

**ASEAN Law Association Conference
Singapore, 28 July 2018**

The Power of One – Unlocking Opportunities in ASEAN through Law

Plenary Session

Cross-border Obstacles in ASEAN and Solutions

Highlights of Research Report ([*Improving Connectivity between ASEAN's Legal Systems to Address Commercial Issues*](#)) Launched in Singapore on 22 March 2018

**Professor Locknie Hsu
School of Law
Singapore Management University**

AEC – some highlights

2007 Economic Blueprint

- Creating a single market and production base with a free flow of goods, services and skilled labour and a freer flow of capital;
- Developing a competitive region with clear competition policies;
- Promoting equitable economic development; and
- Developing a region integrated into global networks.

AEC Blueprint 2025

- A Highly Integrated and Cohesive Economy;
- A Competitive, Innovative, and Dynamic ASEAN;
- **Enhanced Connectivity and Sectoral Cooperation**; A Resilient, Inclusive, People-Oriented, and People-Centred ASEAN; and
- A Global ASEAN.

Overview

- Legal obstacles to doing business in ASEAN
 - SMU research project (Locknie Hsu, Pearlie Koh, Yip Man)

- Main areas of laws examined
 - Corporate barriers (registration, compliance)
 - Trade & Investment barriers
 - Land use barriers
 - Dispute settlement barriers/issues
 - Legal information barriers

Trade Obstacles

- Tariffs
- Non-tariff measures (NTMs)
- Trade Facilitation
 - Growth of e-commerce, privacy and other consumer concerns
 - Technological developments

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ASEAN Information Sources on NTMs

ASEAN Trade Repository (ATR)

+

Matrix of Actual Cases



Integrate to provide an up-to-date, searchable
database

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Examples of suggested solutions

- Laws to support trade facilitation
 - *Digital trade facilitation*
- WTO's Trade Facilitation Agreement (TFA)
- Other useful instruments which ASEAN could study, e.g.
 - MLETR: UNCITRAL Model Law on Electronic Transferable Records
 - FA: Framework Agreement on the Facilitation of Cross-border Paperless Trade in Asia and the Pacific

Investment Obstacles



- Liberalization agendas in goods, services and investment agreements of the AEC
- Enforcement of contracts in ASEAN

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Suggested solution

**ASEAN Priority
Cluster of services**



**Liberalization
and
Facilitation
across:
Goods
Services
Investment**



E-commerce and “Industry 4.0” business activities



Examples of obstacles

- Diverse national laws
- The AEC Blueprint 2025 does not adequately address several legal issues in e-commerce and emerging uses of technology.
Example:
 - Differing laws in ASEAN on the transfer and storage of data – implications e.g. for cloud computing and for value chains.

Example of suggested solution

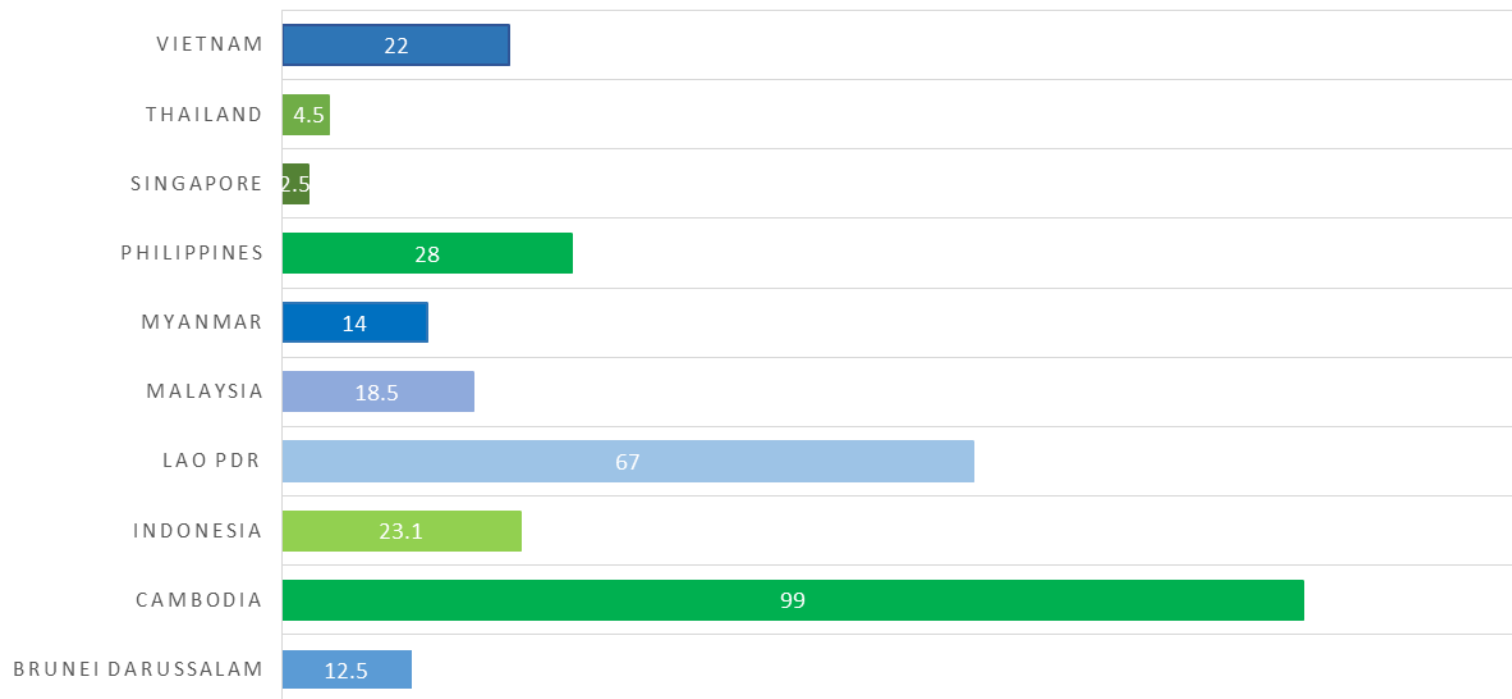
- Establish an AEC Industry 4.0 Committee comprising economic and technology officials of ASEAN, business representatives and academics

Corporate Obstacles

- Registration requirements
- Non-harmonized laws
- Compliance requirements

Corporate Obstacles

ASEAN – Time to Start a Business



Source: World Bank data

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Examples of suggested solutions:

- Need to simplify procedures
 - Electronic forms
 - Online fee payments
 - Fast-track processes

- Investment restrictions

- Harmonization
 - Registration requirements
 - Online registries

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Land Use Barriers

- Titling systems
- Different land rights systems
- Dispute settlement systems

Land Use Obstacles

Examples of difficulties:

- Land use restrictions
- Costly and time-consuming procedures
- Title records management
- Uncertainty in land rights
- Time-consuming dispute resolution
- Unclear compulsory acquisition laws and processes

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Examples of suggested solutions

- Enhancing access to information
 - E.g. Electronic portals

- Enhancing uniform land titling system and governance
 - E.g. electronic land titling systems

- Clarifying compulsory acquisition laws and procedures
 - E.g. grievance procedures and dispute resolution

Dispute Settlement Obstacles

- Enforcement of contracts in ASEAN can be costly and time-consuming, **adding to business costs**.
- It is also **not always easy** to enforce foreign judgments and arbitration awards in ASEAN courts. Related lawsuits can also add to business costs and take up valuable time.
- Examples of issues:
 - Language requirements
 - Access to judgments in English
 - Application of international instruments

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Examples of suggested solutions

- Increase ASEAN judicial dialogue at all levels on cross-border commercial issues
- Where possible, provide access to judgments in English

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The full Report is available at:
<http://www.canasean.com/reports/>.

Thank you.