

ASEAN LAW IN THE NEW REGIONAL ECONOMIC ORDER

The fast-growing last decade of strong economic growth of the Association of Southeast Asian Nations has played a critical role in Asia-Pacific regionalism and global trade. This book explores the concept of ASEAN law under the normative framework of the new regional economic order. It examines the roadmap of the new ASEAN Economic Community Blueprint 2025 by evaluating the impact of ASEAN trade agreements on domestic legislation on professional services, financial integration, investment disputes and digital trade. More importantly, it sheds light on the legal implications of ASEAN's agreements with China and India and the potential developments of megaregional trade agreements such as the CPTPP and the RCEP. Hence, the legal analysis and case studies in the book offer a fresh view of Asia-Pacific integration and bridge the gap between academia and practice.

PASHA L. HSIEH is an associate professor of law and Lee Kong Chian Fellow at Singapore Management University (SMU). He is also the co-chair of the Law in the Pacific Rim Region Interest Group of the American Society of International Law and an Executive Council member of the Society of International Economic Law. Prior to joining academia, he served as a legal affairs officer at the WTO Appellate Body Secretariat and as an associate at Shearman & Sterling LLP. He was awarded SMU's Lee Foundation Fellowship for Research Excellence in 2010 and received the Most Outstanding Legal Studies Teacher Award in 2015.

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ASEAN LAW IN THE NEW REGIONAL ECONOMIC ORDER

Global Trends and Shifting Paradigms

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PREFACE

The Doha Round impasse has spurred the proliferation of trade and investment agreements, particularly in the Asia-Pacific region. The rise of populist nationalism has also posed new challenges to regional integration and the multilateral trading system. Against this backdrop, the fast-growing Association of Southeast Asian Nations has been attracting the attention of governments and enterprises.

In this collection, we seek to provide a valuable guide and legal analysis of the new ASEAN Economic Community Blueprint 2025 from regional and global perspectives. Our aim is to assess the theoretical concept of ASEAN law and the substantive impact of mega-regionals and bilateral agreements on commercial law and business operations.

This collection is a collaborative effort among legal experts who specialize in corporate law, international economic law and intellectual property law. Almost all contributors presented at the ASEAN Law Conference, which took place at Singapore Management University on December 7–8, 2017. The contributors have also incorporated the in-depth feedback provided by senior academics, legal counsels and officials from international organizations.

We thank SMU School of Law's Centre for Cross-Border Commercial Law in Asia (CEBCLA) for funding and organizing the conference. Professors Yeo Tiong Min and Goh Yihan (former and current Dean, respectively) and Tang Hang Wu, Academic Director of CEBCLA, as well as Mr Joe Ng at Cambridge University Press provided substantial support for the project. Detailed comments from Mr. Tan Tai Hiong of the ASEAN Secretariat, Mr. Marcus Bartley Johns of the World Bank, Professor Andrew Mitchell of Melbourne Law School and Gmeleen Tomboc of Sidley Austin LLP, tremendously benefited our discussion at the conference. SMU students Kent Chen Sixue, Terrance Goh, Belle The and Thong Ying Xuan also provided invaluable editing assistance.

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PREFACE

enriching the theme and structure of the book. With contributions from these distinguished colleagues, we hope to offer a fresh and holistic understanding of multifaceted ASEAN law in the new regional economic order.

ABBREVIATIONS

AANZFTA	ASEAN-Australia-New Zealand Free Trade Agreement
ABAC	ASEAN Business Advisory Council
ABIF	ASEAN Banking Integration Framework
ABMI	Asian Bond Market Initiative
ACFTA	ASEAN-China Free Trade Agreement
ACIA	ASEAN Comprehensive Investment Agreement
ACJEP	ASEAN-Japan Comprehensive Economic Partnership
ACMF	ASEAN Capital Markets Forum
ACPE	ASEAN Chartered Professional Engineer
ACPECC	ACPE Coordinating Committee
ADB	Asian Development Bank
ADR	Alternative Dispute Resolution
AEC	ASEAN Economic Community
AEC Blueprint 2015	ASEAN Economic Community Blueprint 2015
AEC Blueprint 2025	ASEAN Economic Community Blueprint 2025
AEM	ASEAN Economic Ministers
AFAS	ASEAN Framework Agreement on Services
AFIF	ASEAN Financial Integration Framework
AFTA	ASEAN Free Trade Area
AHKFTA	ASEAN-Hong Kong Free Trade Agreement
AHKIA	ASEAN-Hong Kong Investment Agreement
AHTN	ASEAN Harmonized Tariff Nomenclature
AIA	ASEAN Investment Area Agreement
AMS	ASEAN Member State
APEC	Asia-Pacific Economic Cooperation
AQRF	ASEAN Qualifications Reference Framework
ASAM	ASEAN Single Aviation Market
ASEAN	Association of Southeast Asian Nations
ATIGA	ASEAN Trade in Goods Agreement
ATISA	ASEAN Trade in Services Agreement
AWGIPC	ASEAN Working Group on Intellectual Property Cooperation
BIT	Bilateral investment treaty

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CCS	Coordinating Committee on Services
CEPT	Common Effective Preferential Tariff Scheme
ChAFTA	China-Australia Free Trade Agreement
CJEU	Court of Justice of the European Union
CLMV	Cambodia, Lao PDR, Myanmar and Vietnam
CMDP	Capital Market Development Plan
CPTPP	Progressive Agreement for Trans-Pacific Partnership
CSFTA	China-Singapore FTA
CTC	Change in tariff classification
DSM	Dispute settlement mechanism
DSU	Dispute Settlement Understanding
EASA	European Aviation Safety Agency
EDSM	ASEAN Protocol on Enhanced Dispute Settlement Mechanism
EEA	European Economic Area
EHP	Early Harvest Program
EU	European Union
EUSFTA	EU-Singapore Free Trade Agreement
EVFTA	EU-Vietnam Free Trade Agreement
FDI	Foreign direct investment
FET	Fair and equitable trade
FTA	Free trade agreement
FTZ	Free trade zone
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	Gross domestic product
GVC	Global value chain
HS	Harmonized System
IAI	Initiative for ASEAN Integration
ICSID	International Centre for Settlement of Investment Disputes
IGA	ASEAN Investment Guarantee Agreement
IIA	International investment agreement
IP	Intellectual property
ISDS	Investor-state dispute settlement
MAAS	Multilateral Agreement on Air Services
MAFLAFS	Multilateral Agreement for the Full Liberalization of Air Freight Services
MAFLPAS	Multilateral Agreement for the Full Liberalization of Passenger Air Services
MFN	Most-favored nation
MIC	Myanmar Investment Commission
MIL	Myanmar Investment Law

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MIR	Myanmar Investment Regulations
MLEC	UNCITRAL Model Law on Electronic Commerce
MNP	Movement of Natural Persons
MOU	Memorandum of Understanding
MRA	Mutual Recognition Agreement
MSME	Micro, small and medium enterprise
NAFTA	North American Free Trade Agreement
NGO	Nongovernmental organization
NIEO	New International Economic Order
NREO	New regional economic order
NT	National Treatment
NTB	Nontariff barrier
NTM	Nontariff measure
OECD	Organisation for Economic Co-operation and Development
PTA	Preferential Trade Agreement
QAB	Qualified ASEAN Bank
RCEP	Regional Comprehensive Economic Partnership
RFPE	Registered Foreign Professional Engineer
RIATS	Roadmap for Integration of the Air Travel Sector
ROO	Rules of Origin
RVC	Regional Value Content
SAFTA	Singapore-Australia Free Trade Agreement
SEC	Securities and Exchange Commission
SEZ	Special economic zone
SICC	Singapore International Commercial Court
SIMC	Singapore International Mediation Centre
SMBD	Senior Management and Board of Directors
SME	Small and medium enterprise
TAC	Treaty of Amity and Cooperation in Southeast Asia
TFEU	Treaty on the Functioning of the European Union
TIG	ASEAN-China Agreement on Trade in Goods
TIS	ASEAN-China Agreement on Trade in Services
TPP	Trans-Pacific Partnership
TRIPs	Agreement on Trade-Related Aspects of Intellectual Property Rights
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
USSFTA	United States-Singapore Free Trade Agreement
WCO	World Customs Organization
WEF	World Economic Forum
WTO	World Trade Organization