

## ASEAN CONSUMER LAW HARMONISATION AND COOPERATION

This is the first Western-language research monograph detailing significant developments in consumer law and policy across the Association of Southeast Asian Nations (ASEAN), underpinned by a growing middle class and implementation of the ASEAN Economic Community from 2016. Eight chapters examine consumer law topics within ASEAN member states (such as product safety and consumer contracts) and across them (financial and health services), as well as the interface with competition law and the nature of ASEAN as a unique and evolving international organisation. The authors include insights from extensive fieldwork, partly through consultancies for the ASEAN Secretariat, to provide a reliable, contextual and up-to-date analysis of consumer law and policy development across the region. The volume also draws on and contributes to theories of law and development in multiple fields, including comparative law, political economy and regional studies.

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Luke Nottage , Justin Malbon , Jeannie Paterson , Caron Beaton-Wells  
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## INTEGRATION THROUGH LAW

The Role of Law and the Rule of Law in ASEAN Integration

### **General Editors**

J. H. H. Weiler, European University Institute

Tan Hsien-Li, National University of Singapore

The Association of Southeast Asian Nations (ASEAN), comprising the ten member states of Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam, has undertaken intensified integration into the ASEAN Community through the Rule of Law and Institutions in its 2007 Charter. This innovative book series evaluates the community-building processes of ASEAN to date and offers a conceptual and policy toolkit for broader Asian thinking and planning of different legal and institutional models of economic and political regional integration in the region. Participating scholars have been divided up into six separate thematic strands. The books combine a mix of Asian and Western scholars.

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ASEAN CONSUMER  
LAW  
HARMONISATION  
AND COOPERATION  
Achievements and Challenges

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## GENERAL EDITORS' PREFACE

This monograph is published within the context of a wide-ranging research project entitled, *Integration Through Law: The Role of Law and the Rule of Law in ASEAN Integration (ITL)*, undertaken by the Centre for International Law at the National University of Singapore and directed by J. H. H. Weiler and Tan Hsien-Li.

The Preamble to the ASEAN Charter concludes with a single decision: 'We, the Peoples of the Member States of the Association of Southeast Asian Nations . . . [h]ereby decide to establish, through this Charter, the legal and institutional framework for ASEAN'. For the first time in its history of over four decades, the Legal and the Institutional were brought to the forefront of ASEAN discourse.

The gravitas of the medium, a Charter: the substantive ambition of its content, the creation of three interlocking Communities, and the turn to law and institutions as instruments for realisation provide ample justification for this wide-ranging project, to which this monograph is one contribution, examining ASEAN in a comparative context.

That same substantive and, indeed, political ambition means that any single study, illuminating as it may be, will cover but a fraction of the phenomena. Our *modus operandi* in this project was to create teams of researchers from Asia and elsewhere who would contribute individual monographs within an overall framework which we had designed. The

#### GENERAL EDITORS' PREFACE

project framework, involving several thematic clusters within each monograph, is thus determined by the framework and the place of each monograph within it.

As regards the specific content, however, the authors were free, indeed encouraged, to define their own understanding of the problem and their own methodology and reach their own conclusions. The thematic structure of the entire project may be found at the end of this Preface.

The project as a whole and each monograph within it display several methodological sensibilities.

First, law, in our view, can only be understood and evaluated when situated in its political and economic context. Thus, the first studies in the overall project design are intended to provide the political, economic, cultural and historical context against which one must understand ASEAN and are written by specialists in these respective disciplines. This context, to a greater or lesser degree, also informs the sensibility of each monograph. There are no 'black letter law' studies to be found in this project and, indeed, even in the most technical of areas we encouraged our authors to make their writing accessible to readers of diverse disciplines.

Comparative experience suggests that the success of achieving some of the more ambitious objectives outlined in Article 1 of the Charter will depend in no small measure on the effectiveness of legal principles, legal rules and legal institutions. This is particularly true as regards the success of establishing 'an ASEAN Community comprising the ASEAN Security Community, the ASEAN Economic Community and the ASEAN Socio-Cultural Community as provided for in the Bali Declaration of ASEAN Concord II'. Article 2(2) (n)

## GENERAL EDITORS' PREFACE

stipulates the commitment of ASEAN member states to act in accordance with the principle of 'adherence to multilateral trade rules and ASEAN's rules-based regimes for effective implementation of economic commitments and progressive reduction towards elimination of all barriers to regional economic integration.' The ASEAN member states therefore envisage that rules of law and the Rule of Law will become a major feature in the future of ASEAN.

Although, as seen, the Charter understands itself as providing an institutional and legal framework for ASEAN, the question of the 'role of law and the rule of law' is not advocacy but a genuine enquiry in the various substantive areas of the project as to:

- the substantive legal principles and substantive rules of the various ASEAN communities;
- the procedural legal principles and rules governing institutional structures and decision-making processes;
- implementation, enforcement and dispute settlement.

One should not expect a mechanical application of this scheme in each study; rather, a sensibility that refuses to content itself with legal enactments as such and looks to a 'living' notion of law and institutions is ubiquitous in all the studies. Likewise, the project is sensitive to 'non Law'. It variously attempts to locate the appropriate province of the law in this experience. That is, not only the role of law, but also the areas that are and should remain outside the reach of legal institutionalisation with due sensitivity to ASEAN and Asian particularism and political and cultural identities.

## GENERAL EDITORS' PREFACE

The project, and the monographs of which it is made, are not normatively thick. They do not advocate. They are designed, for the most part, to offer reflection, discuss the pros and cons, and in this way enrich public awareness, deepen understanding of different options and in that respect contribute indirectly to policymaking.

This decisive development of ASEAN has been accompanied by a growing Asian interest in various legal and institutional forms of transnational economic and political cooperation, notably the various voices discussing and showing an interest in an East Asia Integration project. The number of Free Trade Agreements (FTAs) and Regional Trade Agreements (RTAs) has increased from six in 1991 to 166 in 2013, with a further 62 in various stages of negotiations.

Methodologically, the project and many of the monographs are comparative in their orientation. Comparative law is one of the few real-life laboratories that we have in which to assess and understand the operation of different legal and institutional models designed to tackle similar objectives and problems. One should not need to put one's own hand in the fire to learn that it scorches. With that in mind a couple of monographs offer both conceptual reflection and pragmatic 'tool boxing' on some of the key elements featuring in all regional integration systems.

Comparative law is in part about divergence: it is a potent tool and means to understand one's own uniqueness. One understands better the uniqueness of Apples by comparing them to Oranges. You understand better the specialness of a Toyota by comparing it to a Ford.

## GENERAL EDITORS' PREFACE

Comparative law is also about convergence: it is a potent tool and means to understand how what are seemingly different phenomena are part of a broader trend, an insight which may enhance both self-understanding and policy potentialities.

Although many studies in the project could have almost immediate policy implications, as would the project as a whole, this is not its only or even principal purpose. There is a rich theory of federalism which covers many countries around the world. There is an equally rich theory of European integration, which has been associated with the advent Union. There is also considerable learning on Free Trade Areas and the like.

To date, the study of the legal aspects of ASEAN specifically and other forms of Asian legal integration has been derivative of, and dependent on, theoretical and conceptual insight which were developed in different contexts.

One principal objective of ITL and these monographs will be to put in place the building blocks for an authentic body of ASEAN and Asian integration theory developed in, and with sensitivity to, the particularities and peculiarities of the region and continent. A theory and conceptual framework of Asian legal integration will signal the coming of age of research of and in the region itself.

Although the monographs form part of an overarching project, we asked our authors to write each as a 'standalone' – not assuming that their readers would have consulted any of the other titles. Indeed, the project is rich and few will read all monographs. We encourage readers to pick and choose from the various monographs and design their

## GENERAL EDITORS' PREFACE

own menu. There is, on occasion, some overlap in providing, for example, background information on ASEAN in different studies. That is not only inevitable but desirable in a project of this amplitude.

The world is increasingly witnessing a phenomenon of interlocking regional organization where the experience of one feeds on the others. In some way, the intellectual, disciplinary and comparative sensibility of this project is a microcosm of the world it describes.

The range of topics covered in this series comprises:

The General Architecture and Aspirations of ASEAN  
The Governance and Management of ASEAN: Instruments,  
Institutions, Monitoring, Compliance and Dispute Resolution  
Legal Regimes in ASEAN  
The ASEAN Economic Community ASEAN and the World  
The Substantive Law of ASEAN

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Australian Network for Japanese Law and Associate Director of the Centre for Asian and Pacific Law at the University of Sydney (CAPLUS). Luke's sixteen books include *Contract Law in Japan* (Kluwer, 2019, with H. Sono et al.), *International Investment Treaties and Arbitration Across Asia* (Brill, 2018, co-edited with J. Chaisse), *Independent Directors in Asia* (Cambridge University Press, 2017, co-edited with D. Puchniak and H. Baum), *ASEAN Product Liability and Consumer Product Safety Law* (Winyuchon, 2016, co-edited with S. Thanitcul), *Asia-Pacific Disaster Management* (Springer, 2014, co-edited with S. Butt and H. Nasu), *Consumer Law and Policy in Australia and New Zealand* (Federation Press, 2013, co-edited with J. Malbon), and *Product Safety and Liability Law in Japan* (Routledge, 2004). Luke serves on the International Law Association's Committee for the International Protection of Consumers, and has consulted on consumer law matters for law firms worldwide, ASEAN (two projects since 2014), the European Commission, OECD, UNCTAD, UNDP and the Japanese Government. Luke shares an Australian Research Council Discovery grant on 'Evaluating Consumer Product Regulatory Responses to Improve Child Safety'.

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For translations into English of key consumer legislation in Southeast Asia, including their titles, we have relied primarily on references available through the ASEAN Committee on Consumer Protection ([aseanconsumer.org](http://aseanconsumer.org)), such as ASEAN Secretariat (ed.), *Handbook on ASEAN Consumer Protection Laws and Regulation* (ASEAN, 2018).

## ABBREVIATIONS

AADCP	ASEAN-Australia Development Cooperation Program
AANZFTA	ASEAN-Australia-New Zealand Free Trade Agreement
ACA	ASEAN Cosmetics Association
ACCC	Australian Competition and Consumer Commission
ACCP	ASEAN Committee on Consumer Protection
ACMF	ASEAN Capital Markets Forum
ADR	Alternative dispute resolution
AEC	ASEAN Economic Community
AECN	ASEAN Competition Enforcers' Network
AEGC	ASEAN Experts Group on Competition
AFTA	ASEAN Free Trade Area
APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
B2B	Business-to-business
B2C	Business-to-consumer
BIS	Bank for International Settlements
CASE	Consumers Association of Singapore
CCCS	Competition and Consumer Commission Singapore
CEPT	Common Effective Preferential Tariff

## LIST OF ABBREVIATIONS

CPFTA	Consumer Protection (Fair Trading) Act (Singapore)
CLIP	Competition Law Implementation Program (ACCC)
CLMV	Cambodia, Laos, Myanmar and Vietnam
CMIM	Chiang Mai Initiative Multilateralization
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
EU	European Union
FIEG	Financial Inclusion Experts Group
FDI	Foreign direct investment
FTA	Free trade agreement
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GMP	Good manufacturing practice
GSP	General safety provision
HC	High Court
IFG	International Finance Group
ISO	International Organization for Standardization
IRC	International regulatory cooperation
MAS	Monetary Authority of Singapore
MSME	Ministry of Micro, Small and Medium Enterprises
NDG	Narrowing the development gap
NGO	Non-governmental organisation
NTB	Non-tariff barrier
OCPB	Office of the Consumer Protection Board (Thailand)
ODA	Overseas development assistance

## LIST OF ABBREVIATIONS

OECD	Organisation for Economic Co-operation and Development
OTCC	Office of Trade Competition Commission
PRC	People's Republic of China
RAPEX	Rapid Alert System for Non-Food Consumer Products
RCEP	Regional Comprehensive Economic Partnership
SOE	State-owned enterprise
TPP	Trans-Pacific Partnership
TRN	Transgovernmental Regulatory Networks
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UHC	Universal healthcare
UK	United Kingdom
UN	United Nations
UNCDF	United Nations Capital Development Fund
UNCTAD	United Nations Conference on Trade and Development
US	United States of America
VCA	Vietnam Competition Authority
WHO	World Health Organization
WTO	World Trade Organization
YLKI	Yayasan Lembaga Konsumen Indonesia (Indonesian Consumers Organization)