

DuaneMorris

DOING BUSINESS IN VIETNAM

Legal updates

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DUANE MORRIS VIETNAM LLC

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AGENDA

- **NEW INVESTMENT LAW AND ENTERPRISE LAW**
- **ASEAN ECONOMIC COMMUNITY – WILL VIETNAM BE THE NEXT ASEAN TIGER?**
- **CONCLUSION**

NEW INVESTMENT LAW AND ENTERPRISE LAW

NEW INVESTMENT LAW AND ENTERPRISE LAW – CURRENT PROGRESS

- **New Investment Law framework**

- Investment Law No. 67/2014/QH13 passed by the National Assembly on 26 November 2014
- Draft Decree on detailing and guiding the implementation of the Investment Law in April 2015 open for public comments
- Draft Decree providing outbound direct investment dated 11 March 2015 open for public comments

- **New Enterprise Law framework**

- Enterprise Law No. 68/2014/QH13 passed by the National Assembly on 26 November 2014
- Draft Decree guiding the implementation of the Enterprise Law dated 09 March 2015 open for public comments
- Latest Draft Decree on Enterprise Registration dated 04 March 2015 open for public comments

DEFINITION OF FOREIGN INVESTOR – CLEARER NOW?

- *New Investment Law*: Very simple definition!

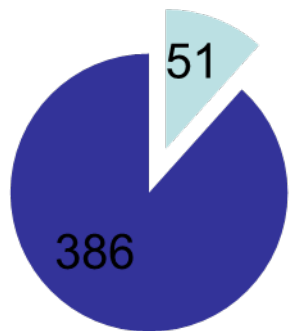
Foreign investor is any foreign individual or organization incorporated under foreign law doing business investment activities in Vietnam

FOREIGN INVESTORS – WHO ARE THEY?

- Foreign nationals and foreign corporate entities
- Defined by the 51% capital ratio:
 - Company with 51% or more charter capital owned by foreign investors (F1 company); or
 - Company with 51% or more charter capital owned by F1 company (F2 company); or
 - Company with 51% or more charter capital owned by F1 company and F2 company

REDUCED NUMBER OF PROHIBITED AND CONDITIONAL BUSINESS ACTIVITIES

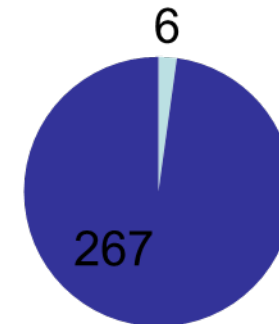
Old IL



- Prohibited business activities
- Conditional business activities

Positive approach

New IL



Negative approach

INVESTMENT PROCEDURE – QUICKER AND CLEARER TIMELINE

- 2 separate steps: Application for Investment Registration Certificate (“IRC”) and Application for Enterprise Registration Certificate (“ERC”)
 - NOT simpler procedure BUT quicker in time
- **Step 1: IRC**
 - IRCs for projects required to obtain preliminary approval of the National Assembly/ People’s Committee are issued within 05 working days upon issuance of such approval
 - For other projects, IRCs are issued within 15 days (instead of 35 days as in the old law) upon receipt of the application dossier
- **Step 2: ERC**
 - Submit an application dossier to the licensing authority upon issuance of the IRC
 - ERCs are issued within 03 working days upon receipt of the application dossier

M&A PROCEDURES FOR FOREIGN INVESTORS

- **Appears to be simple!!! Only registration required, no more IRC**
 - Satisfying the requirements for investment
 - Submitting application dossier
 - Assessment by the licensing authority and decision making after 15 days
- **Subjects:**
 - foreign investors making investment in conditional business activities applicable for foreign investors;
 - F1 Company, F2 Company or F3 Company holding 51% or more of the targeted economic enterprise as a result of the M&A
 - **Exclusion:** Company other than F1 Company, F2 Company and F3 Company:
 - Registration to amend the ERC (for LLCs)
 - Notification of the change in foreign shareholders (for JSCs)
 - The change will be effected within 03 working days

BUSINESS OPERATION

- Freedom to conduct business activities not prohibited by law
- → less risk in doing business
- Business activities are still recorded in the application dossier for ERC; however the business activities will not be listed in the ERC
- Charter capital must be contributed within 90 days from the date of issuance of the ERC
- Charter capital of an Single Member LLC can be reduced

NEW LEGAL REPRESENTATIVE CONCEPT

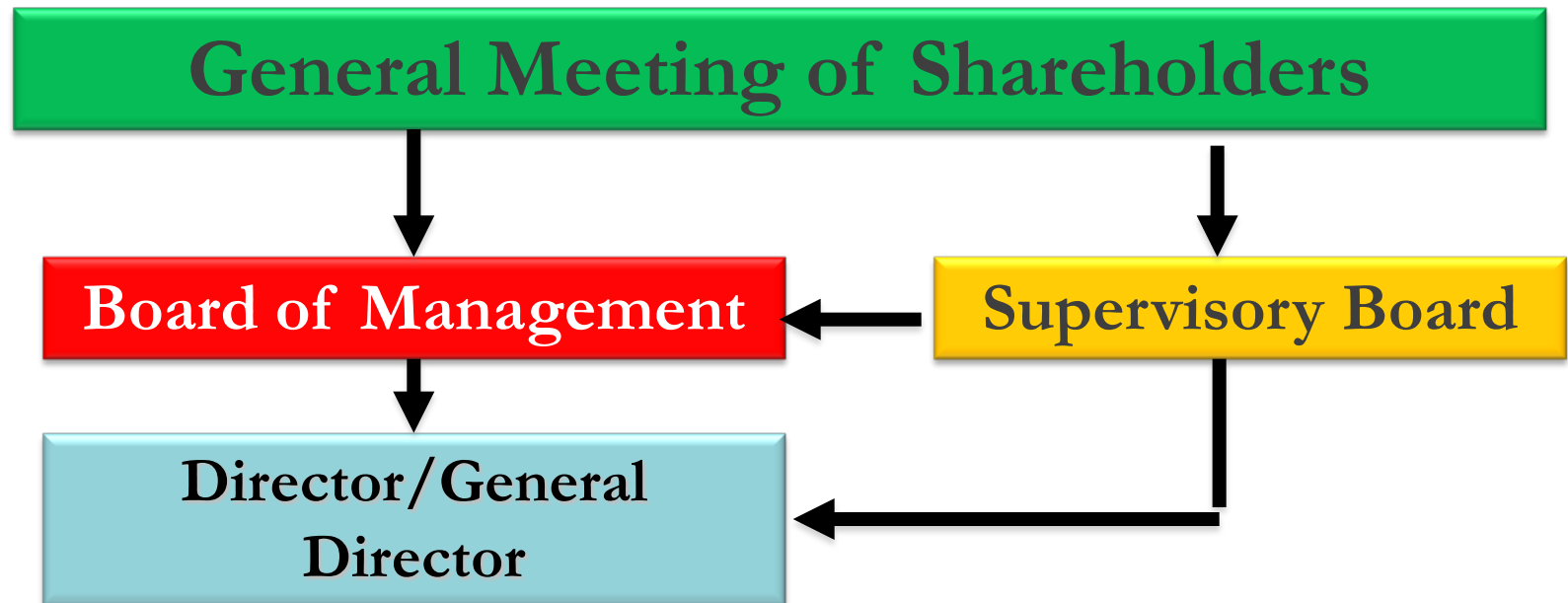
- *Legal Representatives (“Legal Rep”):*
 - Can be more than one BUT no prescribed limit on the number
 - charter to specify the total number of legal representatives and the management title of each
- *Residency of Legal Rep:* Still required!
- In case the only Legal Rep not residing in Vietnam for more than 30 days without any authorization: another Legal Rep to be appointed

COMPANY SEAL

- Companies may decide on the number, the form and the contents of the chops, as long as the chops show the company name and the enterprise code
- Must register the sample of the chop with the business registration authorities
- The use and the storage of the chop must be provided in the Charter

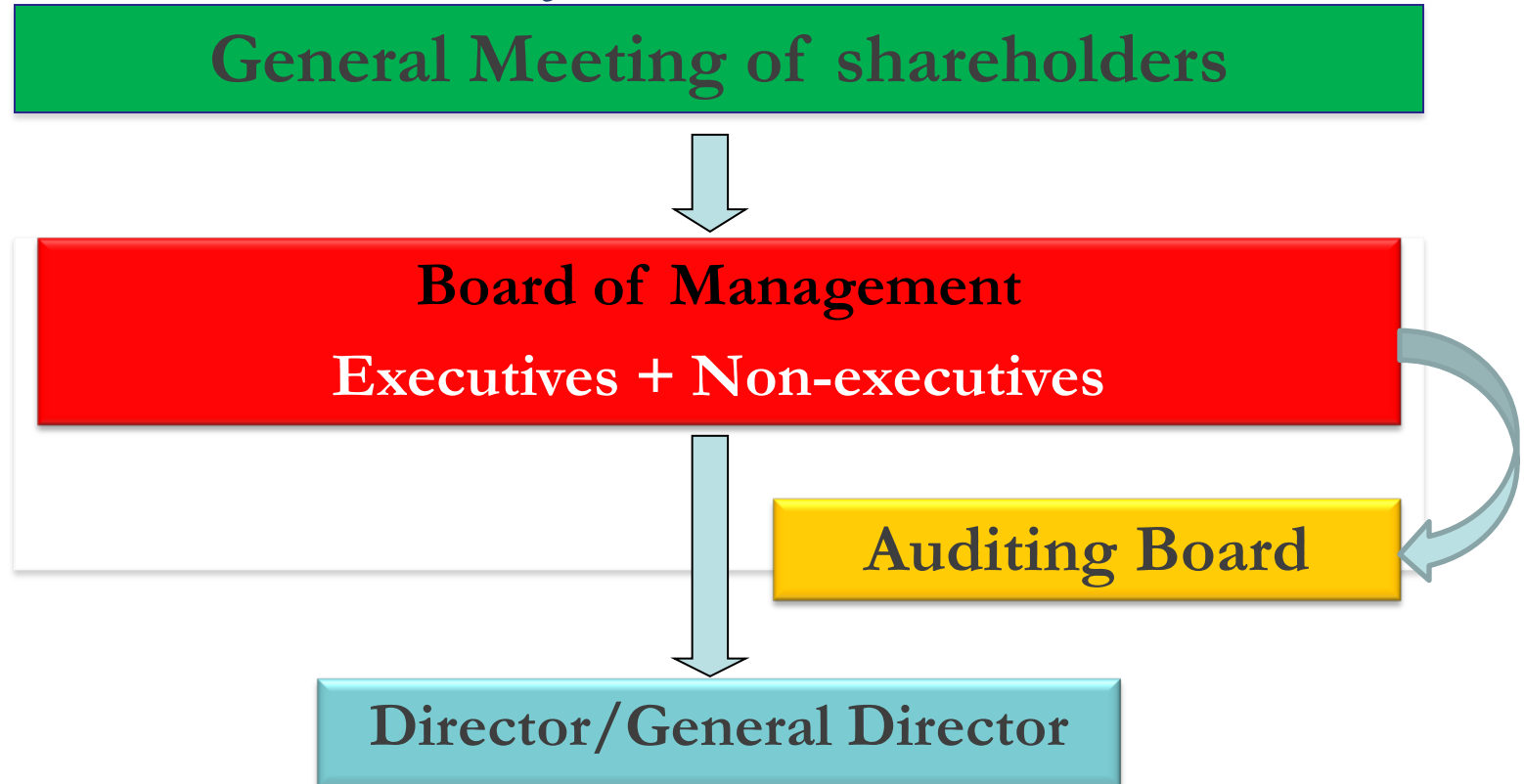
NEW CORPORATE GOVERNANCE STRUCTURES

- *Current EL:* Two-tiered management for joint stock companies (shareholding companies):



NEW CORPORATE GOVERNANCE STRUCTURES

- *New Corporate Governance Structure*: Optional “Anglo-American model” for JSCs:



DECISION-MAKING PROCEDURES

- Control can be achieved at shareholding company when the decision making procedures is now simpler:

	LIMITED LIABILITY COMPANIES		SHAREHOLDING COMPANIES	
	Old EL	New EL	Old EL	New EL
Quorums	75%	65%	65%	51%
Voting thresholds	65%/75%	65%/75%	65%/75%	51%/65%
Approval for written decisions	75%	65%	75%	51%

PROTECTION OF MINORITY SHAREHOLDER

- **More favorable conditions for shareholders to monitor, supervise and file lawsuits against managers when necessary**
- For the first time, the Right to initiate legal action against the management personnel is regulated (Article 72 for LLC and Article 161 for JSC). The procedure and process for filing lawsuit will be performed with the civil proceeding.

REGULATIONS ON GROUP OF COMPANIES

- A parent company of another company is one:
 - owns more than 50% of the charter capital or the total normal shares of that company;
 - has the right to directly or indirectly appoint the majority or all of the members of the Board of Management, Director, General Director of that company; or
 - has the right to amend or supplement the charter of that company.

GROUP OF COMPANIES

- Prohibition on cross ownership:
 - A subsidiary is not permitted to contribute capital or buy shares in its parent company
 - All subsidiaries of the same parent company cannot together contribute capital or buy shares to own each other
 - subsidiaries of the same company with at least 65% state ownership may not together contribute capital to establish a company

Equitisation of State Owned Enterprises - QUO VADIS ?

Equitization plan for 2011 – 2015 period

- Target: 899 equitized SOEs
- Results: 99 in 2011-2013; 432 in 2014
- → 368 SOEs to be equitized in 2015! Great challenges ahead
- Certain kinds of equitization:
 - issue of shares in order to capitalize state-owned enterprises
 - partial sale of state-owned capital; and complete sale of state-owned capital for the purpose of transformation into joint stock companies
- Foreign equity limitation: 30% in general, except certain sectors (Securities: 49%; Banking and finance: 20%)
- The State of Vietnam remains main control over certain equitized enterprises by holding special controlling shares in these enterprises.

M&A and Capital Market Outlook

- Vietnam's economy still remains upbeat as the Government is on the right track to keep the inflation stay low, stabilize the macro economy
- The government may loosen the foreign ownership caps to give investors more room to boost holdings
- The prospects of a TPP and EVFTA with the increase of trade deals will be great outlook for Vietnam to attract more foreign capital
- The reform of SOE by equitization and IPO: targeted to equitize 368 companies in 2015 which definitely provides a good number of companies for the stock market
- New Investment Law and Enterprise Law!!!

ASEAN Economic Community by 2015

AEC ESTABLISHMENT

- One of the 3 pillars of ASEAN Community, together with ASEAN Security Community and ASEAN Socio-Cultural Community
- Originated from ASEAN Vision 2020 adopted in 1997 on the 30th anniversary of the Association of Southeast Asian Nations
- The realization of the end goal of economic integration as espoused in the Vision 2020, which is based on a convergence of interests of ASEAN member countries to deepen and broaden economic integration through existing and new initiatives with clear timelines.

AEC ESTABLISHMENT

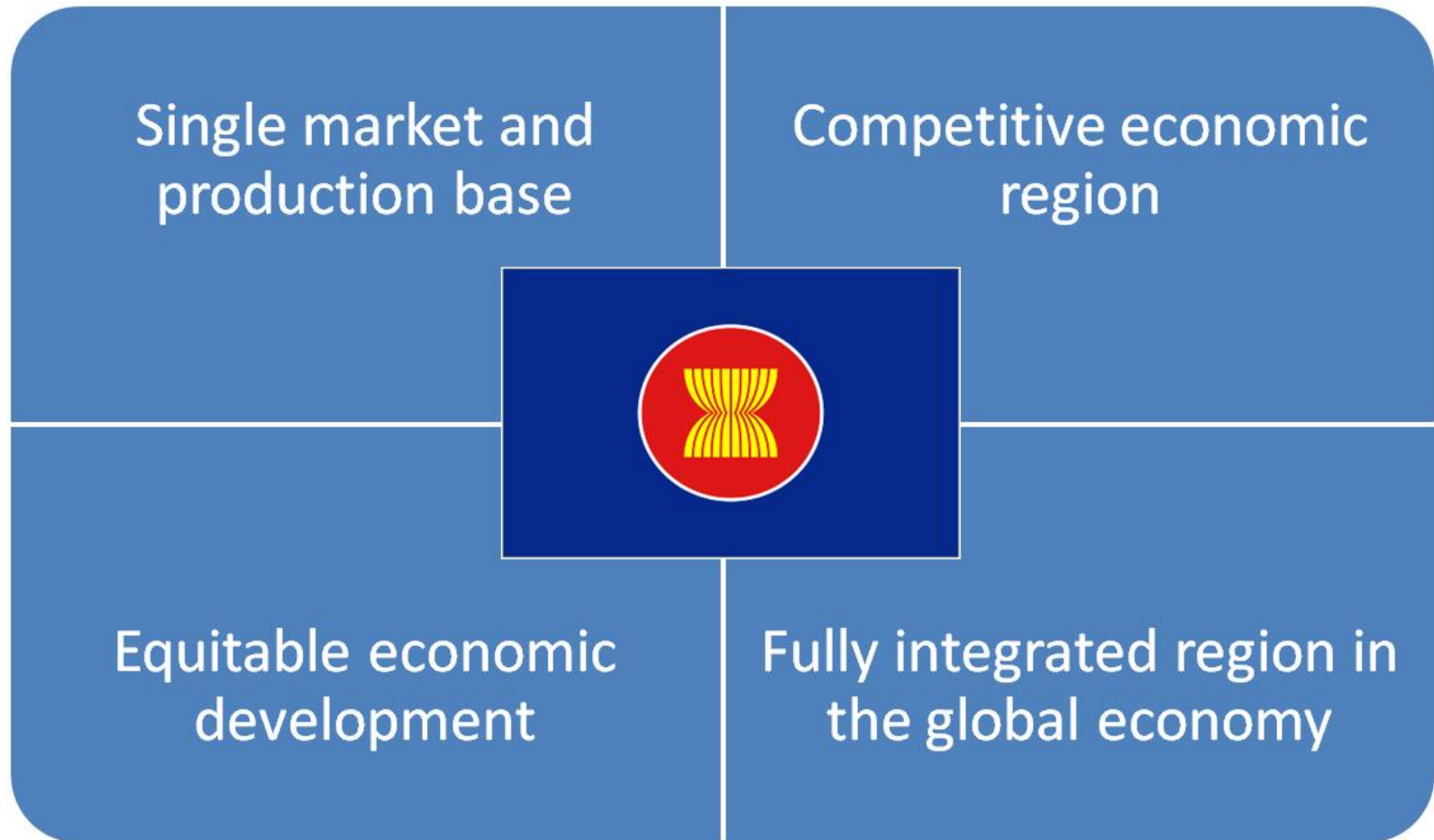
- AEC members: Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Viet Nam



AEC MARKET SNAPSHOT – ASIA'S MAIN INVESTMENT HUB

- GDP: US\$2311.3 billion (2012)
- GDP per capita: US\$3748.4 (2012)
- Population: 620 million, 60% under the age of 35
- AEC % of world GDP: ~3.3%
- AEC % of world population: 9%
- AEC's merchandise exports: US\$1.2 trillion - ~54% of total ASEAN GDP and 7% of global exports
- If ASEAN were one economy, it would be the 7th largest in the world – 4th largest by 2050 if growth trends continue

KEY CHARACTERISTICS OF AEC

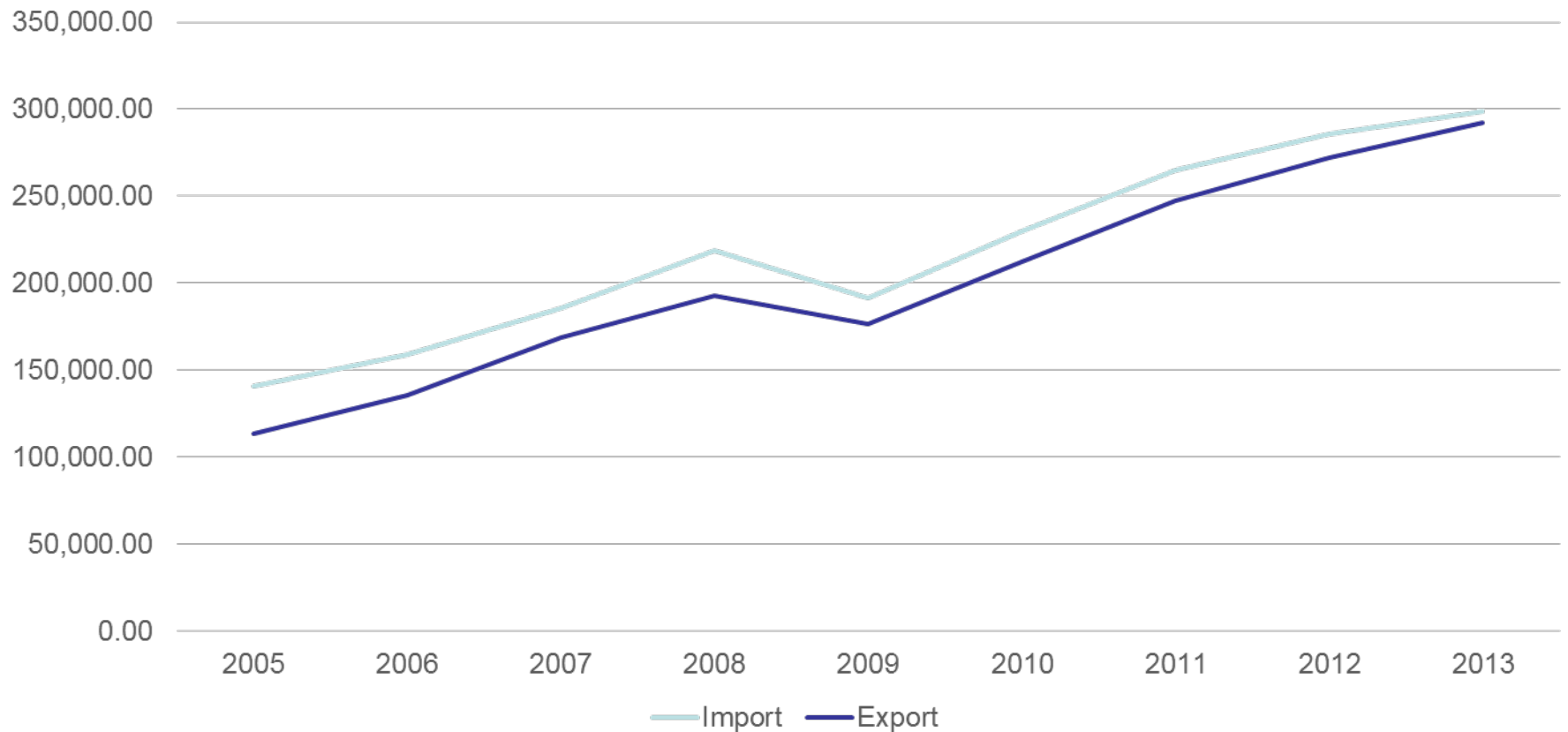


ASEAN FRAMEWORK AGREEMENT ON SERVICES

- Expanding WTO commitments on services – **GATS plus commitments**
- Free flow of services in AEC: substantially no restriction on ASEAN service providers in providing services and in establishing companies across national borders within the region
- Modes 1 (cross-border supply) and 2 (consumption abroad): none except for bona fide regulatory reasons
- Mode 3 (commercial presence): gradually allow 70% foreign (ASEAN) equity participation for all service sectors
- Removal of Other Mode 3 MA Limitations by 2015
- Set Parameters of Liberalisation for Mode 3 NT, Mode 4 (presence of natural person), and Horizontal Limitations

ASEAN TRADE IN SERVICES

ASEAN Trade in Services (value at US\$ million)



ASEAN Financial and Construction Sectors

- ASEAN Financial Services (including insurance services):
 - Most recent result: Fifth Package of Commitment on Financial Services under the ASEAN Framework Agreement on Services (4 May 2011 in Hanoi, Vietnam)
 - Due respect for national policy objectives and the level of economic and financial sector development of the individual members
- ASEAN Construction Services:
 - The Eighth Package of Commitments under the ASEAN Framework Agreement on Services (28 October 2010, in Hanoi, Vietnam)

AEC Financial and Construction Services Sectors Commitments compared with GATS Commitments

No.	Country Name	Financial services sector		Construction services sector	
		New committed sectors/ subsectors	Sectors/ subsectors with new/modified commitments	New committed sectors/ subsectors	Sectors/ subsectors with new/modified commitments
1	Brunei	2	3	1	0
2	Cambodia	0	2	0	0
3	Indonesia	3	19	1	1
4	Laos	12	5	1	2
5	Malaysia	6	29	0	1
6	Myanmar	5	0	8	0
7	Philippines	5	17	6	0
8	Singapore	0	17	0	0
9	Thailand	0	3	2	3
10	Vietnam	0	1	0	1

SERVICES SECTORS OF PRIORITY INTEGRATION

- Air travel
- e-ASEAN
- Healthcare
- Tourism
- Logistics services

MUTUAL RECOGNITION ARRANGEMENT

- To facilitate the free flow of professional services
- Professional service providers registered/certified in their home countries to be equally recognized in other signatory countries
- Up to now, 8 mutual recognition arrangements on:
 - Engineering services
 - Nursing services
 - Architectural services
 - Surveying qualifications
 - Accountancy services
 - Medical practitioners
 - Dental practitioners
 - Tourism professionals

AEC PERSPECTIVES – WHAT DOES AEC HAVE TO OFFER?

- *Shared market, shared benefits - From TEN to ONE*
- *Simplified rules, greater access - Trading on a bigger stage*
- *ASEAN: Home for your investment – Partners in Business*
- *Making capital work for you – Expanding access to finance*
- *ASEAN professionals in the move – Best people and Best practices*

(Source: www.asean.org)

WTO ANALYSIS OF LIBERALIZATION OF MARKET ACCESS

Vietnam ties in first place with Singapore

Country	Limitation of market access*	Country	Limitation of market access*
Malaysia	medium	Myanmar	high
Indonesia	medium	Cambodia	medium
Philippines	medium	Laos	medium
Singapore	low	India	high
Thailand	medium	China	medium
Brunei	high	Vietnam	low

- ***Typical restrictions: number of opened sectors, JV requirement, limits on foreign-owned shares, permission requirement**

Vietnam has the fastest-growing middle and affluent class in the region (Boston Consulting Group)



VIETNAM – THE NEXT ASEAN TIGER

- Manufacturing companies like Samsung Electronics Company and Intel Corporation coming to ASEAN
- Foreign investment in manufacturing sector diverting from China to Vietnam
- Vietnam being the biggest exporter to the U.S. from ASEAN
- Disbursed foreign investment in Vietnam reached \$12.35 billion in 2014, an increase of 7.4% from 2013 and compared with \$2.4 billion in 2000
- Vietnam is in negotiation for TPP and EU-Vietnam FTA

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Thank you very much!

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