharply over the next decade. Moreover, the FIL Implementing Regulations make provision for the establishment of Export Processing Zones (EPZs) which are geared to export-oriented light industry or services.[91] Enterprises established in these zones enjoyed lower profit tax rates (10% to 15%) as well as other incentives, such as higher quality infrastructure and no import or export duties. All transactions in EPZs have to be carried out in foreign currency, ensuring that the majority of production is exported.[92]

III. Comparative Investment Environment and Regulations among Selected ASEAN Countries

Generally speaking, a country that had more foreign investments or enjoyed higher economic development often sets up more complicated investment regulations or higher-standards to apply investment incentives. Those countries like Thailand and Malaysia have gradually amended related foreign investment regulations to heighten incentives standards or canceled foreign investment incentives. Those countries that need more foreign capitals such as Indonesia and the Philippines still provide favorable investment incentives to foreign investors. As to those countries that start to develop their economies like Vietnam and Cambodia, they often own the most liberal and favorable investment regulations to attract foreign investment.

1. Favorable Investment Conditions of Intra-ASEAN

Thailand possesses many excellent advantages including rich natural resources, well-educated labor, stable social and political order, as well as excellent international relations with other countries. Thailand also has engaged in wide-range economic cooperation with its neighbors like Mekong developmental plan, the North and South growth triangle plan and so on. Thailand has an ideal investment environment for foreign investors and also attracts more foreign investments than other ASEAN countries. When foreign investments make Thai economy enjoy a high-level growth, Thai governmental departments has started to choose foreign investment projects that can benefit its national development and promote native technical level. Thus the Thai government gradually has canceled related investment incentives for labor-intensive industries. The Thai government has led its economic developmental direction to raise native industrial competitiveness and lower foreign investment's influence. In recent years, to balance the differences between urban and rural areas, the Thai government now provides more favorable investment incentives to foreign industries that are located out of Bangkok. However, the poor infrastructure, transportation, and communication in remote areas still can not raise foreign investors' interests.

Since 1980s, Malaysia has transformed itself from a raw materials export-oriented economy into a manufacturing one. It is because Malaysia endeavors to attract foreign investments, liberalizing market restrictions, and privatizing national enterprises. Malaysian government stresses raising indigenous economic conditions and set up related measures to

[91] Dinh, A.: *A Review on Kuchiki's Flowchart Approach to Industrial Cluster Policy Canon Effect in Hanoi Vietnam*. Research paper presented to Hitosubashi University, School of International and Public Policy (IPP), August 2007.

[92] *Ibid.*

protect indigenous industries. From 1980 to 1990, most foreign investment in Malaysia concentrated on export-oriented and labor-intensive industries to earn foreign exchange. Following the positive economic development in the 1990s, Malaysia faces an insufficiency of labor and land as well as rising industrial capital. In addition, under rapid economic growth and enormous foreign investments, the Malaysian government gradually has canceled related investment incentives for labor-intensive industries and only provided investment incentives to high-tech industries.

Because traditional historical experiences taught Indonesia to keep a suitable distance from foreign enterprises, the Indonesian government has adopted a changeable foreign investment policy. One hand they hope that foreign capital can assist indigenous industries and native economic development; but the other hand they are afraid that foreign enterprises will control most Indonesian economic sectors. Thus Indonesian government adopted a two-sided foreign investment policy that is to greet foreign capital on one side but to limit foreign equity and investment categories on the other side. Indonesia attempts to combine native and foreign capital to promote national economic development. Due to its huge domestic market, well-planned specific industrial zones, and gradually liberal investment regulations, Indonesia indeed draws many foreign investments. However, under strong competitiveness from P. R. China and Vietnam in recent years, the total foreign investment sum decreased in Indonesia.

Among ASEAN countries, the Philippines had lower-priced labour than other countries. However, the political instability and deteriorating public order are fatal defects for its economic development. In addition, foreign investments mostly focus on basic infrastructure industries and these products still pour into the Philippines' domestic market. This kind of foreign investment neither promotes foreign exchange earnings nor raises native technical levels. Thus foreign industries in the Philippines form strong competitions for domestic industries and cannot provide any substantial assistance to the Philippines' economic development. Unlike Thailand and Malaysia, the government of the Philippines cannot utilize foreign investments to improve native economic development instead of seriously threat to indigenous industries. That is why the Philippines economy still remains on a low-developed level and cannot grow remarkably. Under the worse economic order, the Philippine government now has started to design a series of more liberal and favorable economic plans and investment regulations to attract different kinds of foreign investments. The Subic Bay developmental plan particularly draws many foreign investors' interests.

Although Vietnam still insists on a socialistic economic developmental model, it has adopted a more liberal policy to improve the worsening economy and approach a market-oriented economic system in recent years. Meanwhile, due to the failure of socialistic economic plans and the lack of former Soviet Union's assistance, Vietnam is eager to gain more foreign capital to resolve its economic problems. To attract foreign investments, Vietnam has established the most favorable investment incentives and regulations to pull foreign capital. After joining ASEAN and normalization with the U.S., enormous foreign investments poured into Vietnam. Since 1992, Vietnam has enjoyed a high economic growth of 7%~8% per year. However, the poor infrastructure and transportation, as well as the wicked administrative efficiency are still Vietnam's defectives.

2. Belief of Comparative Investment Regulations among Selected ASEAN Countries

To maintain stable economic growth, ASEAN countries have amended related foreign investment regulations many times to conform to their industrial demands as well as attract more foreign investments. However, the dissimilar economic developmental levels and the different political backgrounds, ASEAN countries also have varied investment regulations. Among those five selected ASEAN member states, Thailand and Malaysia have more complicated and strict investment regulations. It is because both of them have had numerous foreign investments, and they restrict those foreign investments that cannot bring any benefit or promote native technical levels. On the other hand, Indonesia and the Philippines still need more foreign capital and higher techniques, so they have willingness to provide more favorable investment incentives to foreign investors. As to Vietnam, it has planned to attract more and more foreign investments and to improve its economy in recent years; therefore, it owns the best preferential treatment for foreign investors.

a) Foreign Equity Distribution

Among those five selected ASEAN member states, only Vietnam does not set up any restrictions in the approval of 100% foreign ownership enterprises. Thailand and Malaysia regulate industries that export 80% or more of production and may not be subject to any equity conditions. Meanwhile, Malaysia requires indigenous Malaysian equity that should be 30% or more. In Indonesia, the approval of a 100% foreign equity enterprise must export 100% of production and locate in specified economic zones or applied investment sum is over US$ 50 million. In the Philippines, 100% foreign ownership is allowed in areas of activities determined to be "pioneer enterprises" approved by BOI or that is over 60% export-production. In Vietnam, the government allows 100% foreign equity and encourages aliens to invest in any sector of Vietnam's economy.

b) Import Duty Incentives

Basically, most ASEAN countries provide an exemption or reduction of import duties on imported raw materials or machinery. In Thailand, the government had emphasized the balance between rural and urban economic development and provides more favorable incentives to industries that are outside of Bangkok. In Malaysia, the incentives are dependent on whether this industry belongs to an export-oriented one or not. In Indonesia, the government can reduce or exempt from import duties approved investment projects or support and auxiliary equipment. In Vietnam, foreign enterprises are exempted from import duties where the imported goods form part of the capital contribution to enterprises or where raw materials, spare parts and accessories are imported for production of goods for export.

c) Corporate Income Tax Incentives

To attract more foreign investments, ASEAN countries all provide corporate income tax holiday between 2 and 8 years. In Thailand, the government emphasizes the balance between rural and urban areas and provides longer taxes holiday to industries that are outside of Bangkok. In Malaysia, in order to enjoy longer tax holiday must be enterprises that have to hire over 500 full-time employees or the capital expenditure is over US$ 25 million. The Philippines gives longer taxes holidays to "pioneer enterprises" approved by BOI.

d) Foreign Exchange Controls

In most ASEAN countries, capital and profits can freely be repatriated when the remittances do not violate related requirements and regulations. In Thailand and Malaysia, the governmental banks control but allow foreign currency remittances. In Indonesia, the government guarantees related foreign exchange for free remittances. In the Philippines, aliens have to prove remittances registered by its governmental bank. In Vietnam, foreign investors have to pay five to ten percent income tax that is dependent on the total sum of remittances.

e) Land and Immovable Property Ownership

Most ASEAN countries generally provide aliens the lease rights to use land and immovable property; however, they restrict alien land and immovable property ownership. In Thailand, a company may be granted the ownership of land and immovable property by BOI or the Industrial Estate Authority for industrial purposes. In Malaysia, aliens generally have lease rights to use land but restrict their ownership. In Indonesia, the government approves alien joint-venture companies to own the lease rights. In the Philippines, a corporation, at least 60% of the capital stock of which is owned by Philippine nationals can own land. Vietnam is a socialist country and all lands of Vietnam are state-owned.

As a whole, Thailand has attracted considerable foreign investments in recent years. Under this circumstance, its investment incentives gradually have been reduced and many restrictions had been added in contrast with other ASEAN countries. Due to remarkably economic growth and enormous foreign investments, Thailand has gradually canceled investment incentives for labor-intensive industries. However, because the Thai government hopes to balance rural and urban area's economic development, enterprises that are outside of Bangkok can still enjoy very favorable incentives. Malaysia hopes to transform itself into a developed country in 2020 and needs more direct foreign investments to achieve this goal. Therefore, the Malaysian government still plots a series of investment incentives especially providing the most preferential treatment for high-tech industries. In Indonesia, the government attempts to pull more foreign investment to assist indigenous industrial development. Indonesian government thus provides a lot of favorable incentives including relaxing foreign equity, lengthening lease terms to use immovable property, simplifying investment approval process, and improving related infrastructure. The government of the Philippines has already designed "Subic Bay" as an economic specific zone and a free port, as well as drafted related investment regulations to provide foreign investors with more incentives. Whether the Subic Bay transformational developmental plans succeed or not, it will directly impact on the economy in the Philippines. Vietnam furnishes foreign investors with more favorable investment incentives than other ASEAN countries. Besides, Vietnam's government encourages foreign investments in areas that are labor-intensive, generate exports and those utilize raw materials. Compared with Thailand and Malaysia, Vietnam is different from them and strongly encourages labor-intensive industries. If the foreign investor is under the category of labor-intensive, it is Vietnam that provides the most preferential treatments than the other selected countries and will be the best choice. However, if the foreign investor is under the category of capital-intensive or technical-oriented industries, the poor infrastructure and the insufficient transportation and communication systems in Vietnam will decrease investors' interests. Reviewing these different foreign investment regulations, the author considered that there are definitely different economic developmental levels and demands among ASEAN countries.

IV. Conclusion

ASEAN countries are moving combine foreign and national capital to promote indigenous industrial development and native economic growth. Those foreign economic policies are all guided by governmental departments to achieve "economic dependent development." ASEAN countries set up enormous foreign investment incentives to attract foreign capital. Most ASEAN countries also have learned Japan and Asian NICs' developmental experiences and economic models to establish their economic policies. ASEAN countries also encourage export-oriented industries to earn foreign exchanges and speed their economic growth. ASEAN countries offer different investment incentives based on investment projects and industrial categories. It is because ASEAN countries always exert their economic policies and regulations to direct their industrial development. ASEAN countries restrict aliens to invest in areas of public utilities or native security industries including drinking water, electricity, telecommunications, transportation, nuclear power, and media enterprises. Only investing in export-oriented industries, most ASEAN countries approve enterprises of 100% foreign ownership and provide the most favorable incentives.

Generally speaking, one country's foreign investment regulations can express the degree of dependence on foreign investment. Thailand and Malaysia attract more foreign investment than other ASEAN countries. They gradually have canceled or reduced foreign investment incentives for labor-intensive industries. The governmental departments no longer encourage labor-intensive industries and try to attract high-tech industries to invest in their countries. It shows that Thailand and Malaysia own higher-level and self-appointed economic structures. On the contrary, Indonesia and the Philippines still demand more foreign capitals to promote their industrial growth. They have the willingness to provide more preferential policies to draw foreign investments than Thailand and Malaysia. In other words, Indonesia and the Philippines need foreign capital and investments deeper than Thailand and Malaysia. As to Vietnam, it had provided the best investment incentives to alien businesses. The Vietnamese government particularly encourages labor-intensive industries and those that utilize their raw materials. From those countries' investment regulations and related information, it could be found that lower-level developing countries demand more foreign capital to promote their industrial growth and provide more favorable investment incentives to attract foreign investments. On the other hand, higher-level developing countries want to retake their economic independent rights and have more restrictions in investment incentives. That is why many traditional industries have moved from Thailand to other countries and this is also why the Philippines and Vietnam tended to guarantee and give the most preferential incentives to foreign investors.