



# HOW TO OPTIMIZE EXTERNAL GROWTH STRATEGIES INVESTING INTO EMERGING ASIA

Regulatory legal framework

Deal structuring

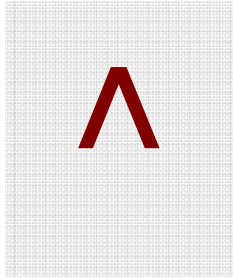
**Paris, 19th May 2011**

**Albert Franceskinj**

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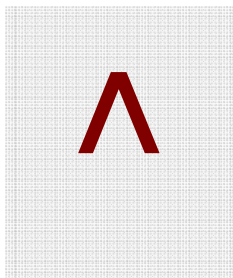
*Partner*





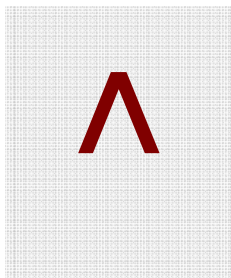
## **OUTLINE**

- **How to enter the region ?**
- **Investment legal frame**
- **Countries specifics**
- **Deal structuring**
- **Cross-culture tips**



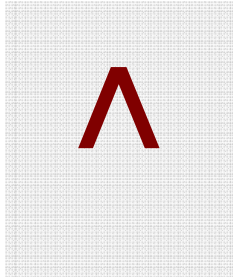
## Gateway to ASEAN

- ASEAN: Vast choice between Indonesia, Malaysia, Philippines, Singapore, Thailand, Vietnam, Brunei, Laos, Myanmar and Cambodia
- Every country is itself a gateway to Asia.
- Find the country best suited to your specific characteristics and needs.



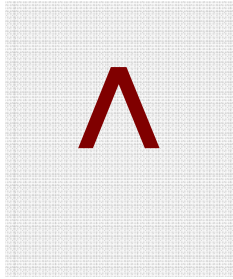
## Gateway to ASEAN

- **Diversity of ASEAN countries in light of**
  - **Their legal environment:**
    - legal system,
    - political context,
    - openness to foreign investment and incentives,
    - bilateral relations with France
  - **Their key business sectors & strengths (skilled labor / cheap resources, infrastructure, IP protection, etc.)**
  - **Their characteristic of manufacturing base/market**



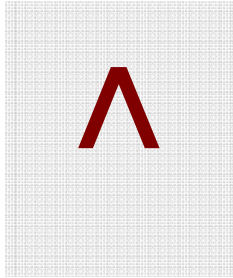
## Legal environment

Countries	State subject to the Rule of Law / Existence d'un « Etat de droit »			
	--	-	+	++
Myanmar	--			
Brunei			+	
Cambodia		-		
Indonesia			+	
Laos		-		
Malaysia			+	
Philippines		-		
Singapore				++
Thailand			+	
Vietnam		-		



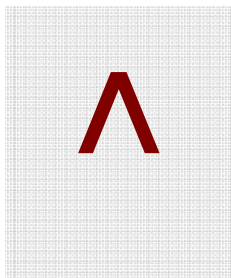
## Legal environment

Country	Legal system		
	Civil law	Common law	Customary / Religious law
Myanmar		X	Customary Law
Brunei	X French-influenced codes		Based on Indian penal code and on English common law; for Muslims Islamic sharia law supersedes civil law concerning Muslim marriages and inheritance
Cambodia	X	increasing influence of common law reported by CIA	Royal decrees, and acts of the legislature with influences of customary law and remnants of communist legal theory
Indonesia	X based on Roman-Dutch law		X Adat: cultural law of Indonesia
Laos	X based on French legal norms & procedures		Influence of traditional customs, socialist practise
Malaysia		X based on English common law	Customary Law Personal law based on sharia law applies to Muslims
Philippines	X Based on Spanish law	X influenced by U.S. common law after 1898	
Singapore		X based on English common law	
Thailand	X	Influences of common law system	
Vietnam	X based on communist legal theory and French civil law system		



# Legal environment

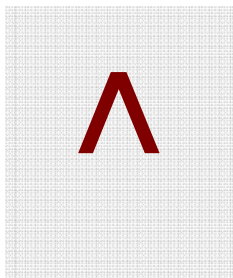
Country	Political context	
	Liberal economic system	Command economy
Myanmar		
Brunei		
Cambodia	X	
Indonesia	X	
Lao		X
Malaysia	X	
Philippines	X	
Singapore	X	
Thailand	X	
Vietnam		X



## Openness to foreign investment

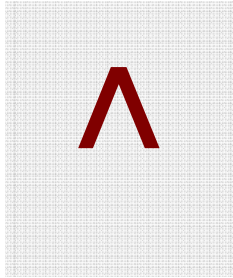
- Freedom: Singapore
- Prior authorization in practise
  - Vietnam: from a system of investment license with prior government authorization, to a process of registration and issuance of a Certificate of investment
- Limitation to foreign capital holding
  - Malaysia: At least 30% Bumiputra in commercial sectors and services (excluding manufacturing investment)
- Prohibited areas
  - Indonesia: "Negative List of Investment"
  - Thailand: "Category 1" media activities and agriculture
- Maximum period of validity of foreign investment
  - Indonesia: 30 years renewable if positive contribution to the economy
  - Vietnam: corporate life of 50 years, exceptionally 70





## General trend towards openness - Agreements

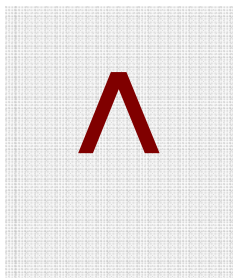
- Between ASEAN countries  
"AFTA": Establishment of a free trade area between the six member countries (Malaysia, Singapore, Philippines, Indonesia, Thailand, Brunei) extended to Vietnam and Cambodia
  
- With non-ASEAN members:
  - ASEAN +3 "": + China, Japan, South Korea
  - "ASEAN +6 " + India, Australia, New Zealand
  - ASEAN +6 FTA"  
AANZFTA (ASEAN-Australia-New Zealand Free Trade Area) signed on 27/02/2009
  - ASEAN–China Free Trade Area (ACFTA), in effect as of 1 January 2010
  - ASEAN–India Free Trade Area (AIFTA), in effect as of 1 January 2010
  - ASEAN–Japan Comprehensive Economic Partnership (AJCEP)
  - ASEAN–Korea Free Trade Area (AKFTA), in effect as of 1 January 2010



## Legal environment

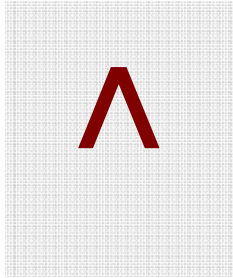
General trend towards openness - Examples of FDI promotion

- Malaysia
  - Government announced in 2003 measures in favour of foreign ownership in local companies
  - Greater opening of services sector
  
- Singapore
  - Dedicated government agency: EDB; financial and tax incentives
  - Development of a competition law
  - Liberalization of services (private banking, telecommunications)
  
- Indonesia
  - Simplifying procedures for obtaining an investment agreement (15 days)
  - Dedicated government agency: Indonesia/Capital Investment Coordinating Board (BKPM)



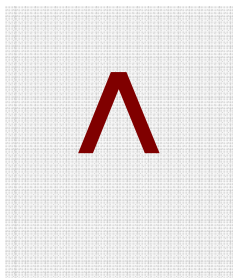
## Legal environment

- General trend towards openness - Some examples of promoting foreign direct investment...
  - Vietnam
    - WTO consequences
    - Multiplication of possible forms of investment
    - Longer lifespan of companies with foreign capital
    - Granting 100% subsidiaries with the rights granted to joint ventures.
  - Thailand
    - Measures to promote investment in specific sectors (movie industry, semiconductor industry)
    - Special benefits reserved for investments in some geographical areas.



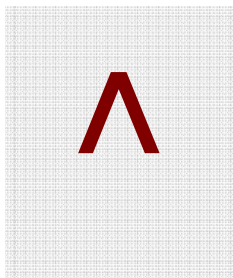
## Legal environment

- ...But maintaining a more or less direct control over certain areas of activity
- Not all areas of economic activity are open to foreign investment
  - Malaysia: Production of products incorporating advanced technology
  - Indonesia: Radio and TV stations, film, sea transport, medical services, ... (necessary review of the "negative list of investment" needed)
  - Vietnam: Mining, pharmaceutical distribution
  - Thailand: Activities "category 1" or agricultural activities related to media ...
  - Singapore: License required for manufacture of certain products: chewing gum, CD, matches, cigarettes



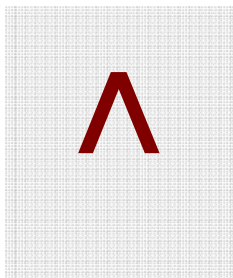
## Legal environment

Country	Tax agreements with France	
	Avoidance of double taxation agreement	Investment protection
Myanmar		
Brunei		
Cambodia		X (13.07.2000)
Indonesia	X (14.09.1979)	X (14.06.1973)
Lao		X (12.12.1989)
Malaysia	X (24.04.1975 amended on 31.01.1991 and on 12.11.2009, in force on 01.12.2010)	X (24.04.1975)
Philippines	X(09.01.1976 amended on 26.06.1995)	X( 13.09.1994)
Singapore	X (09.09.1974 amended on 13.11.2009 in force on 01.01.2011)	X (08.09.1975)
Thailand	X (27.12.1974 amended on 20.08.1999 and 06.03.2000)	13
Vietnam	X (10.02.1993)	X (26.05.1992)



## Countries' features

<b>Countries</b>	<b>Key sectors</b>	<b>Resources</b>	<b>Growth sectors</b>
Indonesia	<ol style="list-style-type: none"><li>1. Industry / Mining</li><li>2. Manufacturing: textiles, metallurgy, chemistry, electronics)</li><li>3. Services</li><li>4. Agriculture</li><li>5. Traditional sectors textiles, footwear, electronics, tourism strongly challenged by neighbors more competitive ASEAN and especially China</li></ol>	<ol style="list-style-type: none"><li>1. Agricultural resources (rice, maize, cassava, soybeans, peanuts, tea, tobacco, palm oil, rubber, coffee, cocoa)</li><li>2. Natural resources: Hydrocarbons, forestry, mineral resources (oil, bauxite, (gas, coal, gold, copper, gold, silver, nickelgas).</li></ol>	<ol style="list-style-type: none"><li>1. Food</li><li>2. Electronic Technologies</li><li>3. Biotechnology</li><li>4. Environment</li><li>5. Infrastructure</li></ol>
Malaysia	<ol style="list-style-type: none"><li>1.Services</li><li>2. Industry and mining, construction</li><li>3.Agriculture</li></ol>	Natural resources: petroleum, natural gas, copper, bauxite, timber	
Philippines	<ol style="list-style-type: none"><li>1. Manufacturing (food processing and electronics)</li><li>2. Services</li><li>3. Agricultural sector</li><li>4. Electronics industry (12% of world semiconductors production)</li><li>5. Services subcontracting</li></ol>		<ol style="list-style-type: none"><li>1. Power sector: privatized</li><li>2. Mining: open to foreign investment</li></ol>



## Countries' features

<b>Countries</b>	<b>Key sectors</b>	<b>Resources</b>	<b>Growth sectors</b>
<b>Singapore</b>	<ol style="list-style-type: none"> <li>1. Manufacturing (electronics, traditional sector, biotechnology, marine engineering)</li> <li>2. Transport, Logistics</li> <li>3. IT communication services</li> <li>4. Finance</li> </ol>	<ol style="list-style-type: none"> <li>1. Geographical localisation</li> <li>2. Development level</li> <li>3. High competitiveness including top infrastructures</li> </ol>	<ol style="list-style-type: none"> <li>1. Equipment and related services (transportation and logistics, maintenance)</li> <li>2. Consumer goods (luxury and fashion, gourmet foods, dietary, biological)</li> <li>3. Health (pharmacy, chemistry, biomedicine, clinics)</li> <li>4. High Capital and high value added industries</li> </ol>
<b>Thailand</b>	<ol style="list-style-type: none"> <li>1. Services</li> <li>2. Mining and construction industry</li> <li>3. Agriculture <ul style="list-style-type: none"> <li>• Telecommunications</li> <li>• Automotive</li> <li>• Biofuels</li> <li>• Agribusiness / Food industry</li> </ul> </li> </ol>		<ol style="list-style-type: none"> <li>1. Energy: Massive and diversified investments (Power Development Plan, Renewable Energy, Nuclear, Gas)</li> <li>2. Transportation: Major Projects (9 subway lines, National Rail, Air: Continued development of air transport capacity)</li> <li>3. Petrochemical (onshore New crackers, Petrochemical planning)</li> <li>4. Education, vocational training, R &amp; D</li> </ol>
<b>Vietnam</b>	<ol style="list-style-type: none"> <li>1. Manufacturing (footwear, textiles, furniture)</li> <li>2. Industry Food, Agriculture, Aquaculture</li> <li>3. Industrial services (electricity, coal, cement, steel ...)</li> </ol>	<ol style="list-style-type: none"> <li>1. Agricultural resources (rice, soy, pepper, tea, coffee, rubber, cashew nuts, ...)</li> <li>2. Coal, oil</li> <li>3. Workforce with potential</li> </ol>	<ol style="list-style-type: none"> <li>1. Infrastructure, Roads, bridges</li> <li>2. Transport (TGV, subway),</li> <li>3. Shipbuilding</li> <li>4. Water (treatment, distribution)</li> <li>5. Energy (nuclear, petroleum refining)</li> <li>6. Health</li> <li>7. Software</li> </ol>

## Deal structuring

- Multiple gateways, multiple opportunities
- Once the countries' characteristics identified & your business needs and defined
  - Objective (manufacturing, selling on the local market)
  - Project Scope
  - Geographical areas to be covered
- find the legal structure that best suits your approach and project
  - Light implementation if business approach or sourcing
  - Industrial implementation
  - Commercial implementation (distribution over Asia, South East Asia, Asia Pacific)
  - Multiple purposes implementation: manufacturing and selling (Asian market, international market)

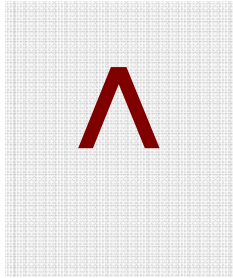


## Deal structuring

- Choice between the traditional legal vehicles
  - Limited liability company (with local characteristics)
  - Joint stock company
  - Representative Office
  - Cooperation contracts (BOT, BTO, ...)
- 100% foreign investment or joint investment
- Depending on the specific legal constraints
  - Authorization of foreign investment in your business sector
  - Openness of this sector
- And tax benefits (DTA, Trade agreements...)

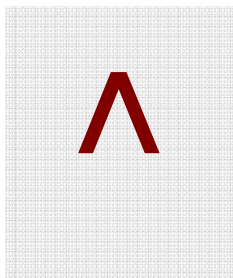
## Deal structuring

- Examples of structuring
  - Representative Office(s) of a parent company in France or an existing structure in Asia  
*E.g.: Existing Company in Malaysia + Representative Office in Indonesia*
  - Initial implementation from a holding company and/or a production base  
*E.g.: Company in Singapore, local distributor in the Philippines*  
*E.g.: Holding Company in Singapore and production unit in Vietnam*
  - Multiple initial implementation  
*E.g.: Holding company in Singapore, production plant in Vietnam*  
*representative office in Malaysia, distribution company in Thailand*
  - Acquisition of a competitor and setting up in its existing legal structures, restructuring
  - Partnership / Acquisition with/of a distributor, settlement in the existing network, additional implementations, restructuring
  - Consider a holding company in Singapore for SE Asia /Asia /Asia Pacific



## Crossculture tips

Country	Tips
▪ <b>Cambodia</b>	<ul style="list-style-type: none"><li>▪ Everything is possible provided that.... At your own risks</li><li>▪ More success is high, higher are the risks</li><li>▪ Deep politic links with Vietnam + chinese influences</li></ul>
▪ <b>Laos</b>	<ul style="list-style-type: none"><li>▪ Lao people is not looking for output or profitabilty</li><li>▪ Patient approach</li><li>▪ Deep politic links with Vietnam + chinese influences</li></ul>
▪ <b>Thailand</b>	<ul style="list-style-type: none"><li>▪ Smiling and calm people</li><li>▪ Unstable political context</li></ul>

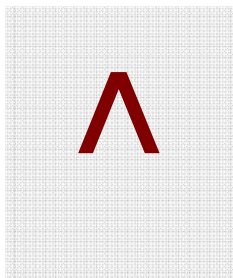


## Crossculture tips

<b>Country</b>	<b>Tips</b>
<ul style="list-style-type: none"><li>▪ <b>Singapore</b></li></ul>	<ul style="list-style-type: none"><li>▪ Predictible</li><li>▪ Straight... square minded</li><li>▪ Everything works provided it is legal</li><li>▪ Materialist</li></ul>
<ul style="list-style-type: none"><li>▪ <b>Vietnam</b></li></ul>	<ul style="list-style-type: none"><li>▪ Comparison with China</li><li>▪ Meridional culture in Asia</li><li>▪ Trust, sentimentals</li><li>▪ Time / impatience: the Vietnamese side of « zen »</li></ul>

## \* Main sources

- The official website of The Association of Southeast Asian Nations (ASEAN): [aseansec.org](http://aseansec.org)
- World Bank group: [DoingBusiness.org](http://DoingBusiness.org)
- Institute of Southeast Asian Studies
- International Federation for Human Rights (FIDH)
- United Nations
- World legal systems – University of Ottawa
- Central Intelligence Agency
- ASEAN Boards of Investments' websites
- ASEAN Ministries of Foreign Affairs' websites
- Chambers of commerce & Business groups in ASEAN



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