

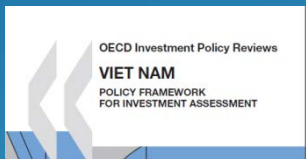


# OECD INVESTMENT POLICY REVIEW OF SOUTHEAST ASIA

Overview of main issues and challenges

3<sup>rd</sup> meeting of the Southeast Asia Regional Policy Network  
on Investment, 7 March 2018, Tokyo

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*Forthcoming 2018:*

- Viet Nam
- Cambodia

*Planned 2018-19:*

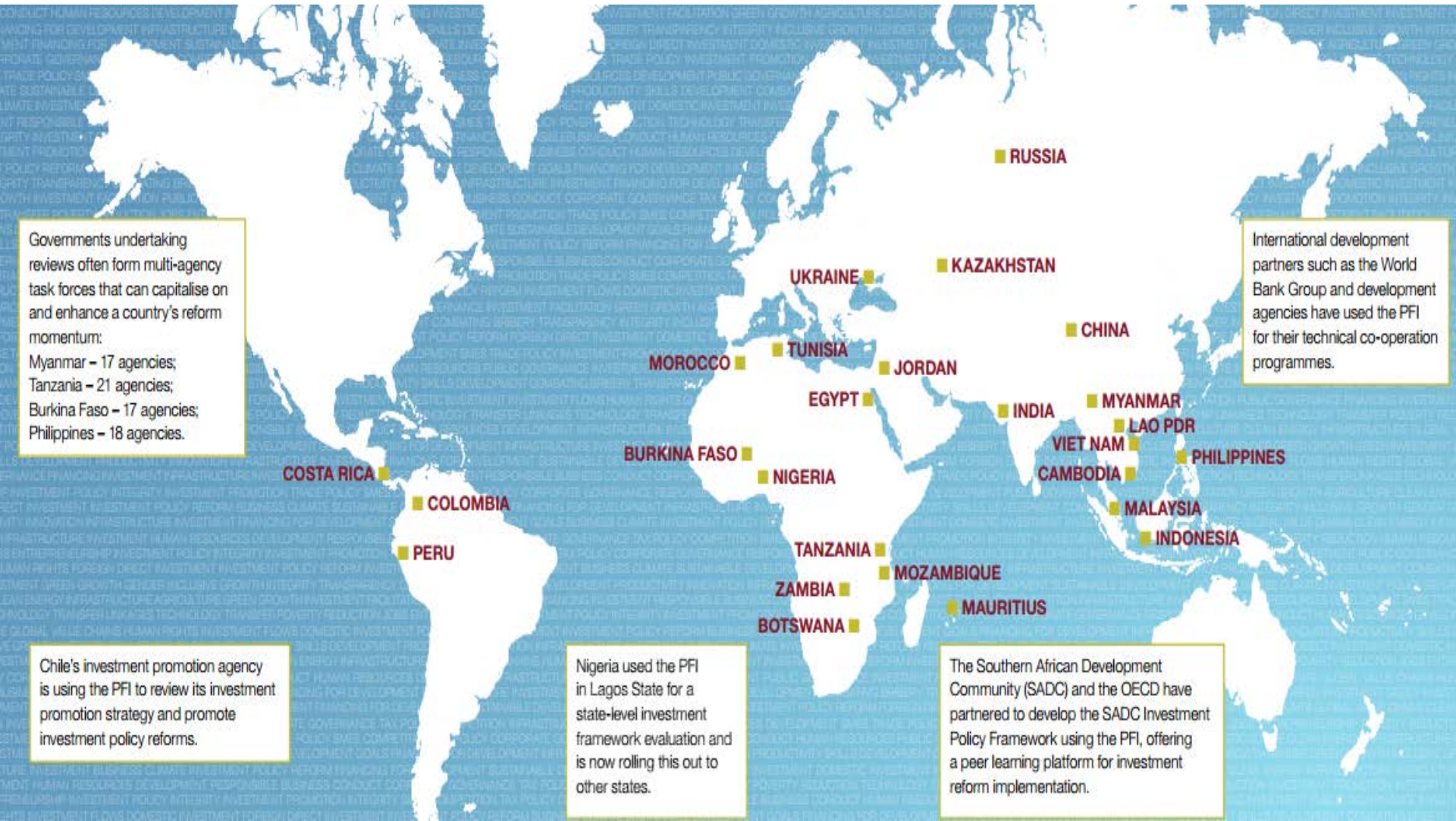
- Thailand
- Indonesia, Myanmar

Country reviews are undertaken jointly by the OECD and the government in partnership with the ASEAN Secretariat and based on the Policy Framework for Investment

# OECD Investment Policy Reviews Southeast Asia



# OECD Investment Policy Reviews using the *Policy Framework for Investment*





# IPR of Southeast Asia

- 1<sup>st</sup> of its kind by the OECD
- More thematic focus:
  - FDI liberalisation
  - Services and productivity
  - Investment protection
  - Incentives
  - Responsible business conduct
- Interplay with regional initiatives:  
AEC Blueprint 2025, ACIA, AFAS,  
ASEAN FTAs
- Key issues:
  - Ensure the continuing attractiveness  
of ASEAN for FDI
  - Increase the impact of FDI on  
productivity/competitiveness,  
inclusiveness





# *FDI LIBERALISATION*



# The OECD FDI Regulatory Restrictiveness Index

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*A tool for benchmarking performance, showcasing reform and estimating impact*

**Statutory restrictions:** All discriminatory measures affecting foreign investors, covering both market access and national treatment:

- **Screening** above a threshold or foreign equity share
- **Equity restrictions** by sector or overall, for acquisitions or greenfield projects
- Restrictions on **key personnel:** managers, directors, experts
- **Operational restrictions:** land ownership, profit/capital repatriation, branching, reciprocity, discriminatory minimum capital requirements, etc.

## **What is not covered?**

- Degree of implementation
- State monopoly
- Special treatment accorded to a group of investors, whether by activity or country of origin



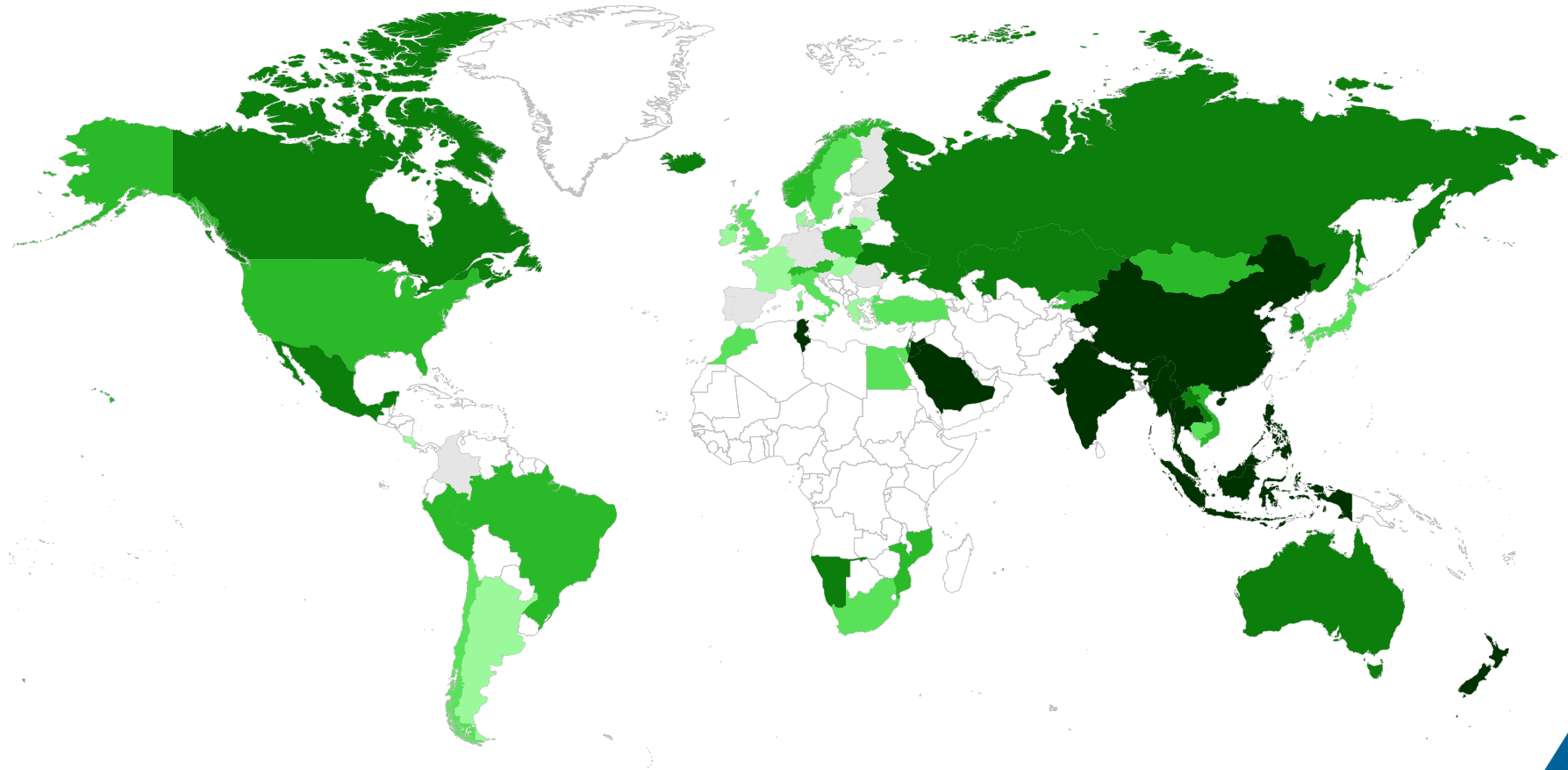
## 22 sectors are included

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1. Agriculture
2. Forestry
3. Fishery
4. Mining & Quarrying (incl. oil extract.)
5. Manufacturing - *Food & Other*
6. Manufacturing - *Oil Ref. & Chemicals*
7. Manufacturing - *Metals, Machinery and Other Minerals*
8. Manufacturing - *Electric, Electronics and Other Instruments*
9. Manufacturing - *Transport Equipment*
10. Electricity (generation, distribution)
11. Construction
12. Distribution – Wholesale
13. Distribution - Retail
14. Transport (surface, water, air)
15. Hotels & restaurants
16. Media (broadcasting and other media)
17. Communication (fixed & mobile telecoms)
18. Financial services - Banking
19. Financial services - Insurance
20. Financial services - Other financial services
21. Business Services (accounting, legal, architecture, engineering)
22. Real estate



# Asian economies are more restrictive on average... 2016

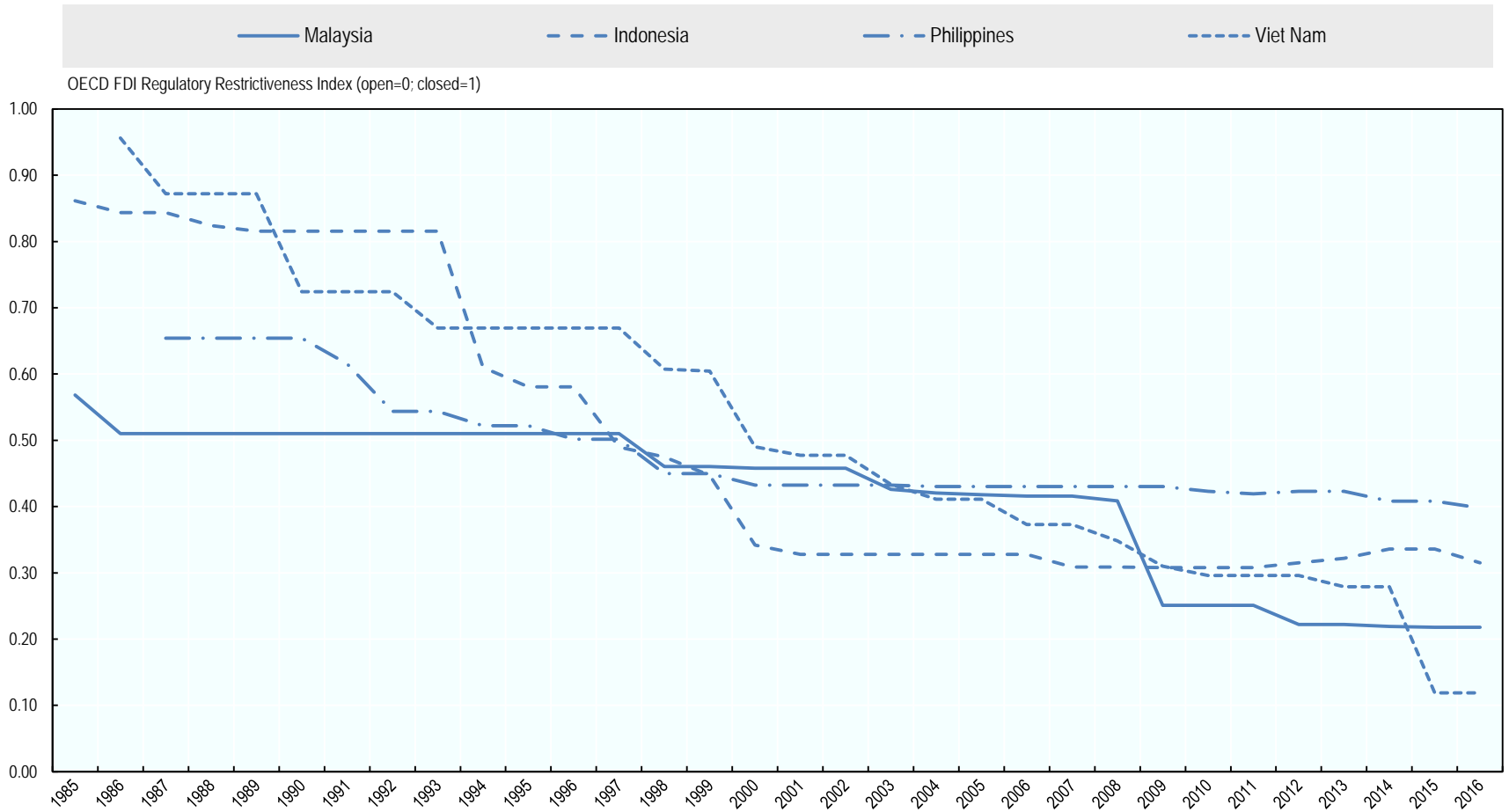


From least to most restrictive countries





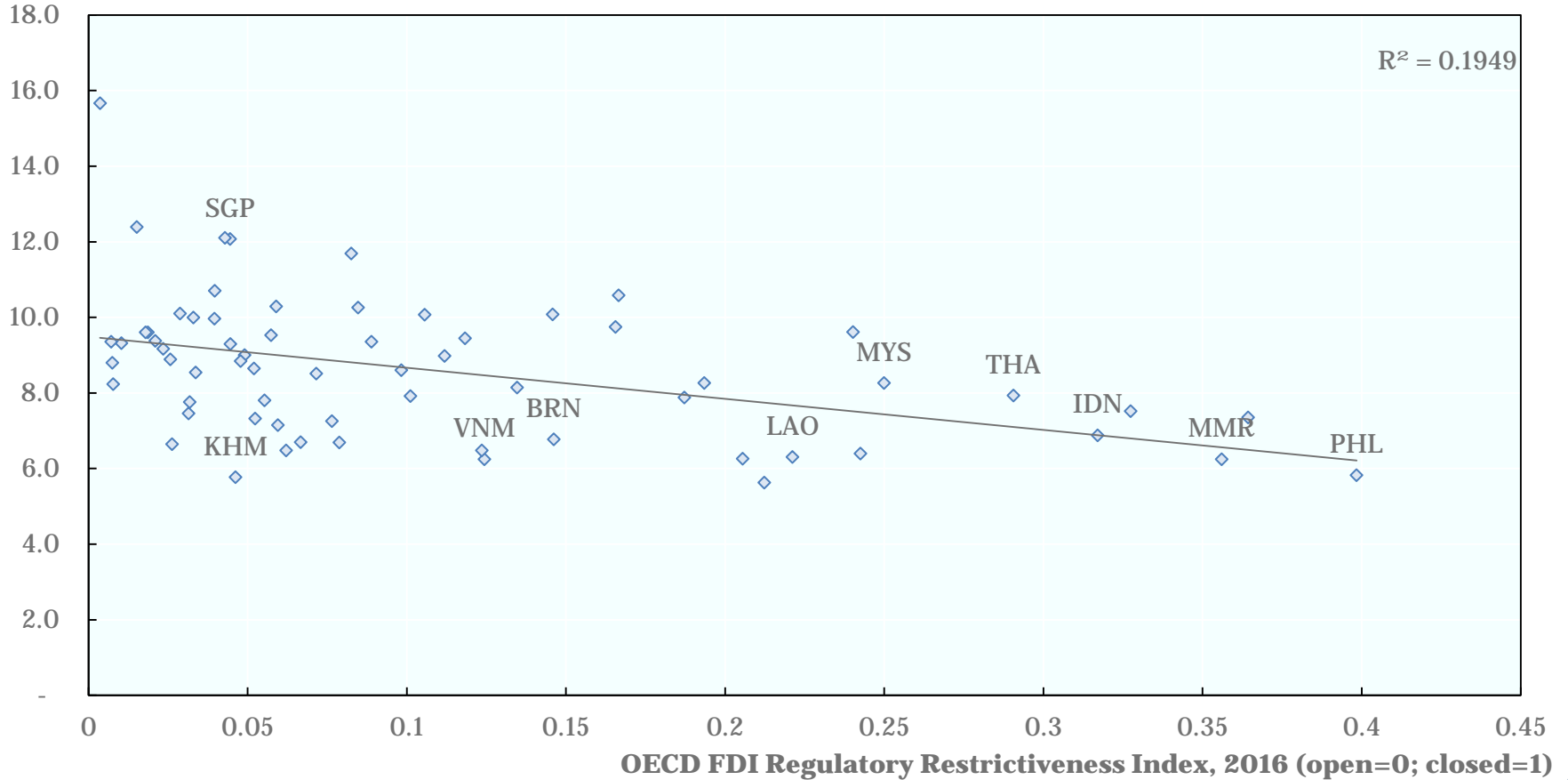
# ...but have nevertheless reformed strongly over time





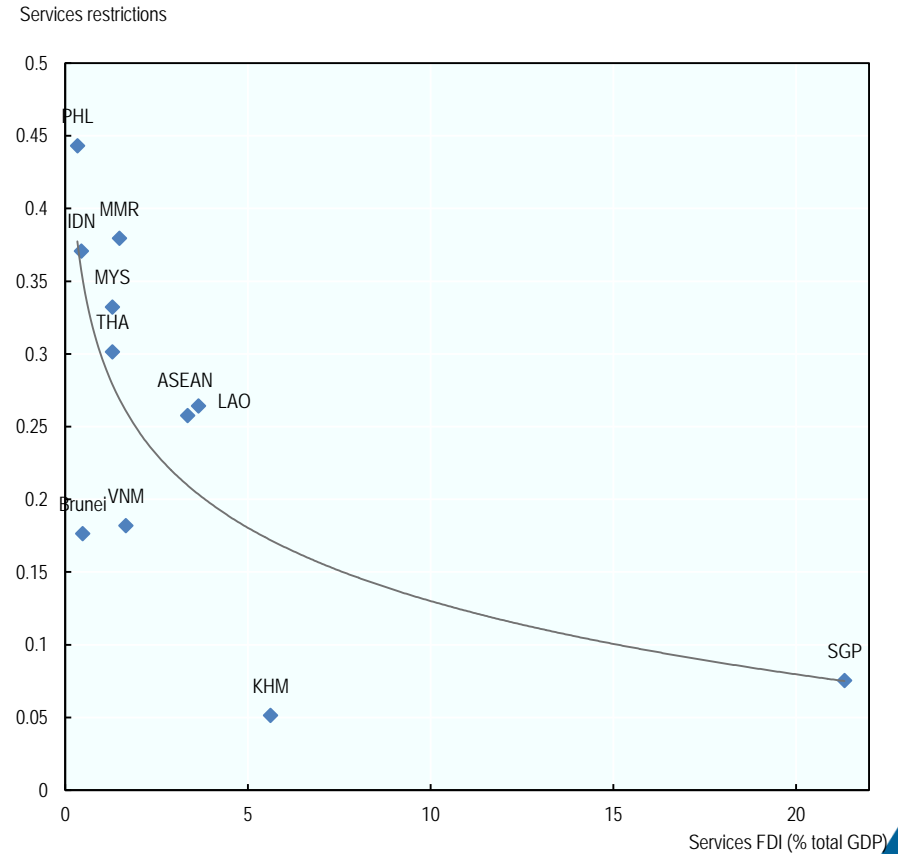
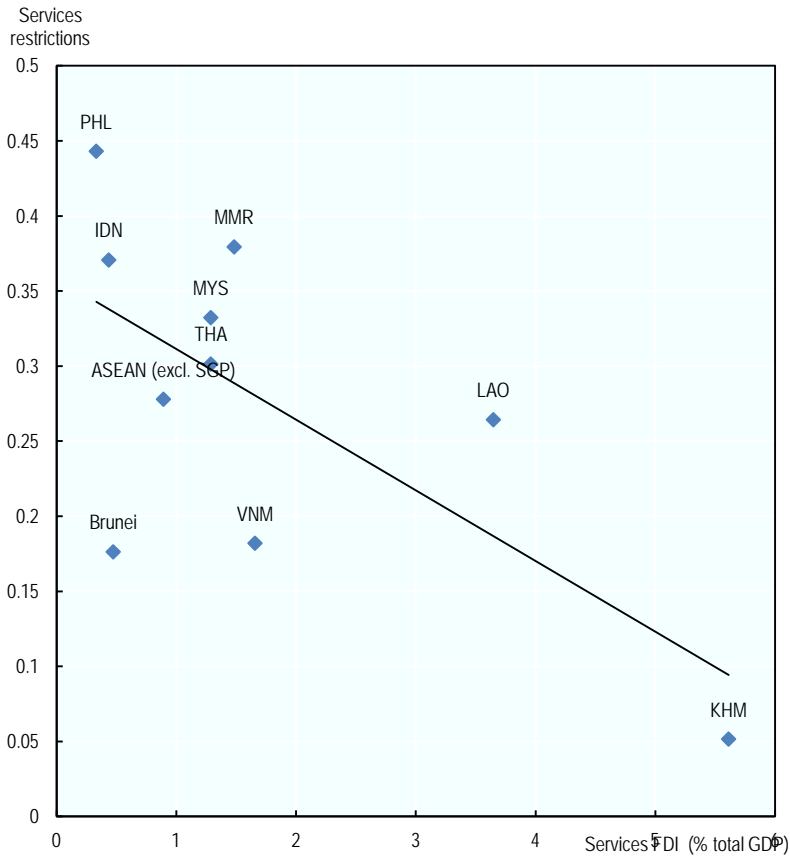
# More restrictive economies tend to have less FDI

Log of Inward FDI stock, US dollar per capita, 2016<sup>1</sup>





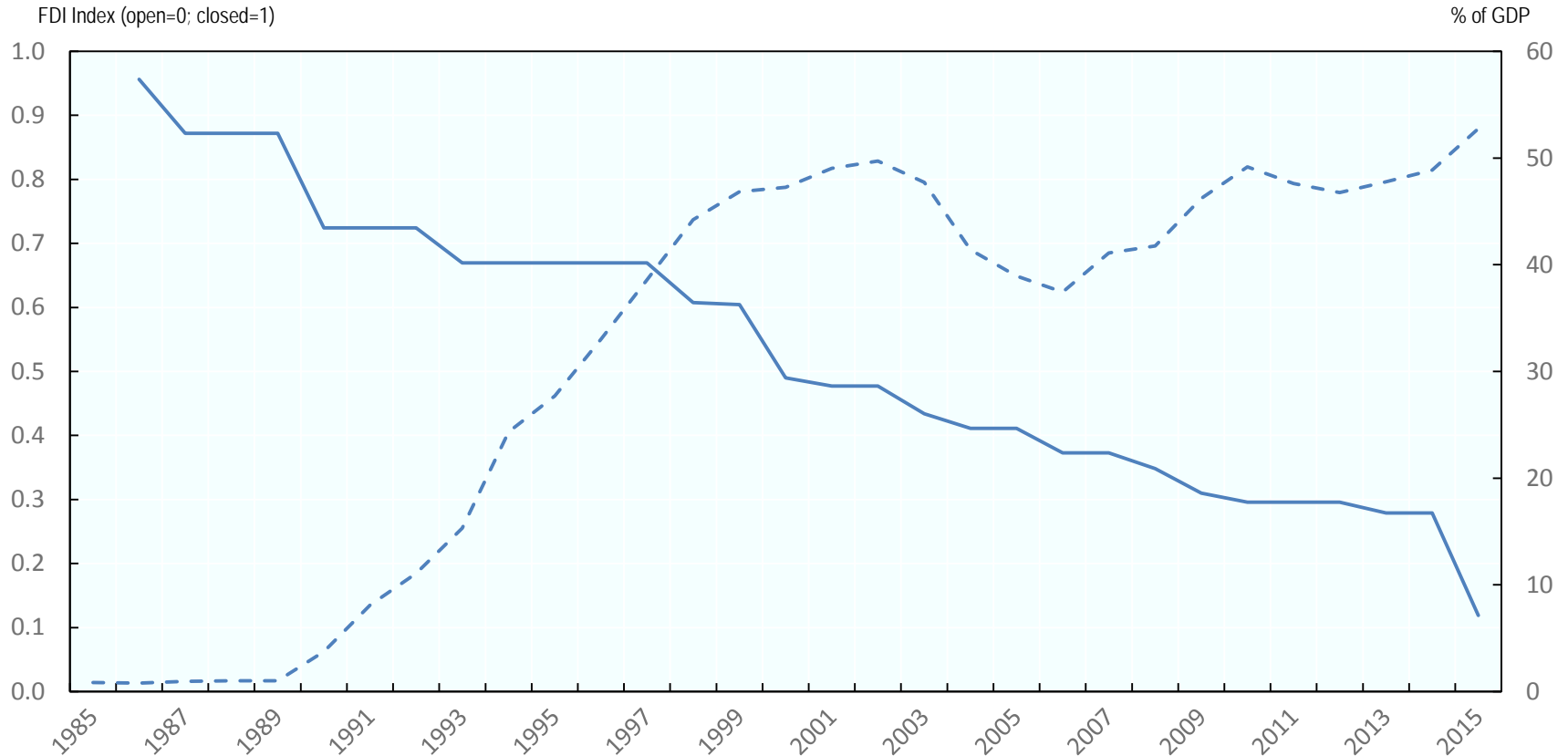
# The relationship is even stronger in services





# Investors respond to reforms

## Viet Nam





## Deepen ASEAN agreements to advance the unfinished services sector reform agenda

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- ASEAN agreements have played more of a role in locking in standards of treatment and market access than in actually driving liberalisation
- Relatively deeper liberalisation achieved in a few key backbone services under AFAS and transport agreements, but still fail to bring ASEAN to levels of openness observed in advanced economies
- ATISA could go further – e.g. by adopting a negative-list approach for services – as many AMS already do in domestic legislation
- Strengthen the agenda for regulatory co-operation and harmonisation with regard to behind the border regulations



# *INVESTMENT PROTECTION*



# The legal regime for investment varies across ASEAN...

	Investment Promotion Act, Omnibus Investment Code, etc.	Foreign Investment Law	Unified (foreign & domestic) Investment Law
Brunei Darussalam	No general law on investment or investment promotion		
Cambodia			1994, 2003, 2018 (expected)
Indonesia		1967	2007
Lao PDR		1986	2009, 2016
Malaysia	1986		
Myanmar		1988, 2012	2016
Philippines	1987	1991 (1996)	
Singapore	No general law on investment or investment promotion		
Thailand	1977, 1991	1972, 1999	
Viet Nam		1987 (1990, 1992), 1996 (2000)	2005, 2014



## Towards a single regulatory block in ASEAN: regional wave of investment legislation reforms

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- Different approaches to investment legislation within ASEAN
- Investment laws often cover protection of investment, market access and NT, incentives, sometimes also outward investment.
- Often used as a signaling device to investors
- Strong legislative reforms over time, particularly in CLMV, sometimes influenced by regional developments (e.g. ACIA)
  - Unified laws and progressive introduction of better delineated and more balanced provisions
- Need to close the gap between domestic and treaty-level protection standards but **harmonisation is a two-way street**





## ...and the treaty framework is complex

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- AMS early adopters of international investment agreements
- BITs, bilateral and regional FTAs, ASEAN agreements (ACIA, AFAS) and now RCEP and CPTPP (for 4 AMS)
- Treaties vary in terms of protection and market access accorded to covered parties and some duplication is inevitable
- But complexity imposes costs on both investors and governments
- Opportunity to review individual agreements – particularly older ones – to assess whether they reflect current practices in terms of their treatment of investors



# Investment disputes in AMS: the horizon of dispute prevention policies (DPPs)

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- ISDS is being called into question by an increasing number of governments and stakeholders
- How to help avoid investment disputes?
  - Establish policies and institutional mechanisms to **prevent** disputes from escalating into costly international arbitration cases:
    - Introduce dedicated legal and treaty provisions
    - Establish early alert mechanisms or Ombudsman services as part of investor aftercare services
  - AMS are not at the forefront of DPPs; they could draw on other regions' practices



# *RESPONSIBLE BUSINESS CONDUCT*



# Responsible business conduct (RBC): global context

Increased attention to RBC in global agendas and expectations on companies to address environmental, human rights and labour risks in their supply chains

## International standards



## Global agendas



## Legislation



## International agreements

International investment agreements increasingly include language on sustainable development or responsible business conduct.



# Regional RBC initiatives in ASEAN

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- AEC Blueprint 2025 calls on Member States to work closely with stakeholders towards promoting CSR activities
- ASEAN Convention against Trafficking in Persons, Especially Women and Children (2015)
- ASEAN Consensus on the Protection and the Promotion of the Rights of Migrant Workers (2017)
- Guidelines for Corporate Social Responsibility on Labour (2016)
- Vientiane Declaration on the Transition from Informal Employment to Formal Employment towards Decent Work Promotion in ASEAN (2016)



# National RBC initiatives in ASEAN

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## **ASEAN Member States have been early movers among emerging economies in embracing RBC**

- National Action Plans on Business and Human Rights are being developed in Malaysia, Myanmar, Thailand, Indonesia, Philippines
- Better Factories Cambodia
- Investor obligations in Investment Law (Lao PDR)
- RBC language in EU-Viet Nam FTA, as well as side agreement with United States under TPP (now CPTPP)
- RBC part of Myanmar Investment Commission approval (Myanmar)
- Indonesia first introduced CSR obligations in mining sector



Thank you

terima kasih

cảm ơn bạn

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salamat

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