

# **Policy and Legal Challenges for Attracting Investments for Development in LDCs: The Case of Myanmar (c.f. 1960 Singapore)**

Second Meeting of the Asia-Pacific Foreign Direct Investment (FDI)  
Network for Least Developed and Landlocked Developing Countries  
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## **Selling the new Myanmar Foreign Investment Law**

Man offering an English translation of the new Foreign Investment Law to passing cars even before the official version has been released. Taken by Prof Michael Ewing-Chow in Yangon, Myanmar, 23 November 2012.

# Myanmar: FDI Challenges & Opportunities



Natural Endowments  
Large Work Force  
Low Labor Costs  
Geography  
Pro-enterprise  
Executive Policies



Low Capital and FDI  
Trade Sanctions  
Limited Infrastructure  
Limited Capacity  
Historical Baggage  
Uncertainty in Laws

# ASEAN: Population, Territory and Economy, 2010

Country	Total land area (sq km)	Total population (thousand)	Gross Domestic Product at current prices		Product per capita	
			(US\$ Mn)	(PPP\$ Mn) <sup>2/</sup>	(US\$)	(PPP\$)
Brunei Darussalam	5,765	415	12,402	19,406	29,915	46,811
Cambodia	181,035	15,269	11,168	28,985	731	1,898
Indonesia	1,860,360	234,181	708,032	1,030,998	3,023	4,403
Lao PDR	236,800	6,230	6,508	16,105	1,045	2,585
Malaysia	330,252	28,909	238,849	415,157	8,262	14,361
Myanmar <sup>1/</sup>	676,577	60,163	43,025	76,601	715	1,273
Philippines	300,000	94,013	189,326	351,686	2,014	3,741
Singapore	710	5,077	223,015	291,934	43,929	57,505
Thailand	513,120	67,312	318,709	585,698	4,735	8,701
Viet Nam	331,051	86,930	107,650	291,260	1,238	3,351
ASEAN	4,435,670	598,498	1,858,683	3,107,829	3,106	5,193
CLMV <sup>3/</sup>	1,425,463	168,592	168,351	412,951	999	2,449
ASEAN6 <sup>4/</sup>	3,010,207	429,907	1,690,332	2,694,878	3,932	6,269

# LDC?

- GDP per capita USD 428
- Population 1.6 million
- Literacy 53%
- Unemployment Rate 13.5%
- Land Area 582 sq km
- Significant Racial and Social Unrest/Riots
- No Natural Resources
- No Agriculture

# Singapore – 1960 (LDC?)

- GDP per capita USD 428 (2011 – USD 50,123)
- Population 1.6 million (2011 – 5.3 million)
- Literacy 53% (2011 – 96%)
- Unemployment Rate 13.5% (2011 – 2%)
- Land Area 582 sq km (2011 – 723 sq km)
- Significant Racial and Social Unrest/Riots
- No Natural Resources and No Agriculture
- Over-reliance on Entrepot Trade
- Low Governmental Revenues

# Singapore's 3 Pronged Strategy

## Enhance Existing Advantages

**Geographical:**  
Entrepot Trade,  
Marine Sector, Oil  
Refinery

**Cultural:** Regional  
Logistics,  
Transportation and  
Tourism Hub

## Build New Capabilities

**FDI:** Reduce  
Unnecessary  
Regulation, Tax  
Incentives

**Technology:**  
Technology Transfer,  
Government Early  
Adoption

## Adopt Complementary Policies

**Pro-enterprise  
Bureaucracy, Focus  
on Efficient  
Processes**

**Education and Labor  
Policy Developed by  
Consulting Industry**



## ASEAN: FDI inflow, by host country (in US\$ million) for periods indicated

Host Country	2003	2006	2007	2008	2009	2010 <sup>p/</sup>	%Share 2010 <sup>p/</sup>
Brunei Darussalam	3,123	434	260	239	370	629	0.8
Cambodia	84	483	867	815	539	783	1.0
Indonesia	-596	4,914	6,928	9,318	4,877	13,304	17.5
Lao PDR	20	187	324	228	319	333	0.4
Malaysia	2,473	6,072	8,538	7,248	1,381	9,156	12.0
Myanmar	291	428	715	976	963	450	0.6
Philippines	491	2,921	2,916	1,544	1,963	1,713	2.2
Singapore	11,941	29,349	37,033	8,589	15,279	35,520	46.6
Thailand	5,235	9,460	11,330	8,539	4,976	6,320	8.3
Viet Nam	1,450	2,400	6,739	9,579	7,600	8,000	10.5
<b>Total ASEAN</b>	<b>24,512</b>	<b>56,648</b>	<b>75,650</b>	<b>47,076</b>	<b>38,266</b>	<b>76,208</b>	<b>100.0</b>
CLMV	1,845	3,498	8,645	11,597	9,421	9,565	12.6
ASEAN6	22,667	53,149	67,006	35,478	28,845	66,643	87.4



## ASEAN: Foreign Direct Investment (FDI) inflows for periods indicated

Categories	2003	2006	2007	2008	2009	2010 <sup>p/</sup>
<b>In US\$ million</b>						
Total	24,511.8	56,647.6	75,650.3	47,075.6	38,266.0	76,207.9
Intra-ASEAN	2,711.6	7,875.8	9,625.5	9,449.3	5,270.7	12,279.2
Rest of the World	21,632.2	47,174.8	65,057.8	37,317.3	32,995.3	63,928.7
Unspecified	168.0	1,597.0	967.0	309.0	0.0	0.0
<b>In percent share to total</b>						
Total	100.0	100.0	100.0	100.0	100.0	100.0
Intra-ASEAN	11.1	13.9	12.7	20.1	13.8	16.1
Rest of the World	88.3	83.3	86.0	79.3	86.2	83.9
Unspecified	0.7	2.8	1.3	0.7	0.0	0.0

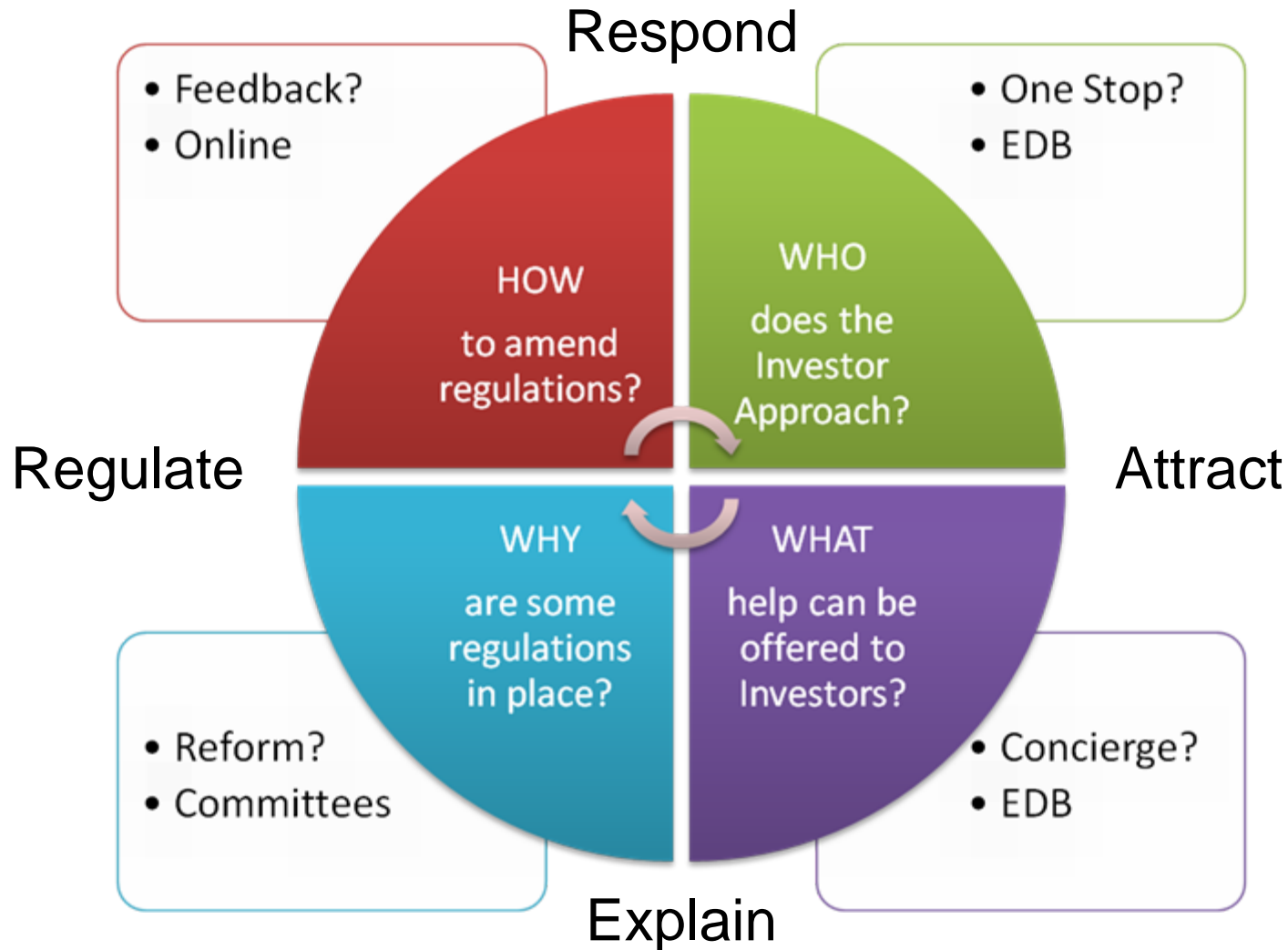
# Myanmar FDI & Growth

- Low Capital Endowments
- FDI needed for growth and political stability
- Singapore receives about 46% of ASEAN FDI (partially can be explained as a hub economy)
- Intra-ASEAN FDI accounts for only about 16%
- Regional Production Networks – intra-ASEAN competition for FDI (factors: labor costs, pro-enterprise policies, good infrastructure)
- Challenge from China (and India) for extra-ASEAN FDI

# Transparency International's Corruption Perception Index (CPI)

Ranking in ASEAN	Country	Country Ranking		CPI Score	
		2010 (178 countries)	2011 (183 countries)	2010	2011
1	Singapore	1	5	9.3	9.2
2	Brunei Darussalam	38	44	5.5	5.2
<b>3</b>	<b>Malaysia</b>	<b>56</b>	<b>60</b>	<b>4.4</b>	<b>4.3</b>
4	Thailand	78	80	3.5	3.4
5	Indonesia	110	100	2.8	3.0
6	Vietnam	116	112	2.7	2.9
7	Philippines	134	129	2.4	2.6
8	Laos	154	154	2.1	2.2
8	Cambodia	154	164	2.1	2.1
9	Myanmar	176	180	1.4	1.5

# Investor Centric Process



# Elements of Legalization

Goldstein, Kahler, Keohane, and Slaughter:

**1.Obligation** refers to international actors being legally bound by legal rules and procedures, whether international or domestic.

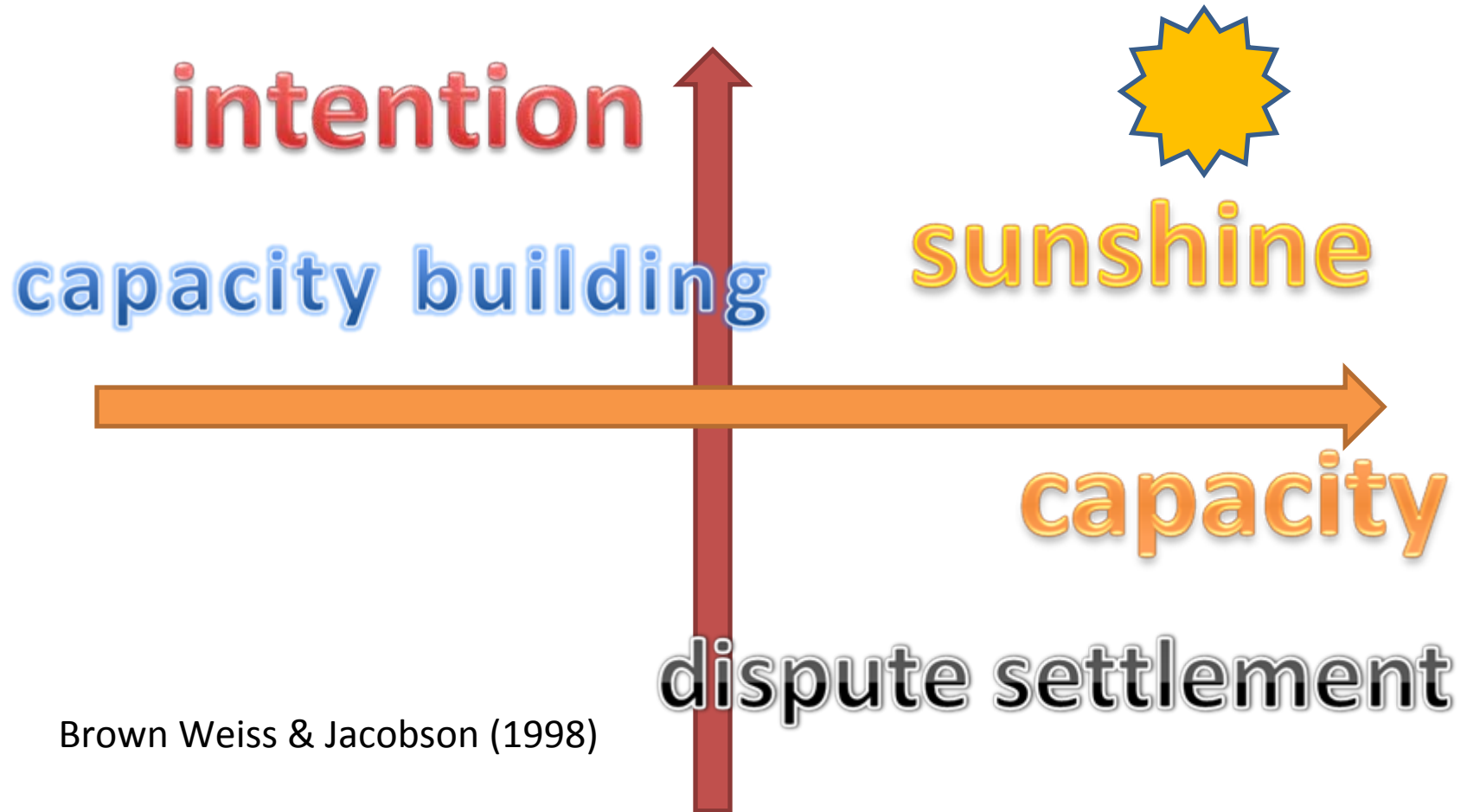
**2.Precision** means that these rules and procedures define rights and obligations in unambiguous ways.

**3.Delegation** relates to the grant of authority to third parties, such as courts, arbitrators, and administrative bodies, to interpret and apply rules during dispute settlement.

# Value of Legalization

- Less use of “non-transparent discretion”
- Less need to “pick and choose” industries by governments – Porter suggests that they are not suited to make such choices
- AEC Blueprint: free movement of goods, services, **skilled** labour, and **freer** movement of capital
- Liberal macro economic policies with some regulatory carve outs
- More attractive environment for FDI and therefore growth and political stability

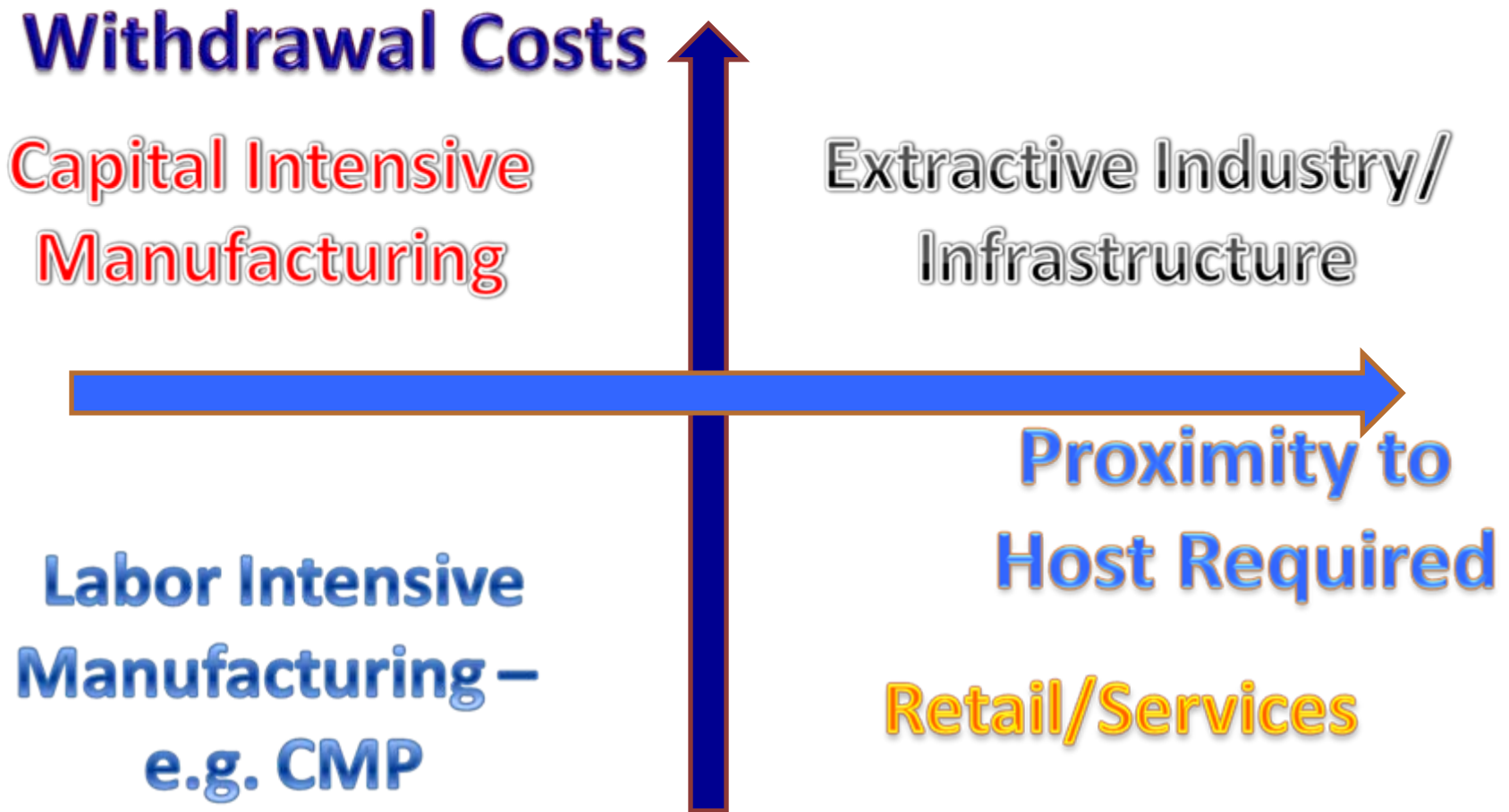
# Strategies for Implementation of Policies and Laws



Brown Weiss & Jacobson (1998)



# Calibrating Tax/Regulation for Different Types of Investments



# Areas for Cautious Progress

- Tax Incentives
  - May not be a major consideration in some circumstances
  - Governmental revenue will be required for development
- Concession Agreements
  - Without a transparent system, interest capture is a possibility
  - Without a good regulatory system, environmental or labor issues may not be sufficiently managed
- Investment Treaties
  - Without a skilled and efficiency bureaucracy, this could lead to unintended consequences

# Recommendations

- Investor Centric Focus
- Transparency – e.g. eGovernment
- Efficiency – e.g. Work Improvement Teams
- Clarity – reduce need for discretion
- Internal Coordination Processes – e.g. Ministerial Coordination but also technical coordination at the inter-sectoral level
- Industry Feedback Loop Mechanism

# Only the Beginning...

- There is no single solution for all time
- Constant improvement and recalibration of policies and regulation required
- Feedback processes will help in this regard
- Adopt constant improvement processes to increase competitiveness
- Benchmark to best practices