

# PTA's INVESTMENT CHAPTER: THE JUXTOPOSITION OF THE INVESTMENT LIBERALISATION PROVISION

Sufian Jusoh

Institute of Malaysian and International Studies (IKMAS)

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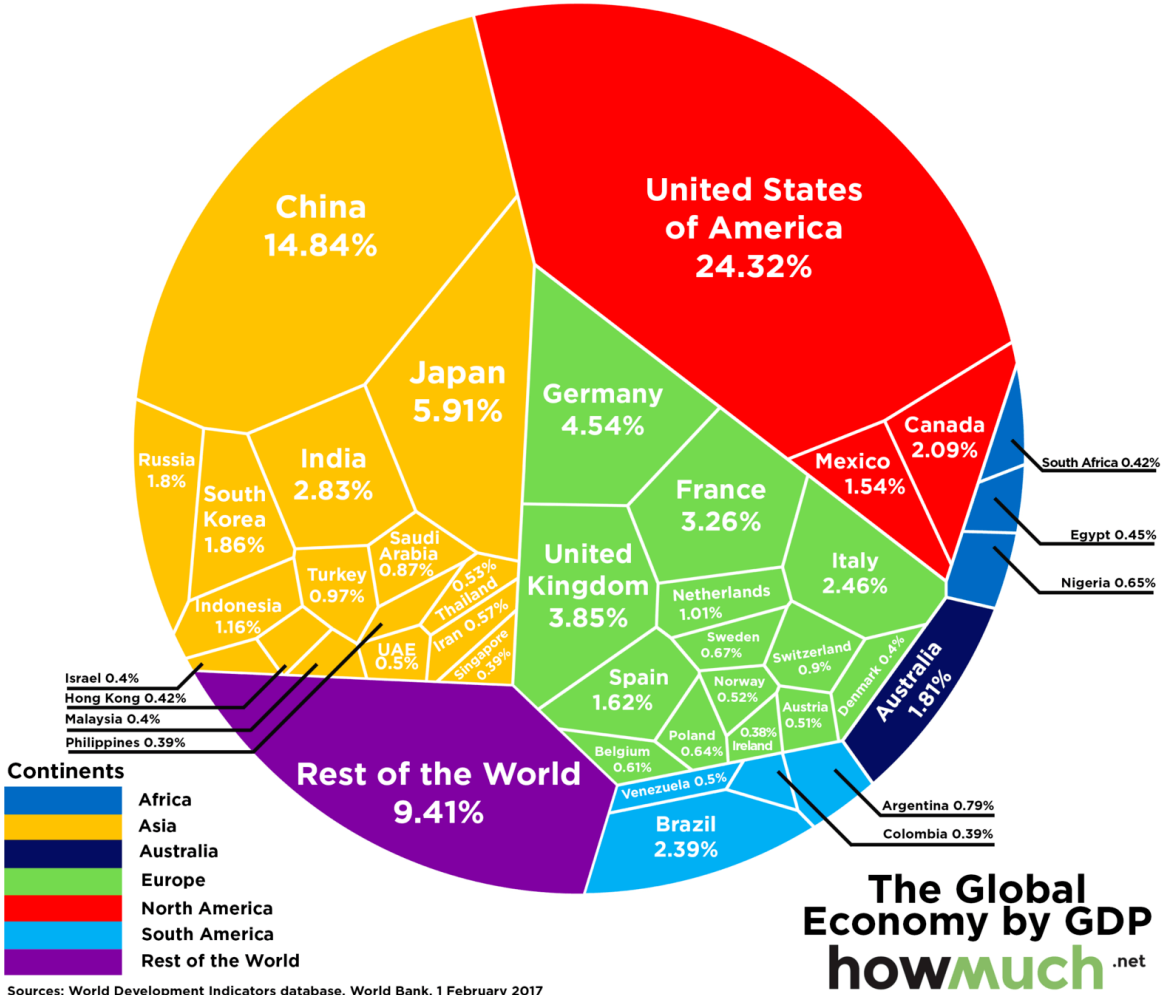
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- Investment Liberalisation and effect on ASEAN Economies
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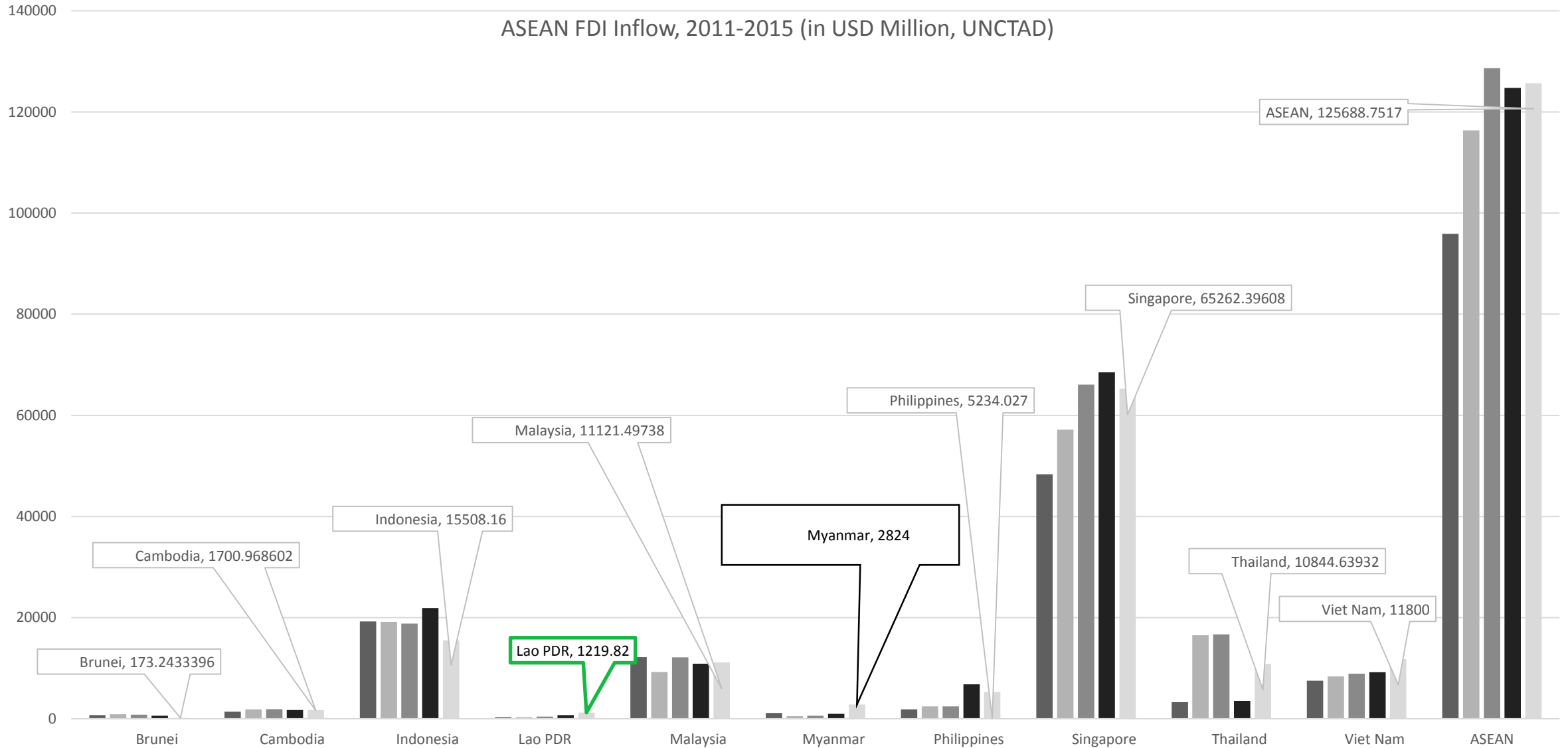
# ASEAN MEMBER STATES AND ECONOMIC POWERHOUSES – The Power of Investment Liberalisation?



Sources: World Development Indicators database, World Bank, 1 February 2017

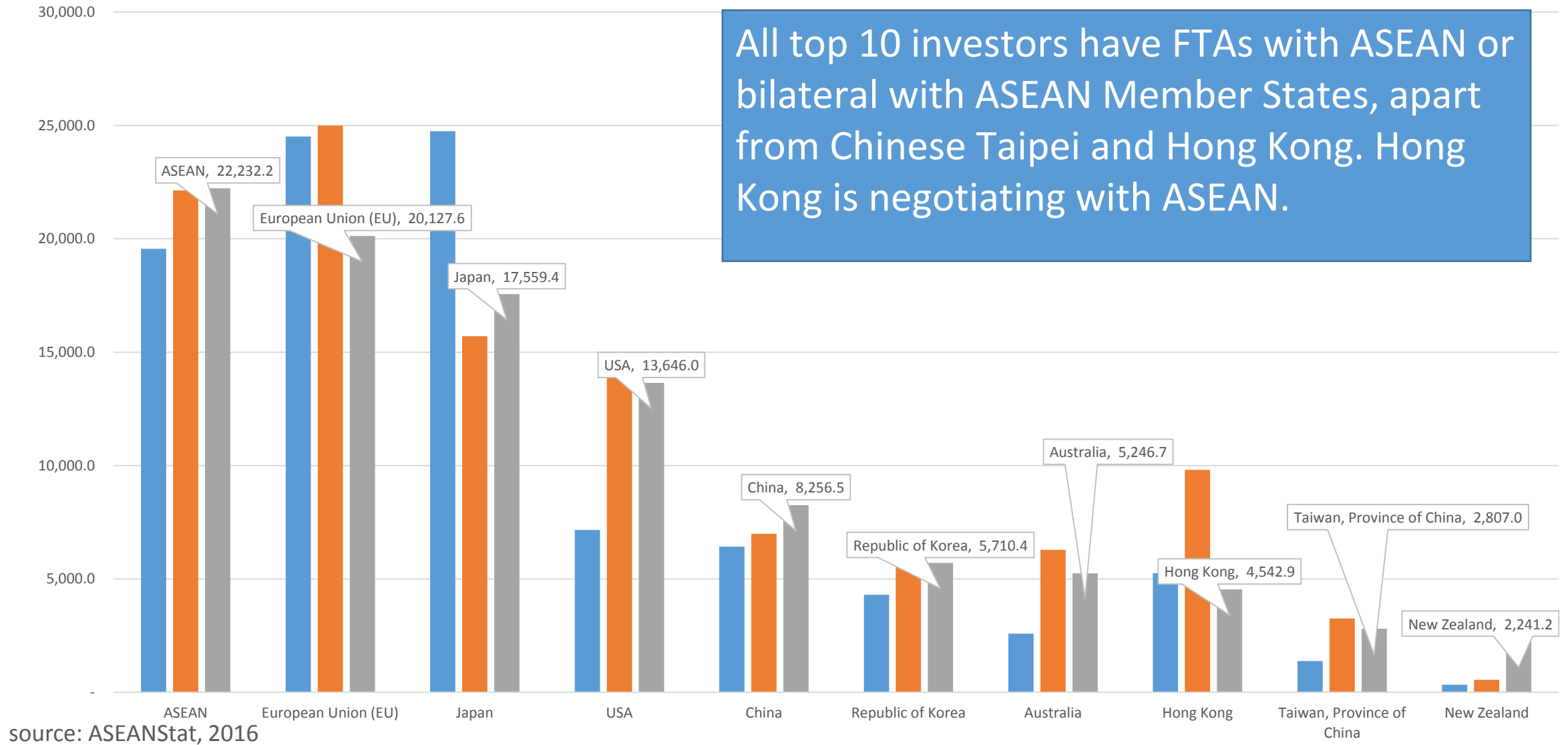
ASEAN MEMBER STATES IN TOP 40 ECONOMIES (popul)	% OF GLOBAL GDP 2017	Nature of FDIs
Indonesia (250m)	1.16%	Market seeking, natural resources
Thailand	0.53%	Market seeking, efficiency seeking
Malaysia (30m)	0.4%	Efficiency seeking, natural resources, strategic assets
Singapore	0.39%	Efficiency seeking, strategic assets
The Philippines	0.39%	Market seeking

# ASEAN Investment Inflow 2011-2015



# Sources of FDI Inflows into ASEAN

All top 10 investors have FTAs with ASEAN or bilateral with ASEAN Member States, apart from Chinese Taipei and Hong Kong. Hong Kong is negotiating with ASEAN.



# Investment Liberalisation

National Treatment  
and MFN at pre-  
establishment

Liberalised Sectors  
(positive/negative)  
and NCM

NAFTA/TPP Model:  
Linkages between  
Investment, Services,  
SOEs and GP Chapters

Level of Liberalisation:  
Ratchet; Stand-still, No  
Roll Back; Progressive  
Liberalisation

# Real Meaning of Liberalisation: Negotiator v. Implementor v. Businesses (case of TPP)

Negotiator	Implementor	Businesses
To meet the mandate: what level of liberalization does the mandate say. Investment Chapter as a bait for bigger objectives?	How to implement the black letters of the Agreement requiring proper translation of the PTA into domestic legal system	At the receiving end. Benefits of FDI spill over v. fear of competitions
What are the level of policy space: weak and strong negotiators	Can I change the Law and policies at the later stage?	Big businesses may be able to influence negotiations.
Negotiation strategies may be de-linked from actual business needs/implementors' capacity	Post PTA, evidence of implementors breach the PTA (lack of understanding, show of domestic power)	MSMEs are often left out unless there is strong leadership
How to deal with objections from within the Government (eg SOE and GP Chapters)	Inter-agency co-ordination and rivalries	Need for an effective SME Chapter, NCMs.

# Advantages of Myanmar

In the Middle of India and China, Bangladesh, ASEAN and 40% of world population

Neighbours economies worth USD 15 trillion or 20% of world's GDP

Big Domestic Market

Rich in Natural Resources, fertile land

Dynamic and enthusiastic Population

Inclusive Reform Process – Increased transparency and public participation



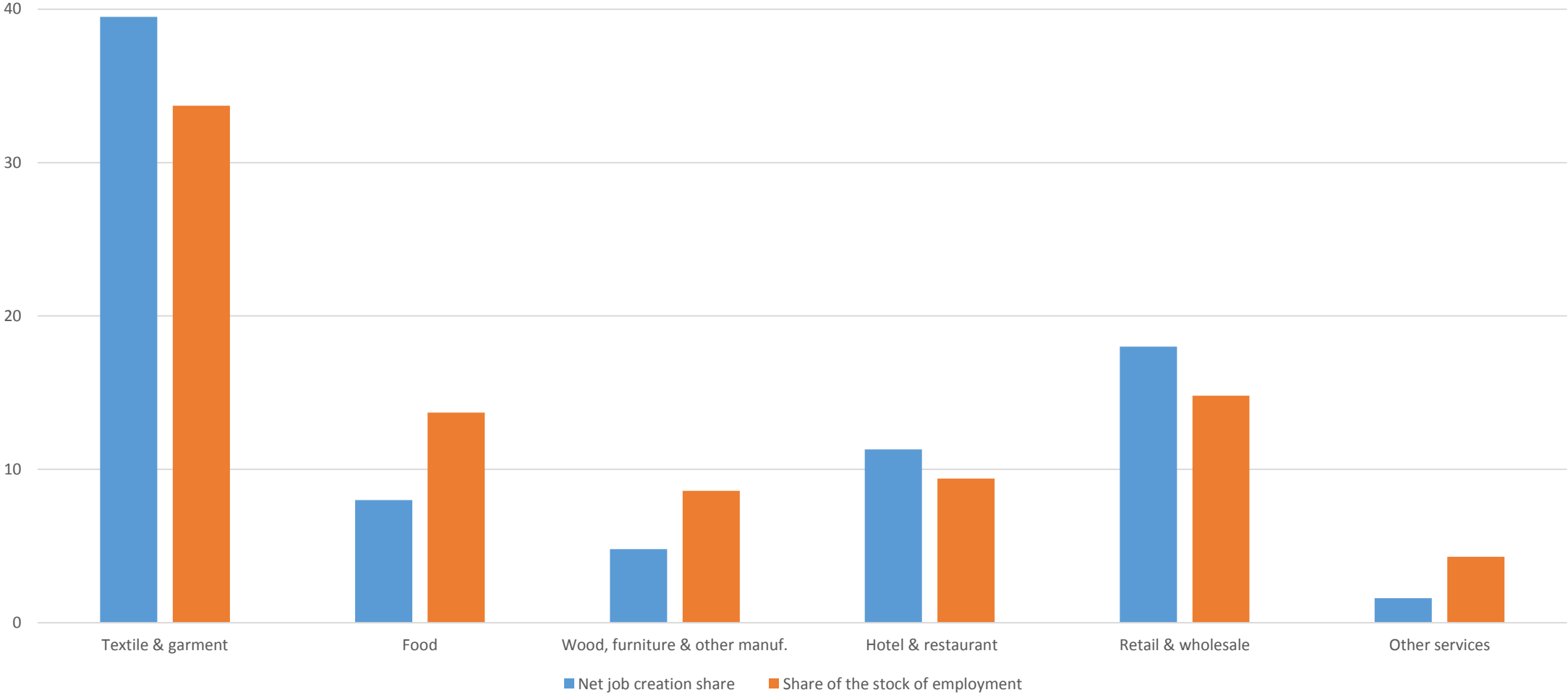
Myanmar FTAs: ASEAN ANZ, China, India, Japan, Korea, (RCEP).



# New Myanmar Investment Law 2016

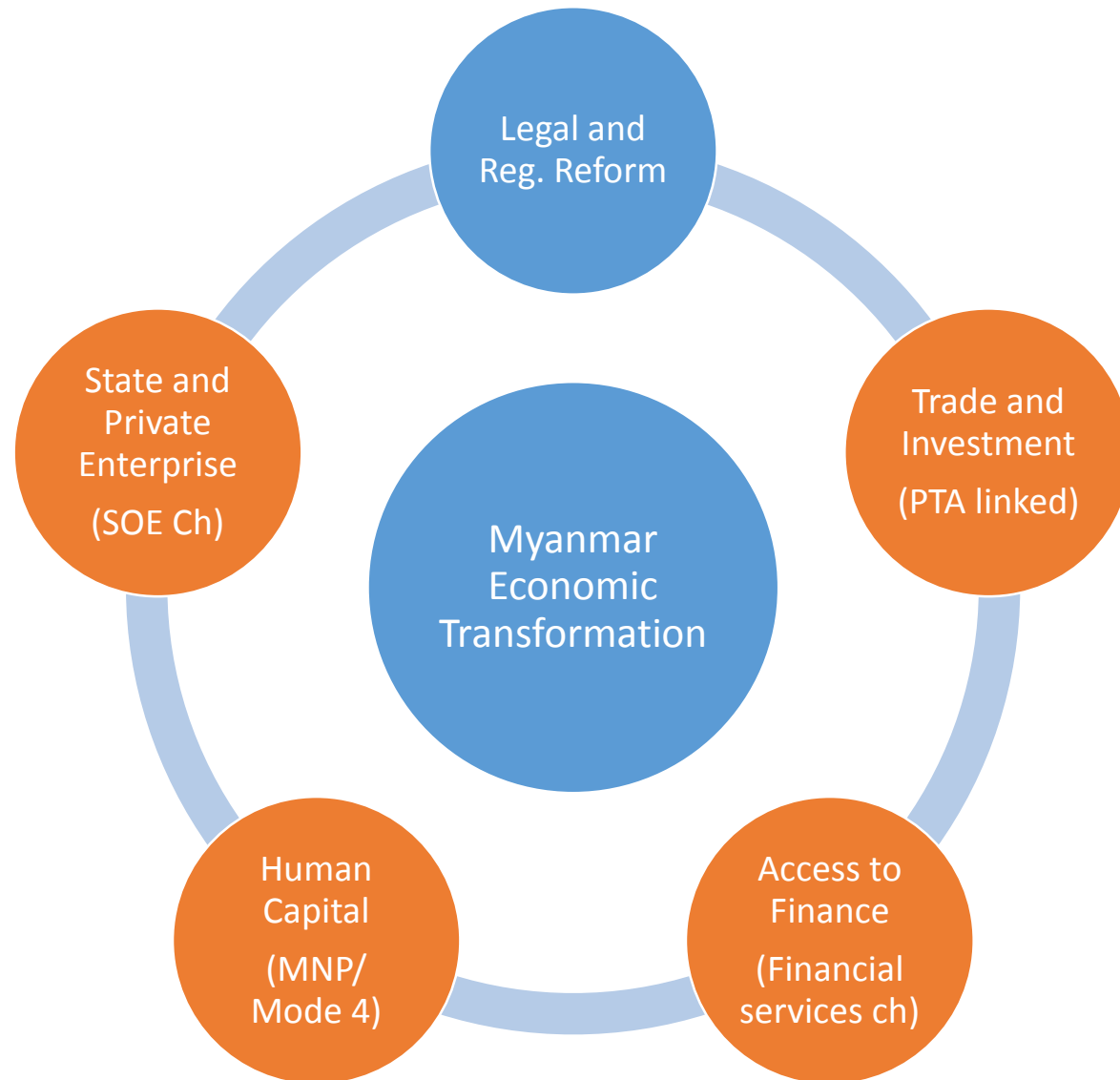
Policy Pillars	Reform
Facilitation	<ul style="list-style-type: none"><li>• One Stop Service Centre</li><li>• State and Regional Offices Centre</li><li>• Encourage domestic investments</li><li>• Information sharing</li></ul>
Promotion	<ul style="list-style-type: none"><li>• The role of Myanmar Investment Commission to promote investment</li><li>• Structure investment promoted sectors</li></ul>
Liberalisation	<ul style="list-style-type: none"><li>• Reduce negative list through consultations and notifications</li><li>• Promoted Sectors</li></ul>
Protections	<ul style="list-style-type: none"><li>• National Treatment and Most Favoured Nations</li><li>• Transfer of Funds</li><li>• Conditions for expropriation and indirect expropriation</li><li>• Fair and Equitable Treatment</li><li>• Transparency</li></ul>

# Potential Impact of Investment Reforms in Myanmar on Jobs



(WBG Enterprise Survey 2014)

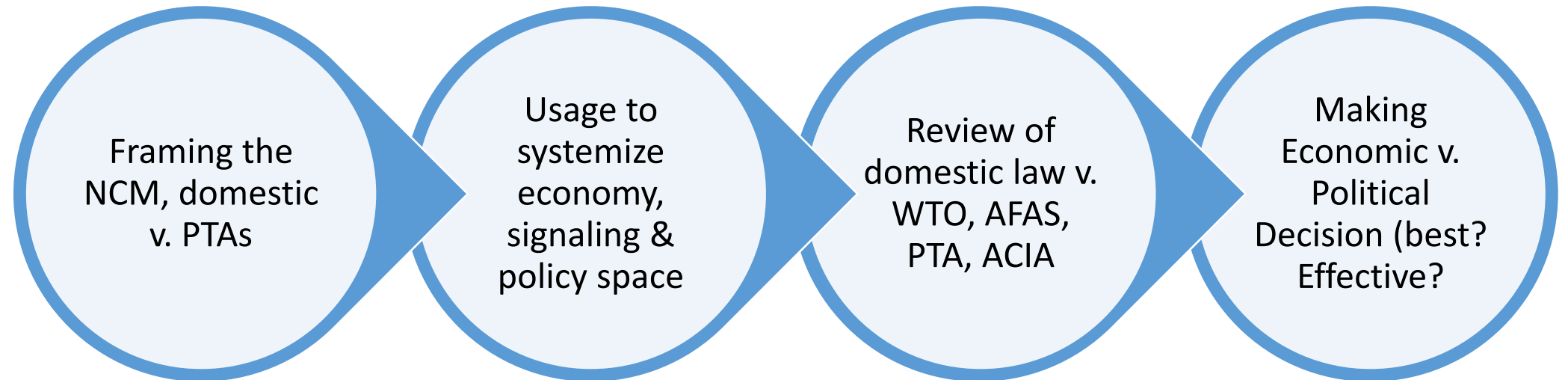
# But Investment Chapter is only one part of the solutions



- Constraints of MSMEs
  - Access to credit and access to land. Only 25 percent of domestic oriented SMEs in Myanmar had checking accounts compared to 75 percent average in East Asia.
  - Access to reliable power is also a constraint for domestic oriented SMEs.
  - Limited culture among SMEs in Myanmar to use internet to communicate with customers and suppliers to secure orders.

(Rahadja, Jusoh et.al, WBG 2017, forthcoming)

# Challenges in implementing the Investment Chapter vis-à-vis the Investment Law



# Criteria/ Considerations for Inclusion in the Negative List

Policy Objective

Is this the best policy instrument?

The scope has to be limited

Cost and Benefit Analysis

Is the policy going to create the net benefit for the country?

International Commitments

Is the policy in compliance with international commitments?

# Thank You

Sufian Jusoh@gmail.com