ESCAP Expert Group Meeting

Trends in investment provisions in Asia and the Pacific

What graduating LDCs should take from BITs, PTAs and WTO IFD

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The trend is not one trend

Four treaty paths now sit side by side in Asia - Pacific.

Path 1

Old BIT stock

Broad FET, MFN, transfers, ISDS. Sunset clauses may last long after termination.

Path 2

PTA chapters

CPTPP, ACIA, AANZFTA, EPAs. Entry rights meet schedules and exceptions.

Path 3

RCEP type

Investment rules in the signed text. No ISDS yet; Article 10.18 left the issue for later talks.

Path 4

Facilitation on the Upswing

WTO IFD, CARTIF, ASEAN IFF. etc

Information, authorisation steps and contact points. No private claim.

Use for LDCs: first identify the path (proection or liberalization or facilitation or combination?), then think of the clause.

Legal risk comes from the ‘package’

Do not score provisions by title. Read the context and ‘linked’ clauses.

FET text	plus expropriation annex
MFN clause	plus dispute limits
Entry rule	plus reservation schedule
Transfer clause	plus BOP and prudential safeguards
Committee	plus focal point and reply duty
Termination	plus sunset clause and old BIT

A treaty can look deep and still give weak policy room. It can also look modest and give real administrative gain.

Before signature: 3 key issues for graduating LDCs

Practical reading order: clause → exception → annex → forum → duration

1

Project stress test

HOW: choose the investment sought. Map entry to exit: establishment, land, licence, customs, incentives, data, transfers, restructuring and dispute.

OUTPUT: real bottleneck + needed commitment, reservation or domestic reform.

2

Treaty package engineering

HOW: read linked provisions together: FET/expropriation; MFN/ISDS; market access/reservations; transfers/safeguards; termination/survival.

OUTPUT: policy-space risk list before signature.

3

Legal TINA as decision tool

HOW: overlay proposed PTA with old BITs, domestic law and state contracts. Tag sector, measure at risk, agency, exception/reservation and dispute route.

OUTPUT: obligation map + unresolved-risk list for negotiators.

Sign only what removes a actual investment obstacle + preserves regulatory space + can be delivered by the State.