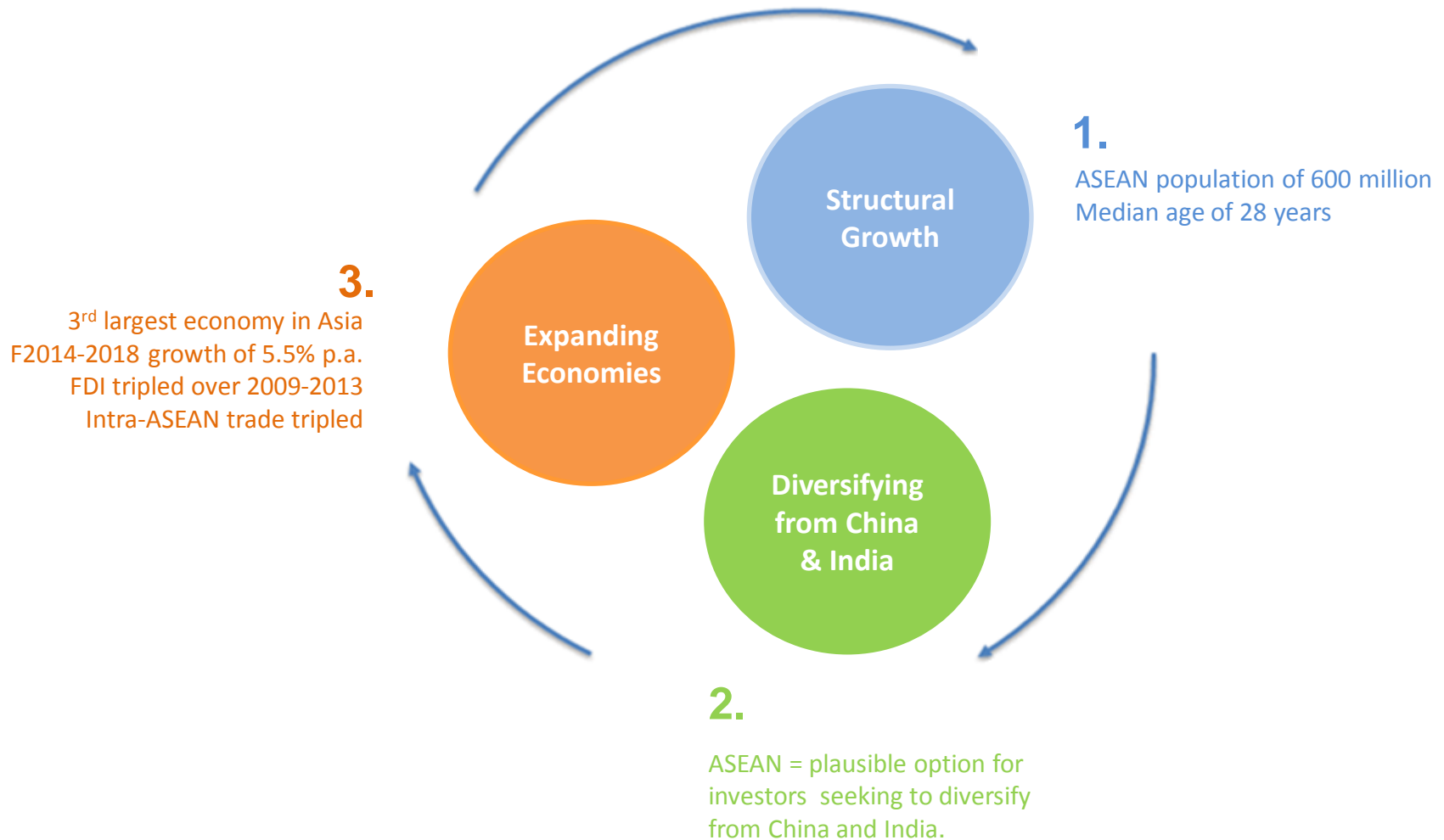




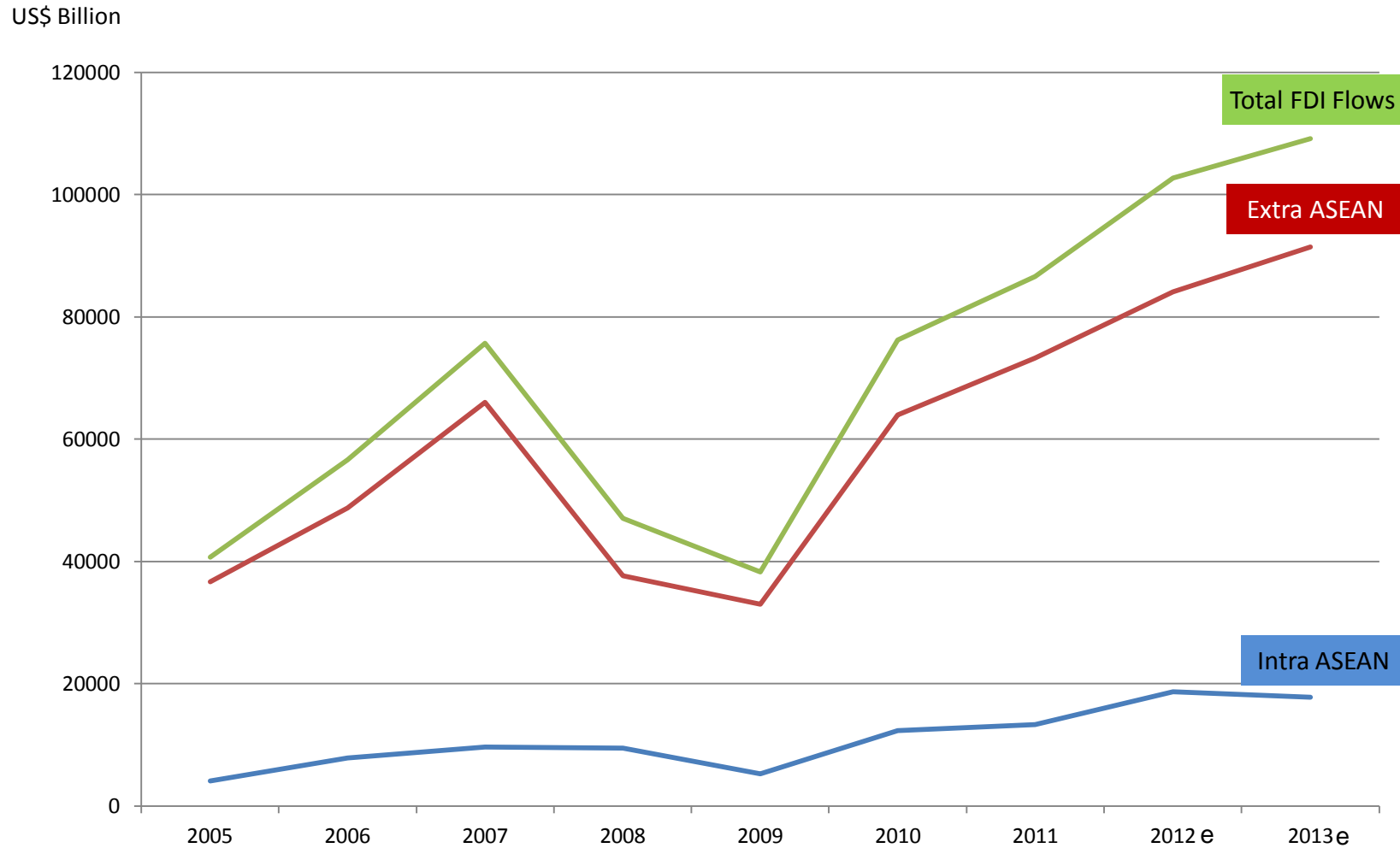
Doing Business in the Greater Mekong Region
Update: Myanmar, Thailand & Vietnam
Singapore In House Congress
23 September 2014

- 1 Investment Trends in ASEAN
- 2 M&A Trends in ASEAN
- 3 Ease of Doing Business in ASEAN

Why ASEAN?



ASEAN Key Indicators: FDI Trends



ASEAN Key Indicators: 2014 GDP (IMF)

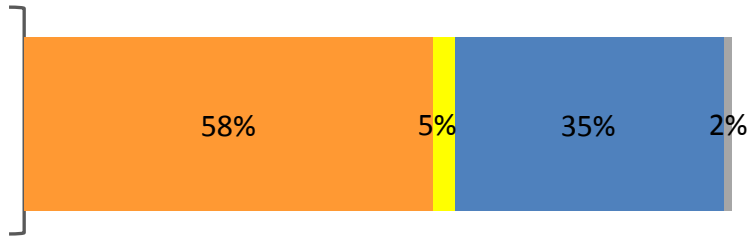
Country	POP Million 2014e	GDP USD Per Capita 2014e	GDP USD PPP 2014e	GDP Growth 2011e	GDP Growth 2012e	GDP Growth 2013e	GDP Growth 2014e	GDP Growth 2015e
Cambodia	15.6	1,087.83	2,777	7.1	6.5	6.7	7.2	7.3
Vietnam	90.6	2,073	4,256	5.9	5.1	5.9	5.6	5.7
Laos	6.9	1,699	3,285	8.0	8.3	8.1	7.5	7.8
Myanmar	66.2	910	1,866	5.5	6.2	6.3	7.8	7.8
Thailand	68.5	5,450	10,226	0.05	5.6	5.9	2.5	3.8

System		GOVT	POLITICS	LAW
Cambodia	MARKET: Small state	Dem PM & Pres	Multi party Monarchy	<ul style="list-style-type: none"> - Civil (FR/JP/GER) - Com? (no SD) - Soc
Indonesia	MARKET: Large state	Dem; PM	Multi party	<ul style="list-style-type: none"> - Civil (Dutch-Roman) - Islamic - Customary
Lao	PLAN: Large state	Soc: PM	1 party	<ul style="list-style-type: none"> - Soc/civil (FR)
Myanmar	PLAN: large state	Dem (2010) Pres; Fed	Multi party (2 main)	<ul style="list-style-type: none"> - Common
Thailand	MARKET: large state	Dem	Multi party (Monarchy)	<ul style="list-style-type: none"> - Civil (JP/FR)
Vietnam	PLAN : large state	Soc	1 party	<ul style="list-style-type: none"> - Soc/Civil (FR,GER,JP)

TODAY

Over the past 2 years

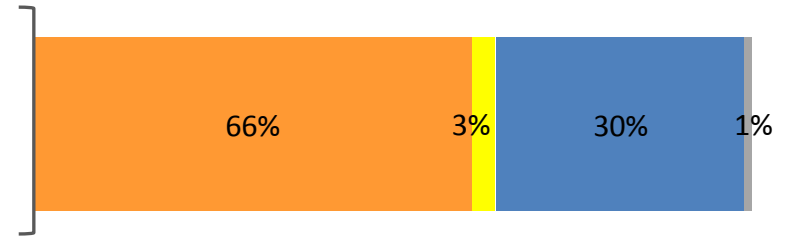
Importance of ASEAN Markets in Terms of Worldwide Revenues, over the Past 2 Years



More important Less important Have the same importance Don't know

In the next 2 years

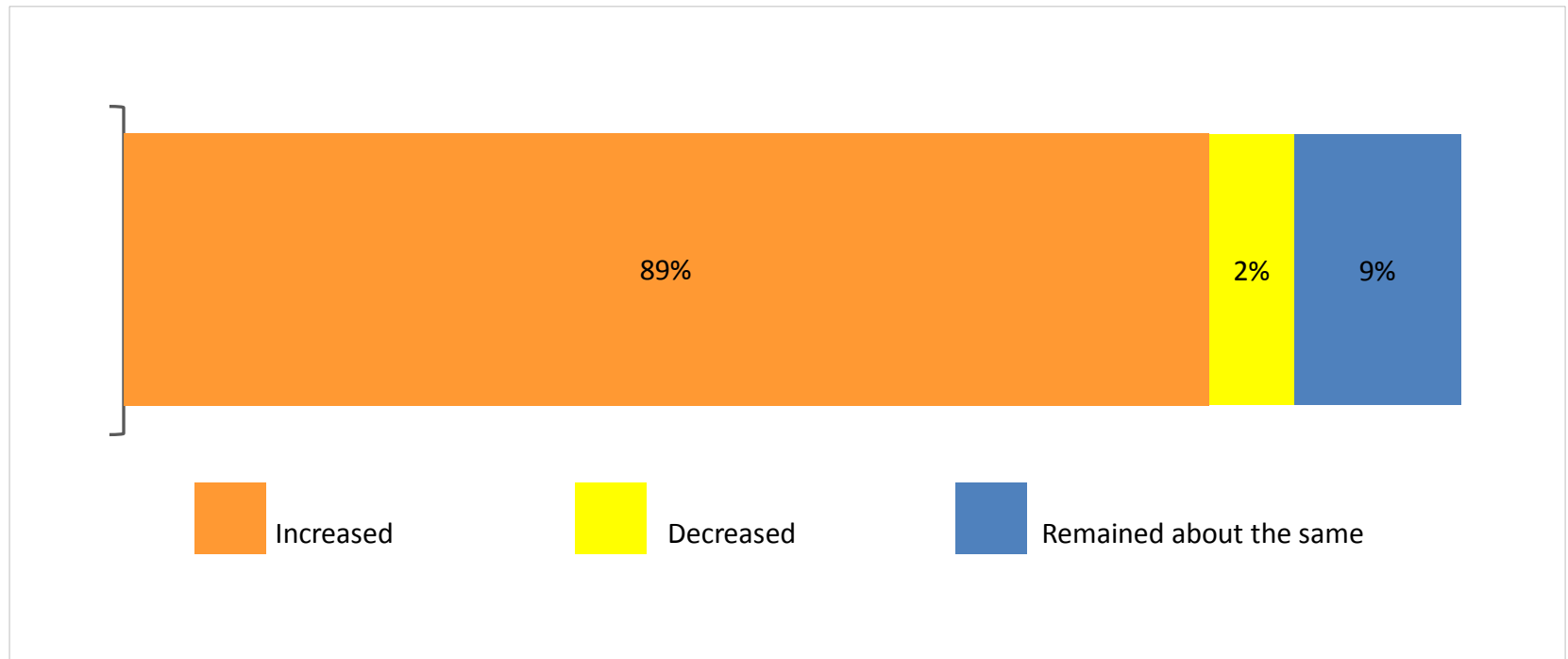
Importance of ASEAN Markets in Terms of Worldwide Revenues, over the Next 2 Years



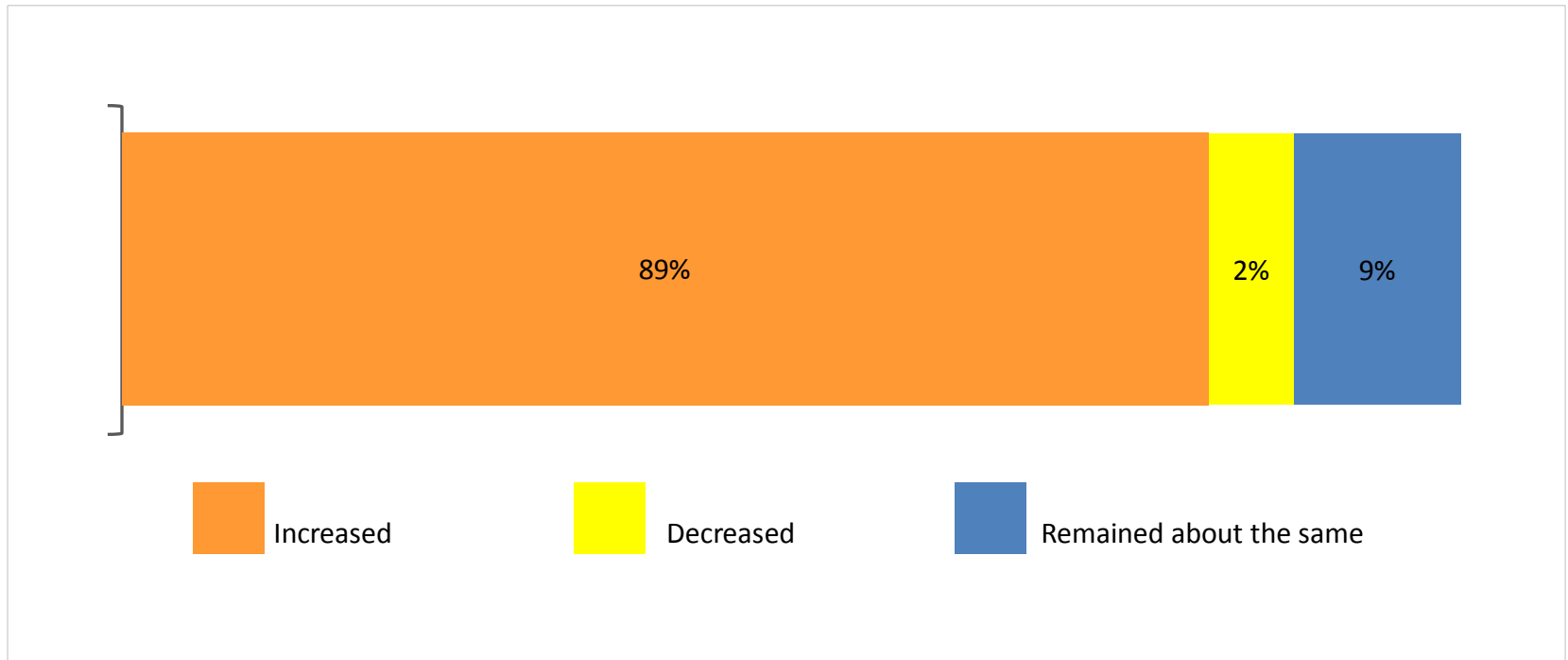
More important Less important Have the same importance Don't know



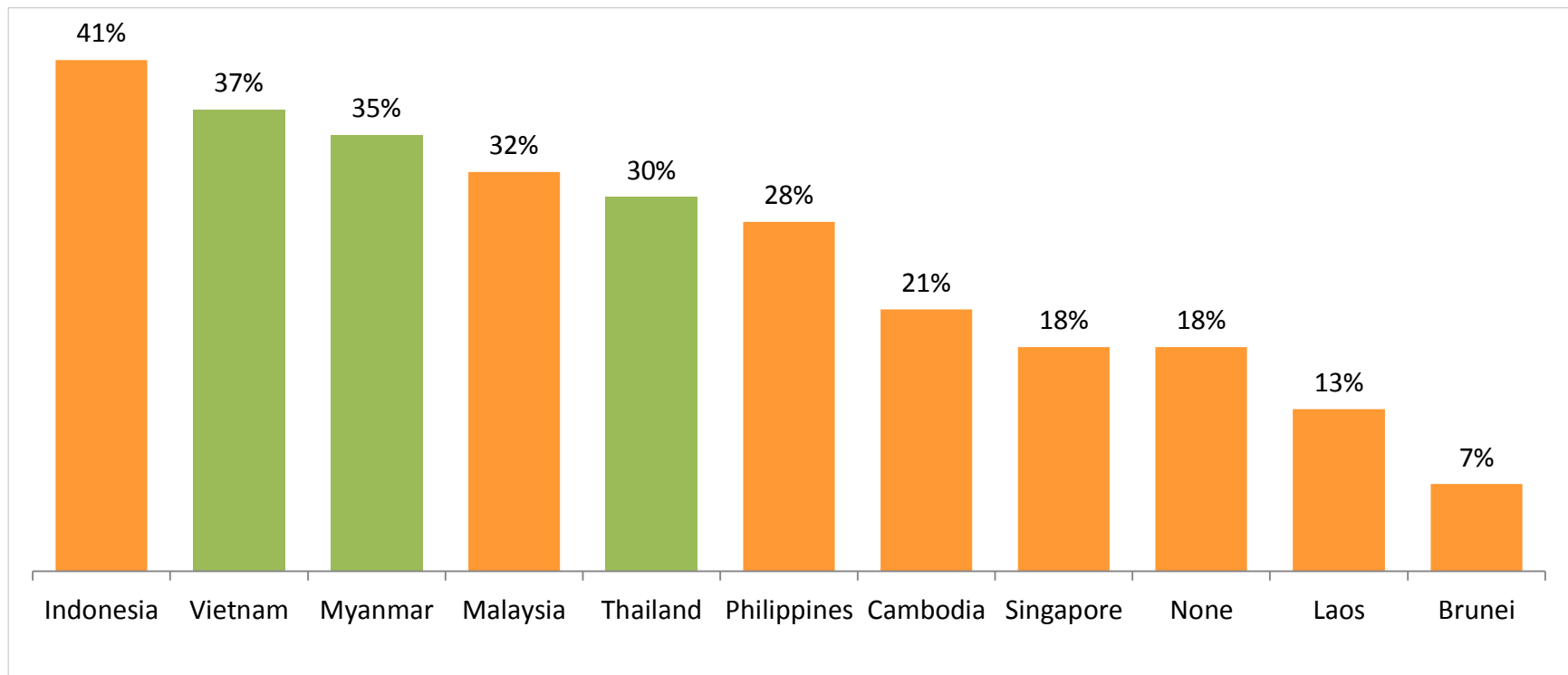
Level of Trade/Investment in ASEAN over the Next 5 Years



Level of Trade/Investment in ASEAN over the Next 5 Years



Into which Specific ASEAN Country or Countries, if any, Does Your Company Plan to Expand?



1

Investment Trends in ASEAN

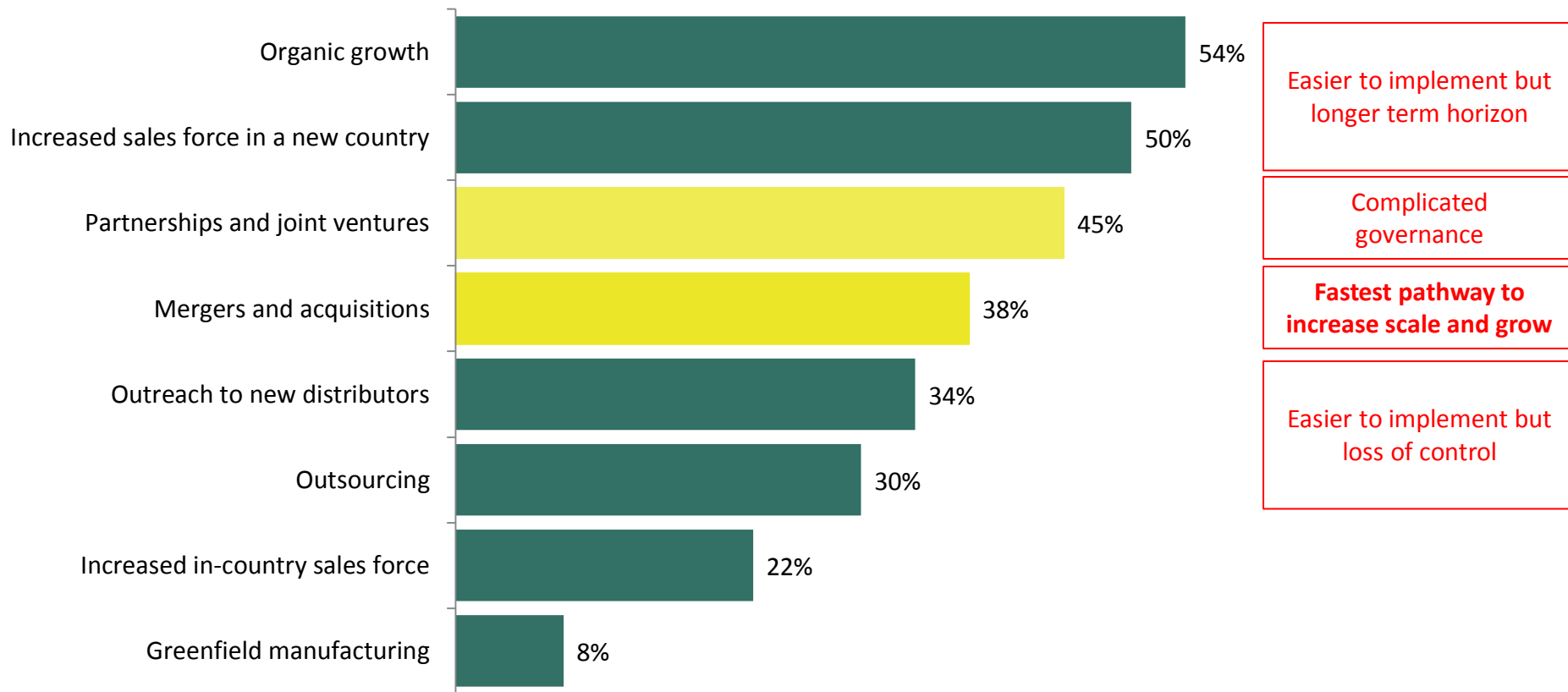
2

M&A Trends in ASEAN

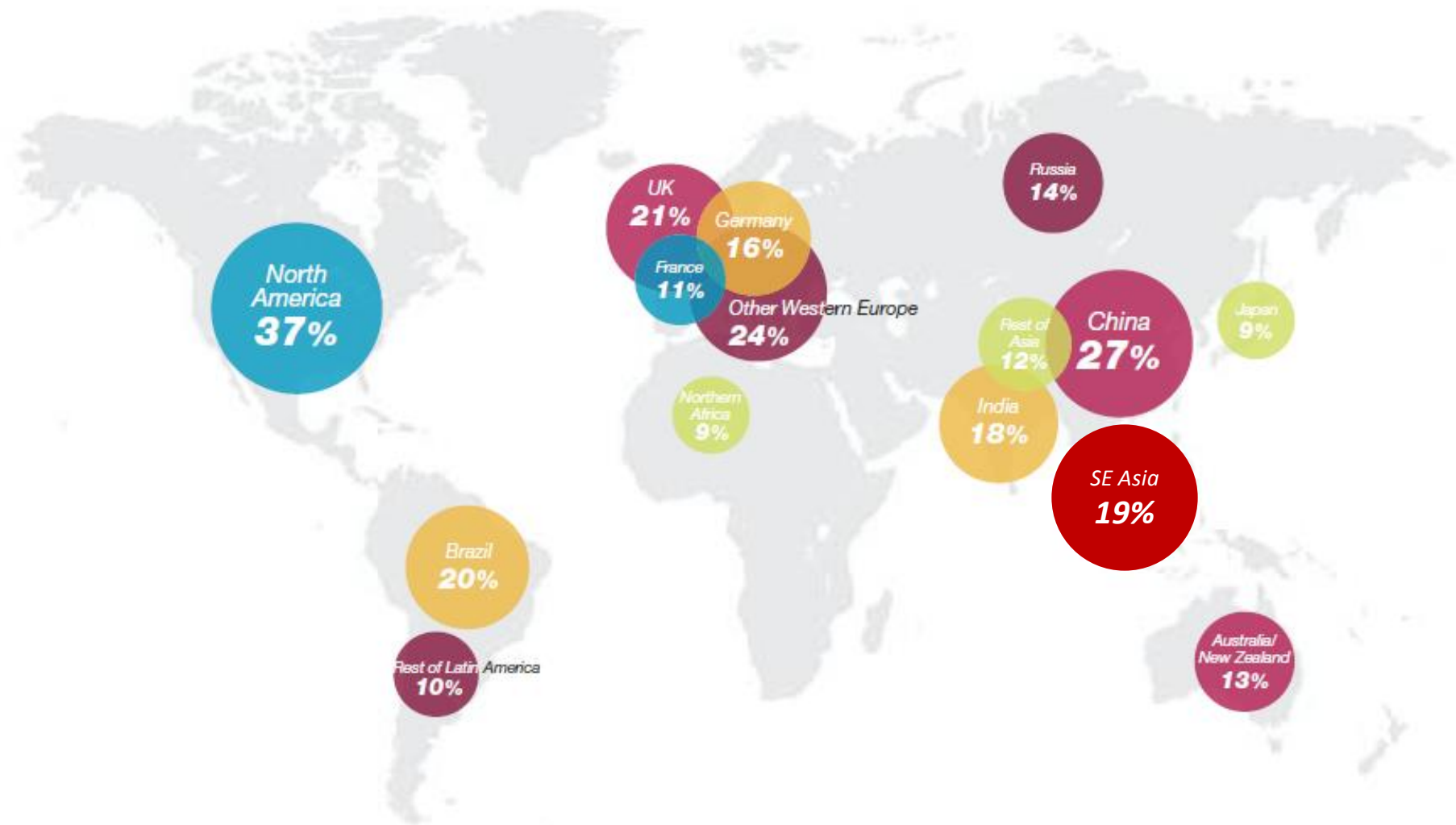
3

Ease of Doing Business in ASEAN

ASEAN M&A Key Indicators: Expected growth path



M&A Destinations – Global



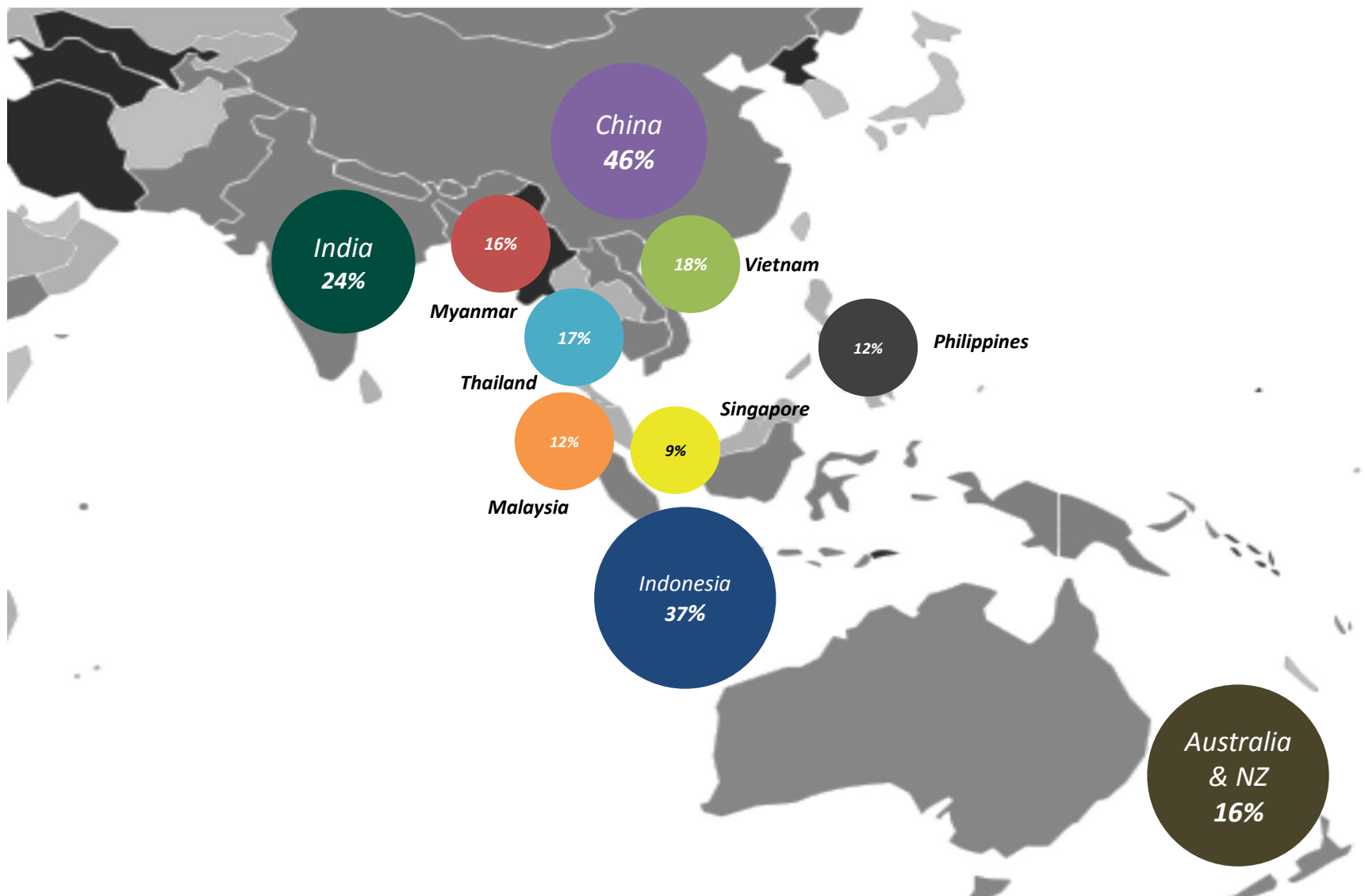
Drivers

- Low growth environment in USA & Europe and slowing growth in China
- Strong corporate balance sheets
- Access to debt at historically low interest rates
- Flight to high growth markets
- Potential to lower production costs

Obstacles

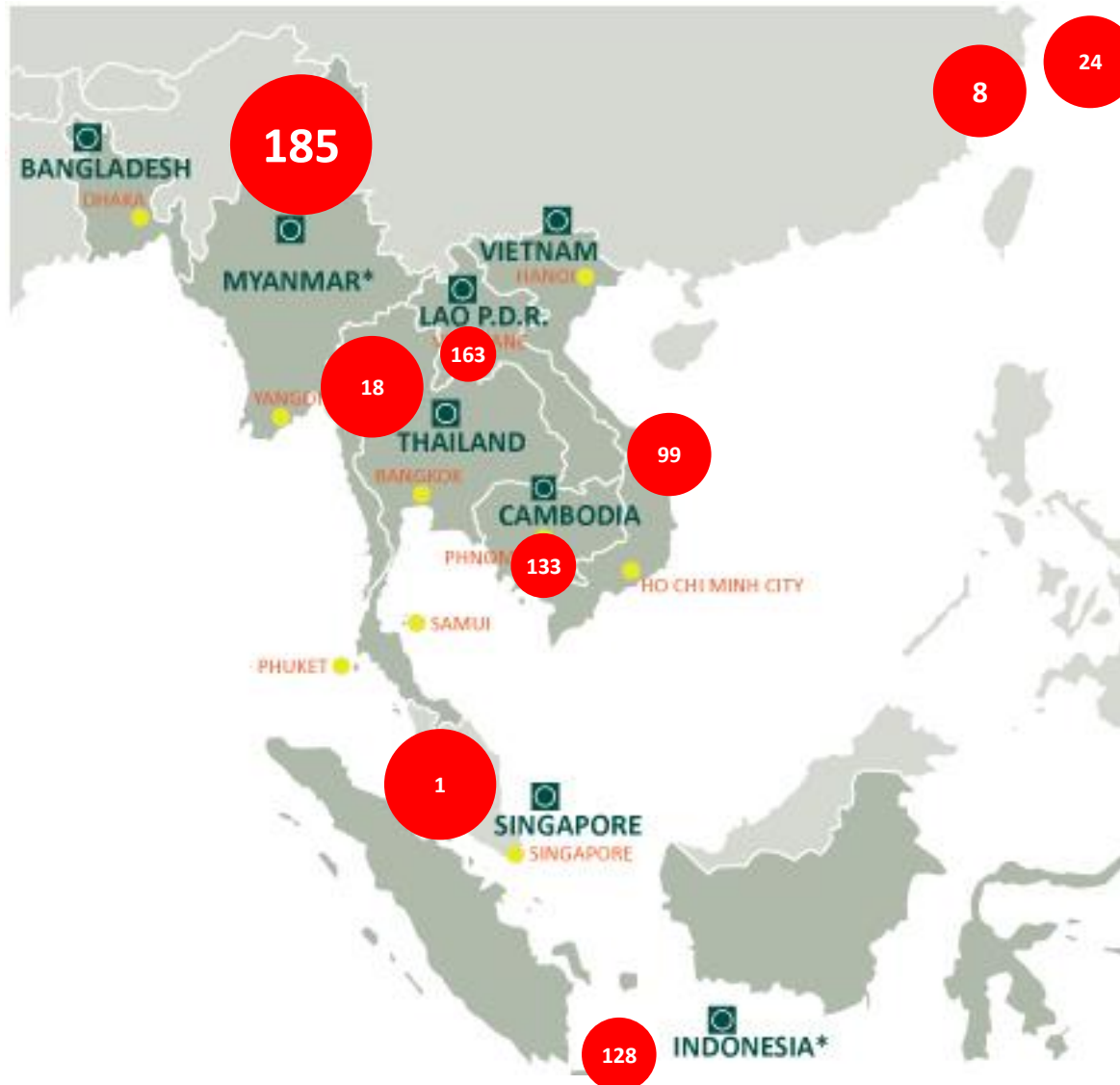
- Intense competition for scarce quality targets
- Protectionism & foreign ownership restrictions
- Political uncertainty & expropriation risk
- Transparency, bureaucracy & integrity issues
- Integration & cultural issues
- Human resources & infrastructure constraints
- Expensive business inputs (power)

M&A Destinations – Regional

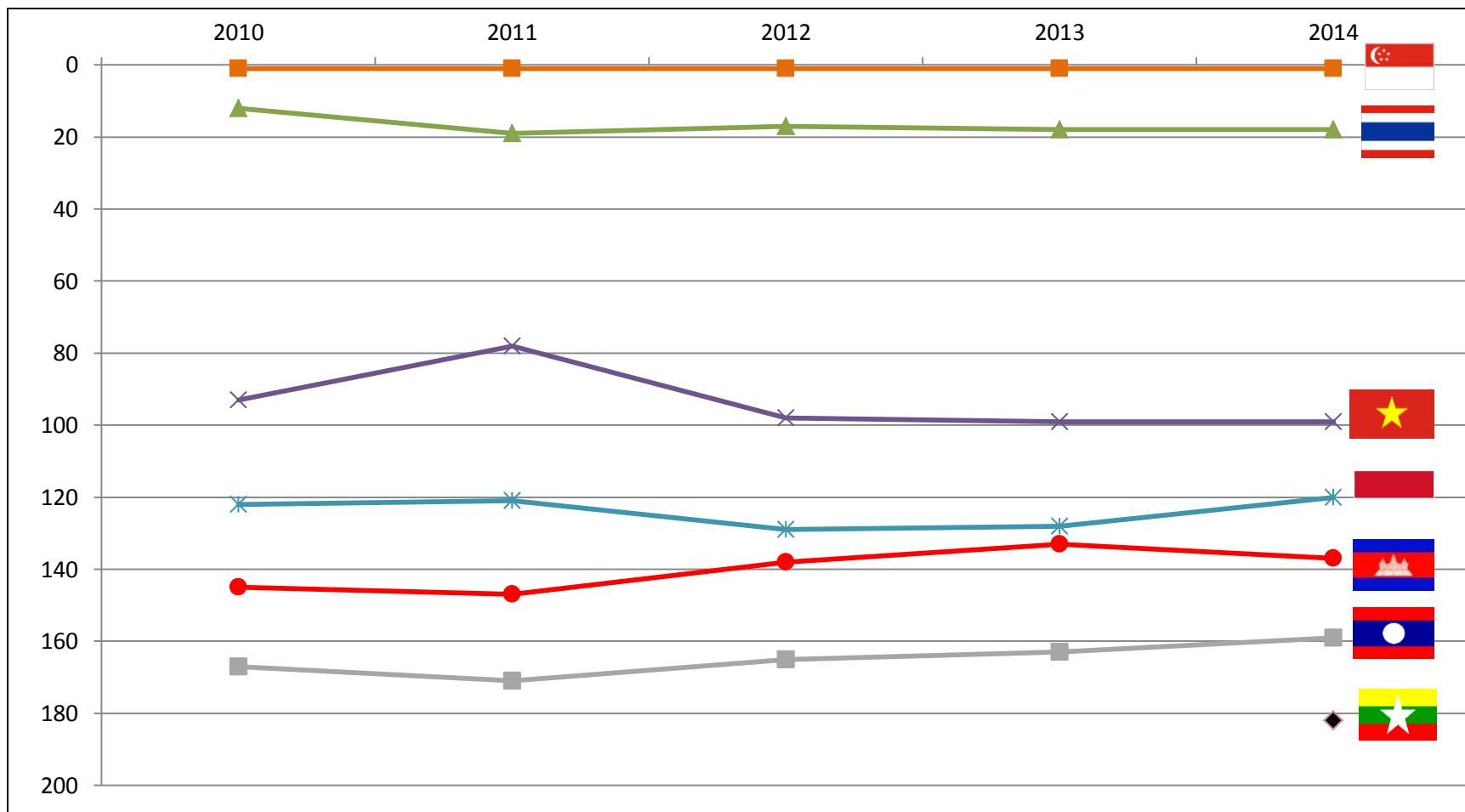


1	Investment Trends in ASEAN
2	M&A Trends in ASEAN
3	Ease of Doing Business in ASEAN

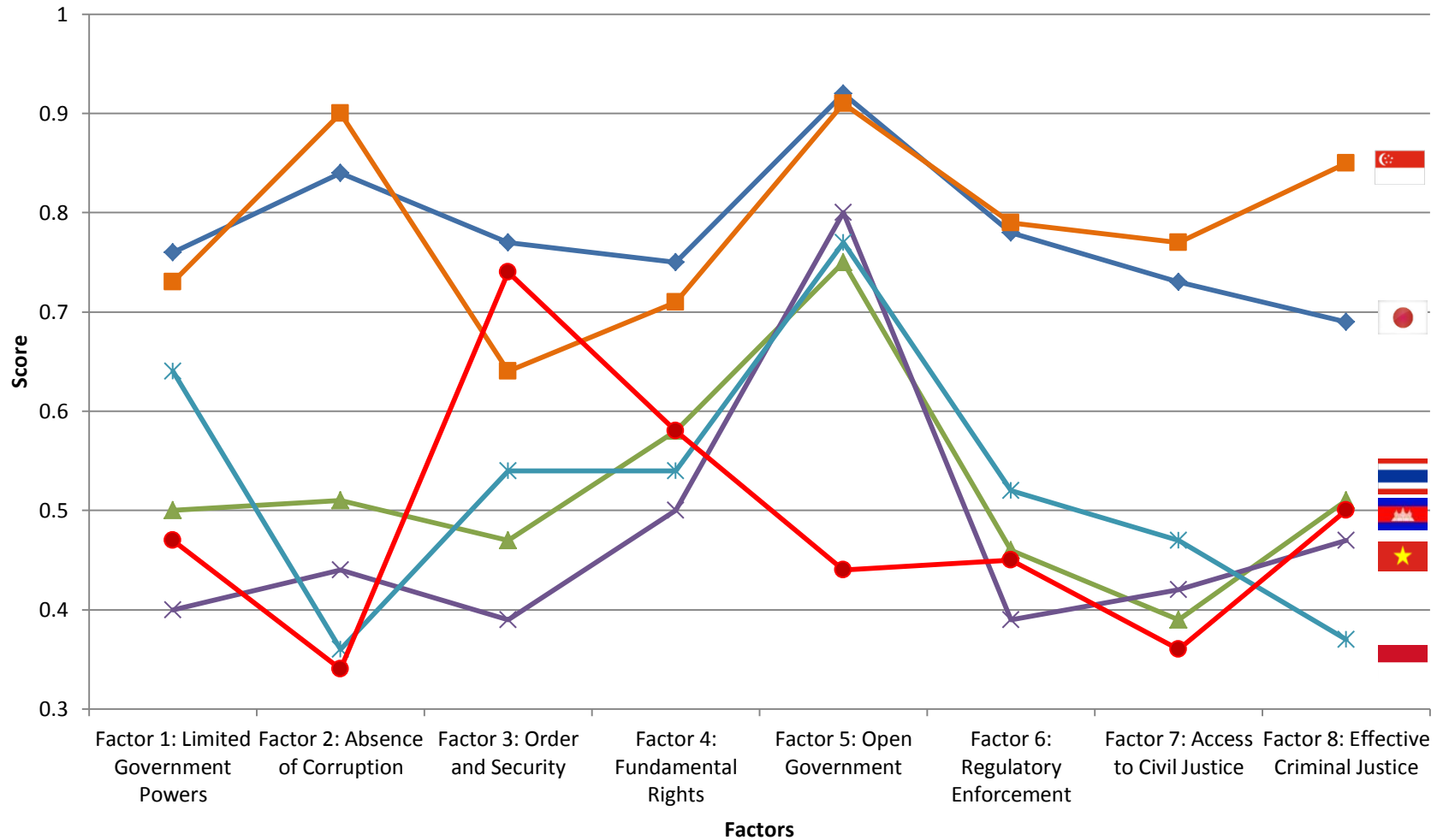
Ease of Doing Business (Global)



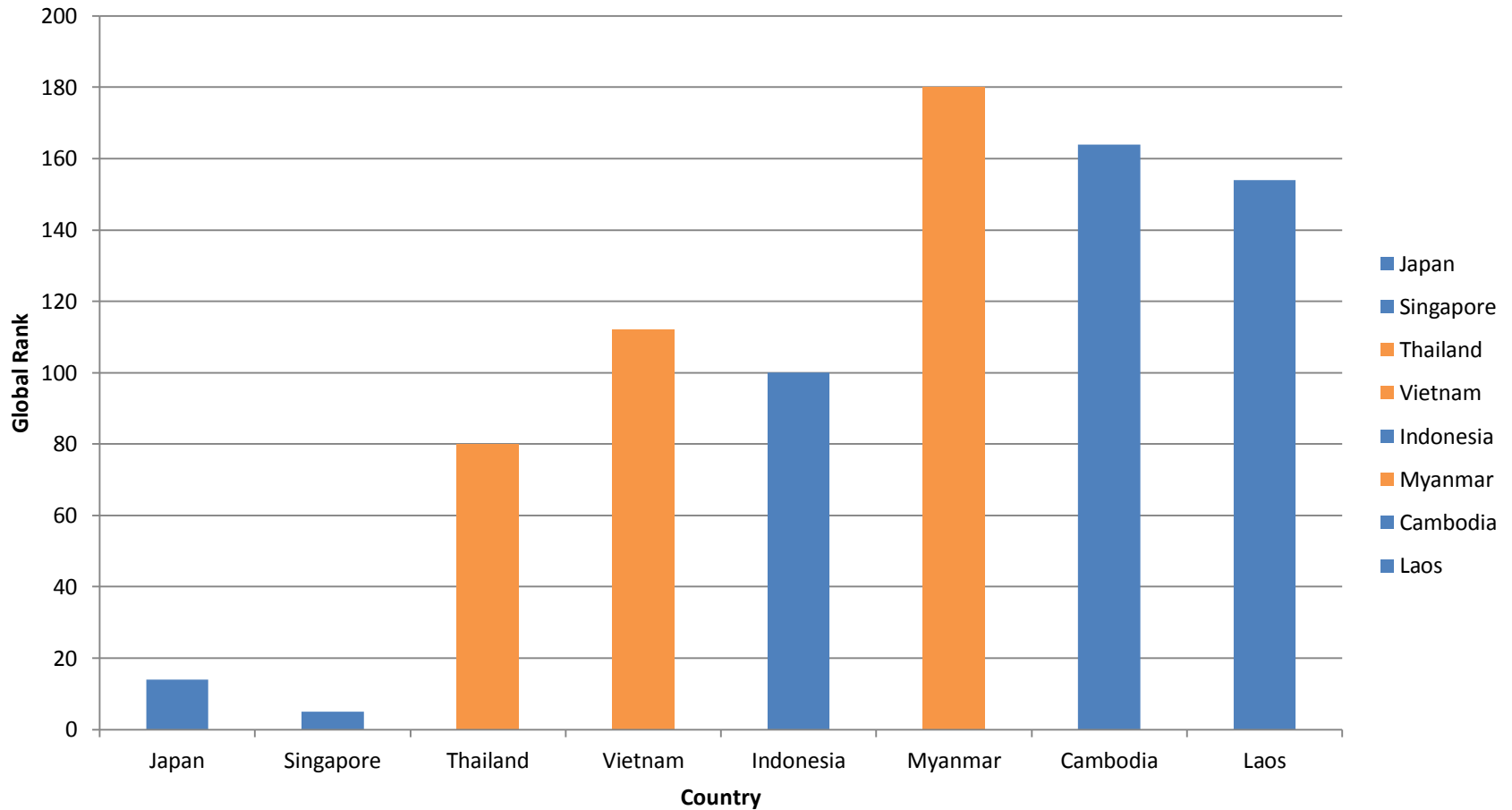
2010-14 Ease of Doing Business: ASEAN (World Bank)



WJP Rule of Law Index Factors Overview 2014: Score



Corruption Perception Index 2011: Global Ranking



Economic Freedom 2014: Overall

Rule of Law

Property Rights
Freedom from Corruption

Limited Government

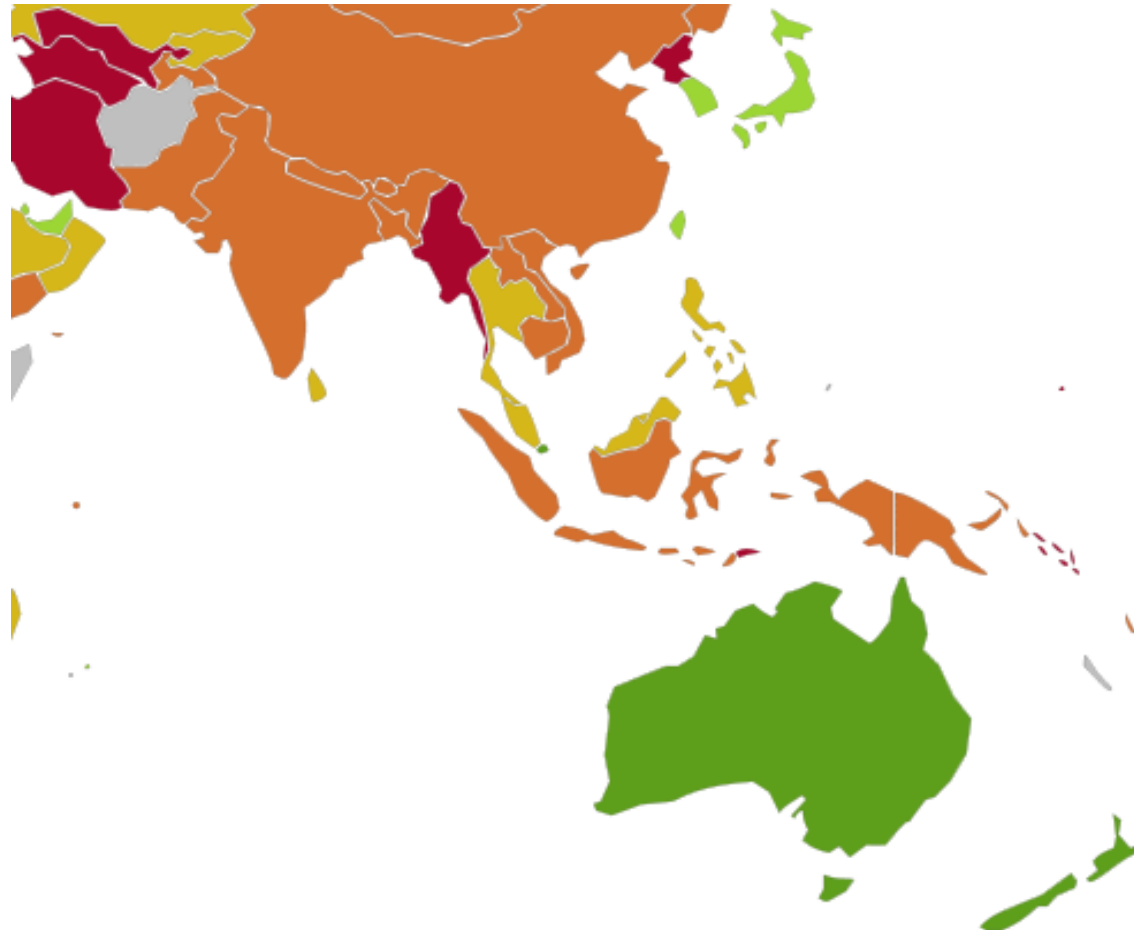
Fiscal Freedom
Government Spending

Regulatory Efficiency

Business Freedom
Labor Freedom
Monetary Freedom

Open Markets

Trade Freedom
Financial Freedom
Investment Freedom



LEVEL OF ECONOMIC FREEDOM

100-80

79.9-70

69.9-60

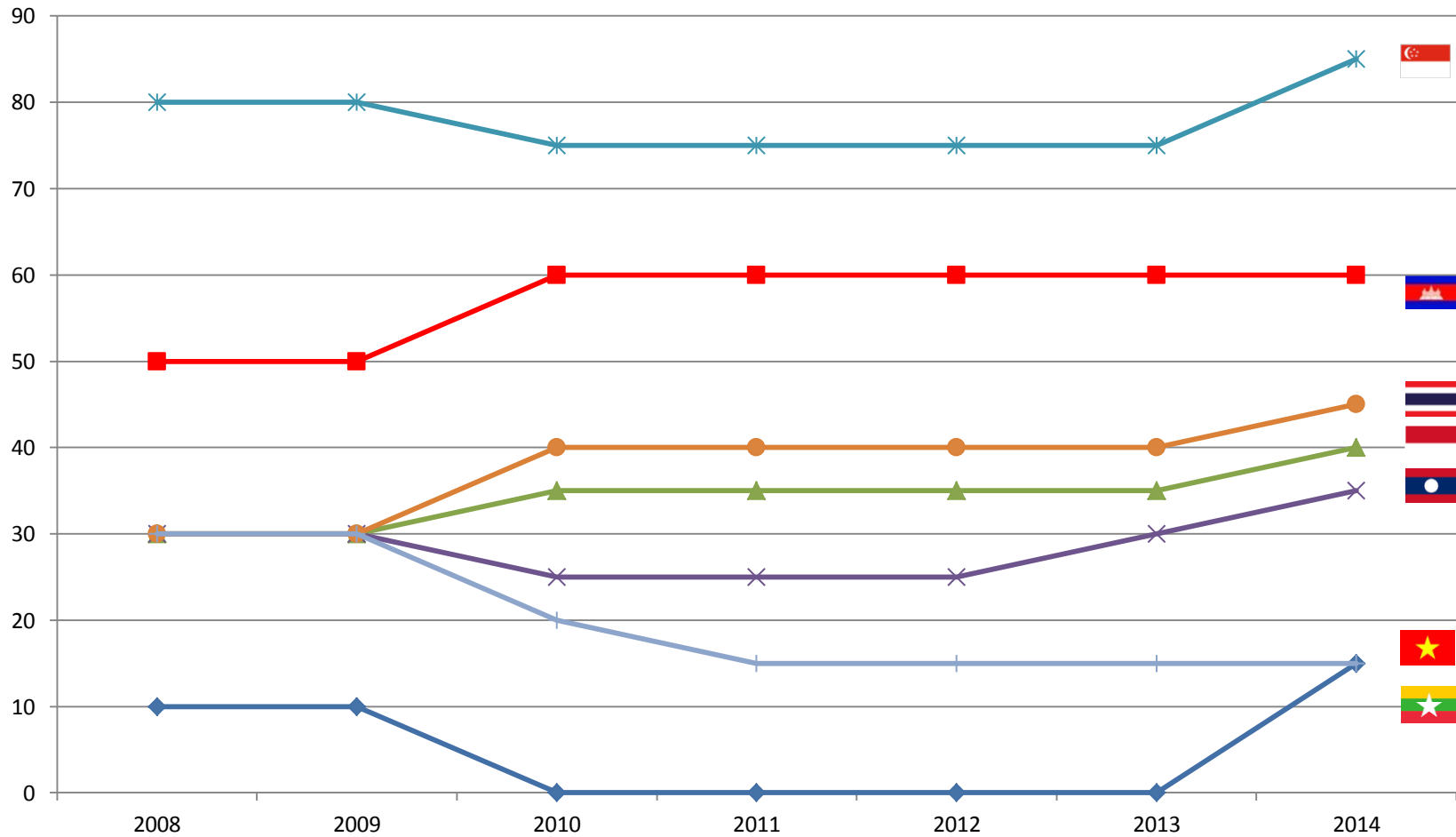
59.9-50

49.9-0

N/A


Freedom	Definition
Economic Freedom	Right of property ownership; freedom of movement for labor, capital, and goods; and an absence of coercion or constraint of economic liberty for citizens to protect and maintain liberty itself.
Business Freedom	Individuals' right to establish and run an enterprise without interference from the state.
Trade Freedom	Openness to the import of goods and services from around the world and the citizen's ability to interact freely as buyer or seller.
Fiscal Freedom	Extent to which individuals and businesses are permitted by government to keep and control their income and wealth.
Monetary Freedom	Steady and reliable currency as a medium of exchange, unit of account, and store of value.
Investment Freedom	Maximum entrepreneurial opportunities and incentives for expanded economic activity, greater productivity, and job creation.
Financial Freedom	Transparent and open financial system ensures fairness in access to financing and promotes entrepreneurship

Investment Freedom 2008-2014: Overview




	WTO Membership	Accession Date	WIPO Membership	Accession Date
Hong Kong	Yes	1 Jan 1995	(China)	3 Mar 1980
Singapore	Yes	1 Jan 1995	Yes	10 Sept 1990
Cambodia	Yes	13 Oct 2004	Yes	25 Apr 1995
Indonesia	Yes	1 Jan 1995	Yes	18 Sept 1979
Lao PDR	Yes	2 Feb 2013	Yes	17 Oct 1994
Myanmar	Yes	1 Jan 1995	Yes	15 Feb 2001
Thailand	Yes	1 Jan 1995	Yes	25 Sept 1989
Vietnam	Yes	11 Jan 2007	Yes	2 July 1976


- **Civil law based legal systems (except Myanmar):** Civil law basis embodied in Vietnamese, Indonesian, Cambodian, Philippines
- **“Socialist-oriented market-based” systems:** Labor legislation is a good example of the influence of the political orientation of Vietnam
- **Growing economic international integration : ASEAN** accession phase, WTO accession phase, AEC perspectives



Governments promote investment in all sectors, all activities, and all areas throughout the country



Governments do not promote the investment in areas and activities that are deemed detrimental to national security, to the environment, to public health and to the national culture



Investments in certain sectors (retail sales, wholesale sales, warehousing business, micro finance institutions, tour operations, construction and land ownership) are restricted or prohibited (among other areas).

Sentiment on ASEAN – business environment

Factors	Regional	Brunei	Cambodia	Indonesia	Laos	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam
Personal security	66%	88%	45%	45%	69%	42%	68%	49%	93%	65%	61%
Sentiment towards the U.S.	62%	63%	77%	38%	54%	58%	68%	86%	64%	62%	66%
Stable government & political system	51%	75%	50%	45%	46%	47%	55%	43%	92%	80%	60%
Tax structure	40%	63%	59%	48%	62%	38%	50%	55%	86%	38%	48%
Availability of low cost labor	40%	50%	86%	43%	69%	45%	73%	69%	53%	40%	61%
Availability of trained personnel	41%	50%	41%	62%	100%	37%	86%	78%	55%	54%	35%
Ease of moving your products through customs	35%	50%	36%	60%	69%	43%	59%	55%	64%	33%	35%
Free movement of goods within the region	41%	38%	36%	48%	62%	42%	41%	41%	66%	37%	42%
Infrastructure	47%	63%	77%	88%	85%	57%	91%	67%	90%	53%	48%
New business incentives offered by government	36%	44%	41%	64%	85%	47%	45%	37%	61%	44%	44%
Availability of raw materials	34%	31%	32%	31%	38%	45%	45%	41%	33%	36%	43%
Local protectionism (or lack of)	40%	31%	64%	57%	62%	57%	41%	43%	52%	44%	47%
Office lease costs	34%	50%	45%	43%	46%	50%	82%	51%	61%	50%	44%
Housing costs	41%	50%	45%	45%	38%	40%	91%	53%	78%	53%	42%
Laws & Regulations	39%	50%	41%	76%	77%	37%	77%	43%	83%	43%	49%
Corruption	51%	56%	82%	79%	100%	67%	64%	57%	90%	78%	69%

Strength
 Weak strength
 Neutral
 Weak concern
 Concern



Thailand: Legal and Tax Update Business Climate Business Opportunities

In-House Congress Singapore 2014



Marcus Collins

*Partner, Head of Real Estate Practice Group and
Head of Indonesia*

marcus.collins@dfd.com

1

Thailand – An Overview

2

Political Timeline

3

Changes

4

Conclusions and Expectations

2014 Key Statistics: International Monetary Fund

	POP 2013 (Mil)	GDP USD Per cap 2013	GDP INT-D Per cap PPP 2013	GDP Growth 2011	GDP Growth 2012	GDP Growth 2013	ASEAN CG Score 2012-13
Hong Kong	7.2	37,777	52,722	4.8	1.6	2.9	NA
Singapore	5.4	54,776	64,584	6.0	1.9	4.1	71.68
Cambodia	14.4	1,016	2,576	7.1	7.3	7.0	NA
Indonesia	248.5	3,510	5,214	6.5	6.3	5.8	54.55
Laos	6.7	1,477	3,068	8.0	7.9	8.2	NA
Malaysia	29.8	10,548	17,748	5.1	5.6	4.7	71.69
Myanmar	53.3	869	1,740	5.9	7.3	7.5	NA
Philippines	96.2	2,790	4,682	3.6	6.8	7.2	57.99
Thailand	66.2	5,674	9,875	0.1	6.5	2.9	75.39
Vietnam	89.7	1,902	4,012	6.2	5.2	5.4	33.87

Source: IMF World Economic Outlook April 2014; 2013 World Population Data Sheet (PRB)



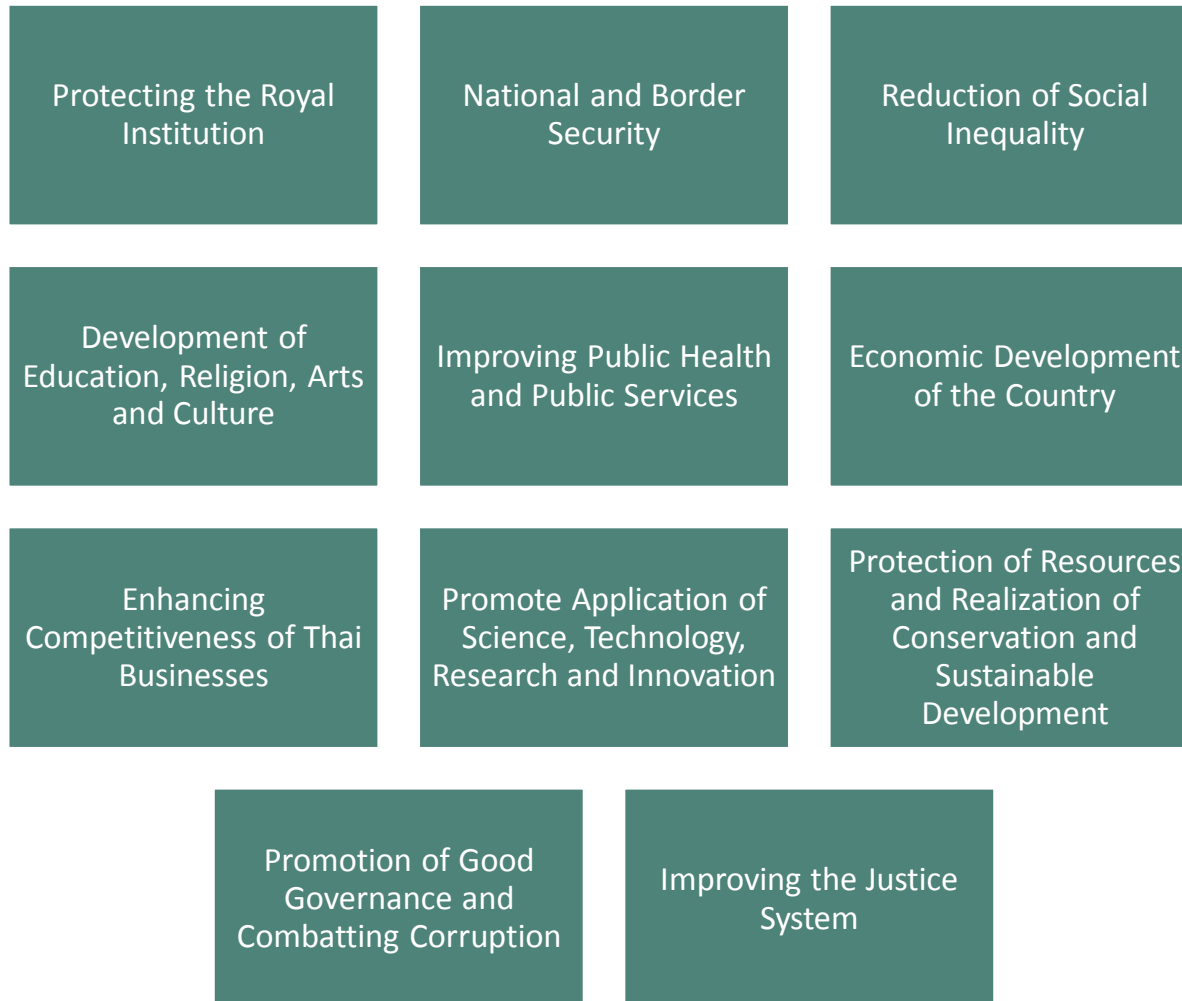
Snapshot:

- WTO accession: 1995
- Population: 67.4 million
- GDP Growth (IMF): 3.1% (2013) & 5.2% (2014e)
- Inflation (World Bank): 2.8% (2013)
- Market Economy (free enterprise)
- Civil/common law influences
- Thai Securities Exchange opened 1975
- Key FDI sources (BOT 2013 Jan-Jun): Japan, ASEAN, Singapore, Malaysia, Taiwan, China, Hong Kong, India, USA

- November 2013: Amnesty Bill passed by House of Representatives
Protestors take to the street against the proposed political amnesty bill
Government offices seized by the People’s Democratic Reform Committee
- December 2013: PM Yingluck Shinawatra rejects calls for stepping down and announces elections for February 2014
- January 2014: Protest leader Suthep Thaugsuban begins “Shut Down Bangkok” protest
State of emergency declared for 60 days
- February 2014: General elections held invalid by Constitutional Court due to disruption caused by protestors.
- May 2014: Constitutional Court orders PM Yingluck Shinawatra and her ministers to resign over irregularities in the appointment of a security officer

Army seizes power in a coup d’etat
- August 2014: Coup leader General Prayuth Chan-Ocha made Prime Minister.
National Reform Council beginning to take shape

11 Targeted Changes



Priorities

1. Ease of doing business
2. Setting up Special Economic Zones (SEZ)
3. Dealing with industrial waste
4. Tax reform

“Reducing procedural hurdles faced by businesses is crucial for Thailand to remain competitive”

Chakramon Phasukvanich
(Minister of Industry)

Implemented Changes

- Application process for factory permits reduced from 90 days to 30 days
- Approval of a THB 2.58 trillion budget for fiscal year 2015.
- Implementation of an interim constitution and parliament.
- New Board of Investment Policy (1st January 2014)

Proposed Changes

- Power to grant permits/licenses vested directly in civil servants.
- Minister’s role altered to oversee appeals and monitor the general process
- Appeal Court and Supreme Court expected to speed up case proceedings.
- New procedures on commercial debt collection

September 2013: Board of Investment consults with the Thai business community in regard to investment incentives.

June 2014: BOI presents proposals to the foreign business community

January 2015: New scheme will come into effect

- Previous sectors which benefitted from the BoI's scheme may no longer qualify.
- Refusal to promote sectors of:
 - (i) low added-value
 - (ii) labour-intensive
 - (iii) low-tech; and/or
 - (iv) uncomplicated production processes
- Sector based v criteria based promotion
- Promotion of outbound investment

“a mechanism for fairness and income generation for local communities”

Gen. Prayuth Chan-Ocha
(Prime Minister)

Inheritance Tax

- Levy taxes of 5-30% on all domestic assets passed down to heirs.
i.e. on Real Estate, Automobiles, stocks and bonds.

Property Tax

- Land and building tax rates will range from 0.05 – 2% taking into account the purpose of the land and improvements made to it.

Process

- Being drafted by the Revenue Department.
- Will be submitted first to the interim civilian government and subsequently to the National Legislative Assembly.

“We all agree that the election of a new prime minister will lead to the formation of an active government that will further boost confidence of investors and the international community”

Supant Mongkolsuthree

(Chairman of the Federation of Thai Industries)

“If he [PM Gen. Prayuth Chan-Ocha] continues the way he has over the last couple of months, cleaning up problems and improving the country, I don’t know why anyone would be against him”

Marc Spiegel

(Vice Chairman of the Joint Foreign Chambers of Commerce Thailand)



Investing in Myanmar

William D. Greenlee Jr., Partner (Myanmar)
In-House Congress, Singapore
September 2014

1

Myanmar's Investment & Regulatory Environment



- Legal environment still in the early stages of reform and modernization.
- New laws co-exist with colonial laws and laws under successive authoritarian governments.
- Government's "policies and practices" not detailed in laws or published regulations, but guide how the government interacts with investors.
- Many layers of government approval required for foreign investments

- Foreign investment in many sectors is still limited
- However, many still-restricted sectors are likely to begin opening up in the medium term – for example, trading
- Resultant legal landscape and investment environment requires patience to navigate and still holds a degree of risk for investors.

2

Foreign Investment Legal Framework



- Foreign Investment Law 2012
- Foreign Investment Law rules, regulations and notifications
- Myanmar Companies Act 1914
- Myanmar Investment Commission
- Directorate of Investment and Company Administration (DICA)

- Foreign Investment Law, 2012 (“**FIL**”)
 - Investment permits granted to investors based on contribution to national economic development.
e.g. create jobs, promote and expand exports, introduce significant capital investment, develop technologies, develop skills and knowledge of citizens and protect and conserve the environment.
 - MIC grants investment permits for prescribed categories of investment

Continued

- 31 January 2013:
 - Ministry of National Planning and Economic Development issued Notification № 11/2013 (“**FI Rules**”).
 - Sets out in more detail the rules applicable to foreign investments under the FIL.
 - MIC issued Notification № 49/2014 (“**Notification**”).
 - Lists sectors and types of business permitted under the FIL, many of which are subject to restrictions and conditions.
 - Four lists.

Continued

- List 1** Businesses that are not permitted to be carried out with foreign investment.
- e.g. defense sector, hazardous chemical production and importation, trading of electricity, exploration and production of jade.
- List 2** Businesses that are permitted, but only via a joint-venture with a local citizen/company
- e.g. packaging, tannery works, manufacturing of water, malt liquors, construction and sale of residential and office buildings, hospitals, tourism.
 - Shareholding ratios to be “by mutual agreement”.

Continued

- List 3** Businesses that can be carried out under specific condition of having to have either the approval of the Government, or obtaining prior “comments’ of the relevant Ministry.
- e.g. marine fisheries work, dockyards and inland waterways, business related to healthcare.
- List 4** Areas of business requiring other conditions and authorizations
- e.g. the need for an Environmental Impact Assessment and/or Social Impact Assessment to be carried out for certain construction projects or restrictions on small retail trading activities – only supermarkets, shopping centers and department stores are allowed for foreign investors.

General rule is that an investor must have a corporate presence in Myanmar.

A corporate presence in Myanmar can be:

- 100% foreign owned company
- Branch office
- Joint venture
- Myanmar local company
- Representative office

Foreign direct investment in a project in Myanmar can either be made through an investment vehicle established:

1. Under the Foreign Investment Law (FIL) and Myanmar Companies Act – *for projects in sectors identified by the FIL, foreign investors must apply to the Myanmar Investment Commission (MIC) for an investment permit*
2. Under the Myanmar Companies Act alone – *for projects that do not require an MIC Permit (e.g. provision of services)*



3

Foreign Exchange Laws

- Foreign Exchange Regulation Act 1947
- Foreign Exchange Management Law 2012
- Central Bank of Myanmar Directive No. 13/2012
- Directive of Foreign Exchange Management No. 15/2012
- Central Bank of Myanmar Directive No. SE1/182, 3 July 2014

- Foreign Exchange Management Law 2012 (“FEML”)
 - Intended, among other things, to liberalize transfer payments for “Current account transactions”.
 - Remittances for trading, services fees, settlement of short term bank loans;
 - Remittances for payment of interest on loans and net income from investments;
 - Installment loan payments or depreciation on direct investments, and
 - Inbound or outbound remittance for family living costs.
 - Under the FEML these no longer require Central Bank of Myanmar approval
 - However, under Directives 13/2012, 15/2012 and SE1/182, many of these activities still require the permission of the Foreign Currency Management Department.

- “Capital account transactions” still require Central Bank of Myanmar approval
 - These are any other account transactions not considered “current account transactions”, such as:
 - Payment of dividends, and
 - Return of equity capital.
 - CBM has the right to
 - Enquire whether investment capital was “brought-in” to Myanmar as foreign investment in accordance with law, and
 - Reject any request to remit such payments if investor cannot produce required evidence of the investment funds being brought in according to law.
 - Caveat in relation to account transactions under the FEML:
 - Shareholder loans may be treated as capital transactions and, therefore, subject to CBM approval procedures.
 - Risk of rejection.



4

Access to land



- Under general law, foreigners cannot own land
- Foreigners and foreign companies cannot lease land or other real estate space for more than one year at a time
- However, exceptions in the FIL
- MIC Permit allows foreigners and foreign companies to take out a long lease of land

- Other exceptions:
 - Having a “beneficial relationship with the State” :
 - Embassies or diplomatic missions, United Nations’ organizations, or any other accredited organizations of individuals – no timeframe limit , or
 - Investments for the economic development of the State – thirty (30) years
 - Long-term lease of thirty (30) years, renewable for two (2) consecutive periods, by being established in an Industrial Zone or a Special Economic Zone;
 - Long-term lease of thirty (30) years or even unlimited, by investing in the agricultural sector in connection with perennial plantations such as rubber, oil palm and cashew nut plantations, or seasonal plantations such as pulses, maize and oilseeds.



5

Financing Options for Investment in Myanmar

- Under FI Rules, transfer of shares (all or partial) by a foreigner to a citizen (or vice versa) requires prior approval by MIC.
 - Request will be scrutinized and granted/denied after considering:
 - Whether the reason to transfer all shares is correct;
 - Whether the interest of the Union and its people could be detrimental;
 - Whether the transferee of all shares is in position to keep carrying out the business successfully;
- If granted, the share transfer has to be submitted to the Directorate of Investment and Companies Administration (DICA), together with the MIC approval and finally the Cabinet.

- Property Restriction Law prohibits:
 - Transfer of any immovable property by any person to a foreigner or a company owned by a foreigner by way of sale, purchase, gift, acceptance of a gift, mortgage, acceptance of a mortgage, exchange or transfer, and acceptance of a transfer by any other means.
 - Transfer of any immovable property by any foreigner or a company owned by a foreigner by way of sale, purchase, gift, acceptance of a gift, mortgage, acceptance of a mortgage, exchange or transfer, and acceptance of a transfer by any other means.
- Therefore, a foreign lender or borrower is prohibited to take or make secured loans by way of transfer or sale and mortgage of immovable property.

- However:
 - Investments under the FIL may escape foregoing general rule.
 - Pursuant to Section 17 of the FIL, investors may sub-lease or mortgage the land and buildings that are under the scope of a MIC Permit, provided that:
 - The mortgage is deposited within the term of the business, and
 - There is prior approval from the MIC.
 - The FI Rules provides that the investor will file such request with the MIC in the so-called “Mortgage Form 5”, together with the consent of the person who has the right to use the land or who is entitled to lease the land.

- Security package are possible, which may include:
 - A charge over shares;
 - A fixed and floating charge over assets;
 - A charge over accounts;
 - A deed of assignment of contracts, and
 - The appointment of an onshore security agent regarding immovable property
 - However - current restrictions on immovable property regarding foreigners pursuant to the Transfer of Immoveable Property Restriction Act of 1987.

6

Upcoming legislative changes



- The FIL and Myanmar Citizens Investment Law in the future will be combined into one legislative regime.
- Restrictions on foreign entities undertaking “trading” activities will be relaxed.
- Many implementing rules and regulations to laws yet to be released.

- Myanmar has acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (“**Convention**”)
 - Foreign arbitration clauses should be permitted in agreements and Myanmar courts will be obligated to enforce foreign arbitration awards.
 - Still waiting for local implementing legislation.

Thank you



William D. Greenlee, Jr.

Partner

Managing Director, Myanmar

Head of China Desk

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Investing in Vietnam

Thierry Gougy, Partner
In-House Congress, Singapore
23 September 2014

Part 1

Keynotes to new investors in Vietnam





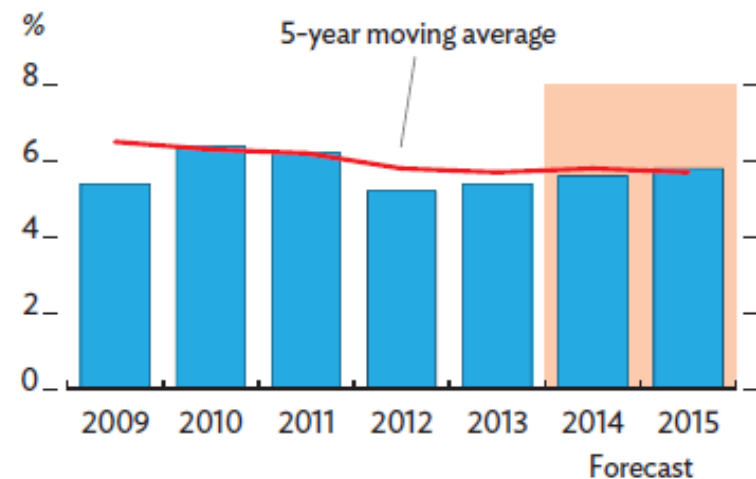
- Demographics: 86 million people mostly between the ages of 25-35, ambitious and captivated with modernization
- Geography and natural resources
- Cheap and educated workforce
- Political and social stability
- WTO membership
- Impressive historical macroeconomics, but challenges more recently

3.31.1 Selected economic indicators (%)

	2014	2015
GDP growth	5.6	5.8
Inflation	6.2	6.6
Current account balance (share of GDP)	4.1	3.0

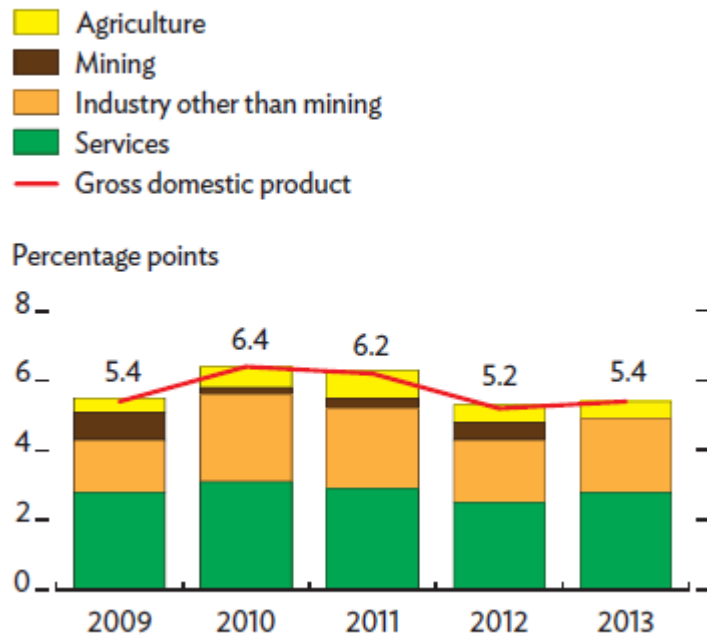
Source: ADB estimates.

3.31.9 GDP growth



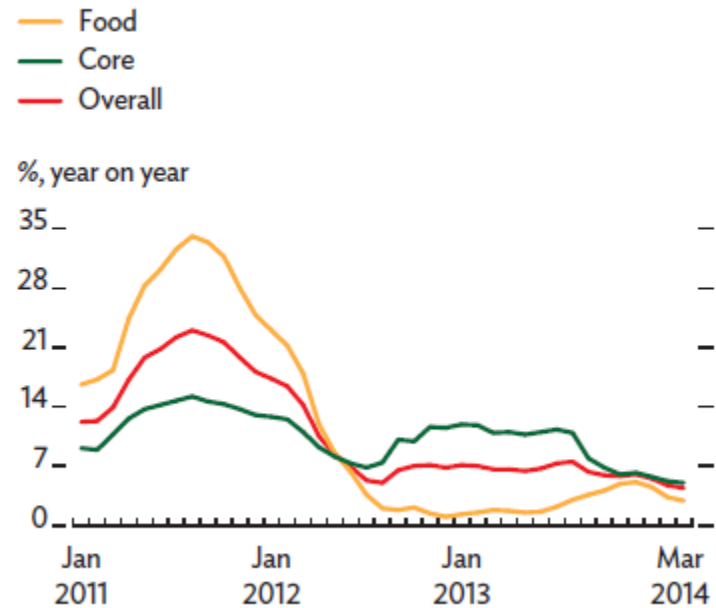
Source: Asian Development Outlook database.

3.31.1 Supply-side contributions to growth



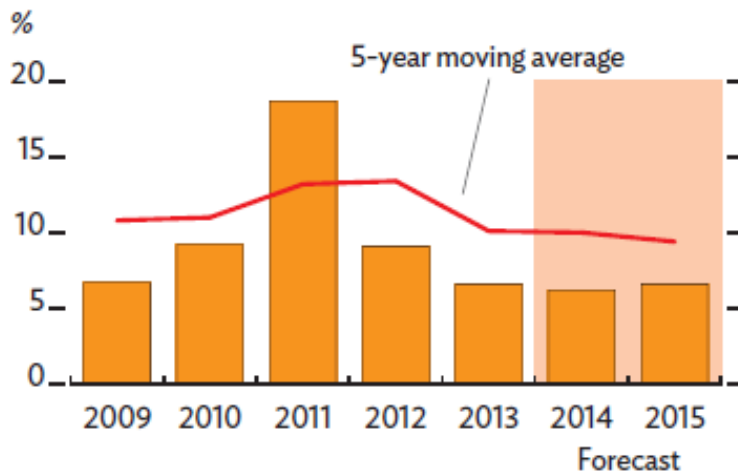
Source: General Statistics Office of Viet Nam.

3.31.2 Inflation



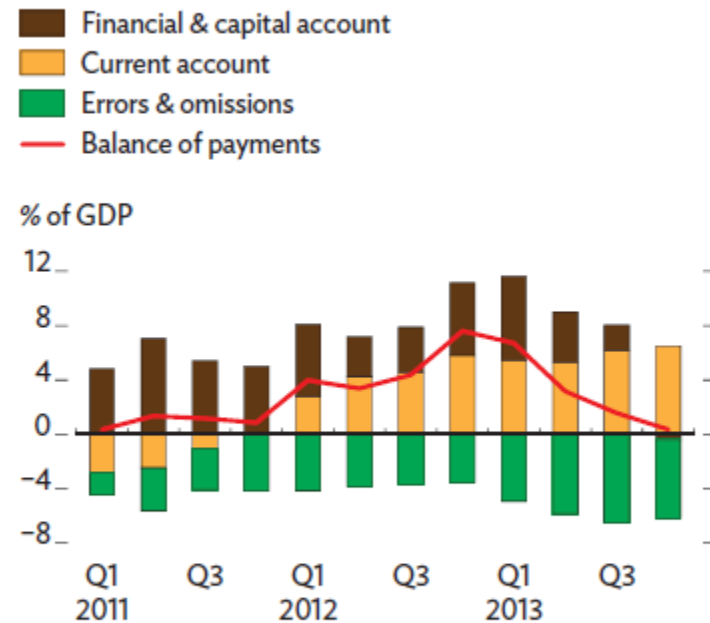
Source: General Statistics Office of Viet Nam.

3.31.10 Inflation



Source: Asian Development Outlook database.

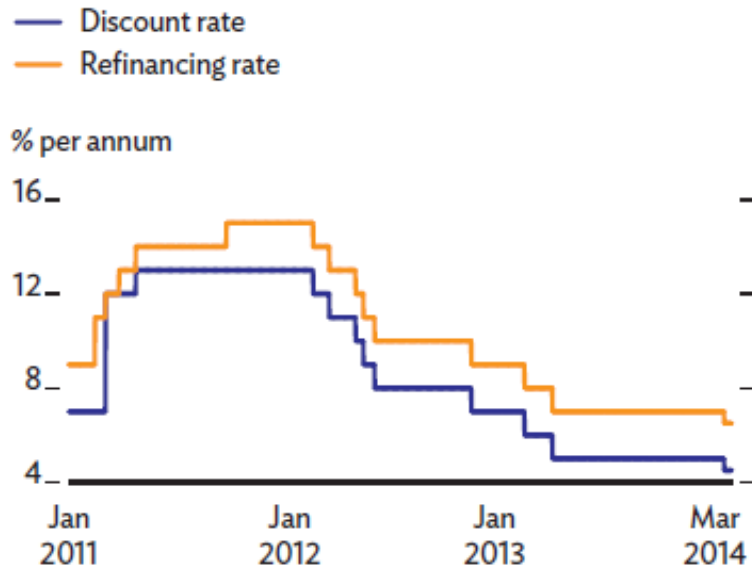
3.31.11 Balance-of-payments indicators



Q = quarter.

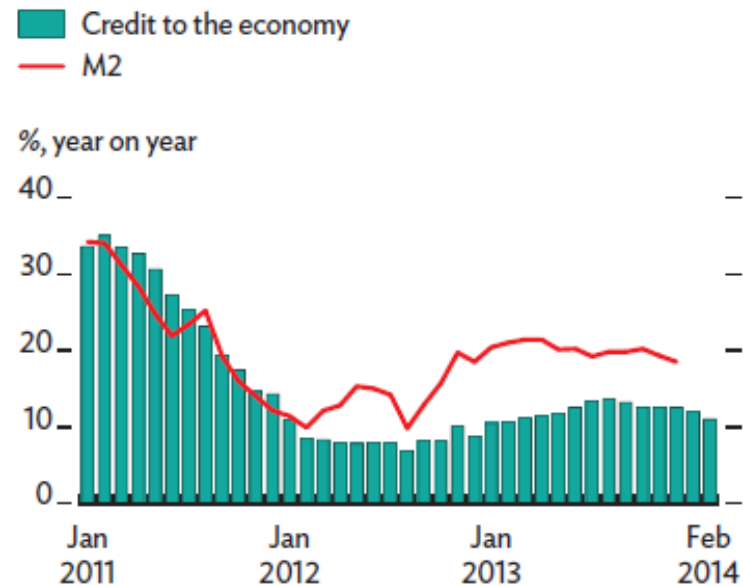
Sources: State Bank of Viet Nam; International Monetary Fund; ADB estimates.

3.31.3 Interest rates



Source: State Bank of Viet Nam.

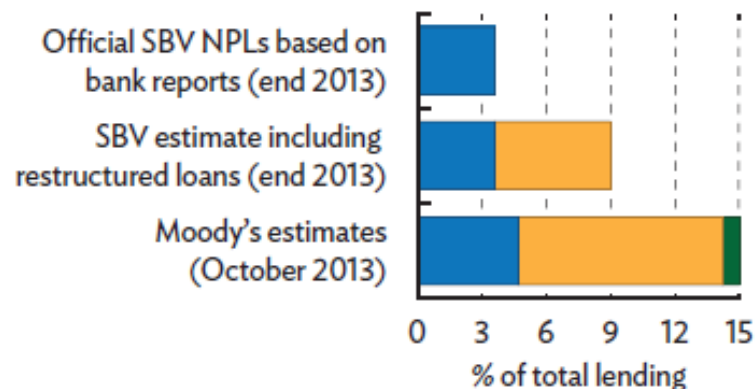
3.31.4 Credit and money supply growth



Sources: State Bank of Viet Nam; ADB estimates.

3.31.7 Nonperforming loans

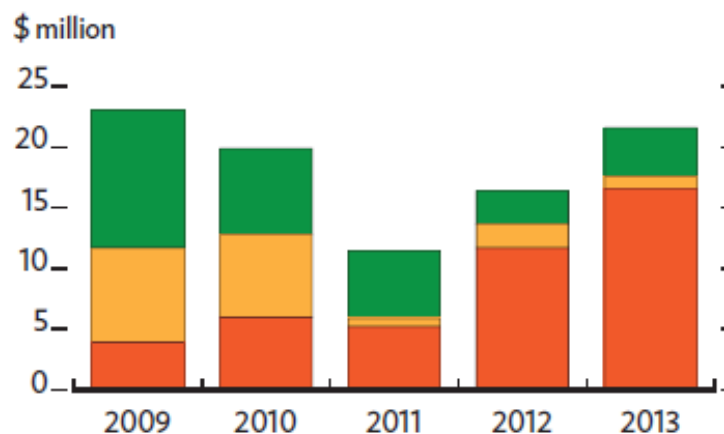
- Official
- Restructured loans
- Other



NPL = nonperforming loan, SBV = State Bank of Viet Nam.
 Sources: State Bank of Viet Nam; Moody's Rating Agency.

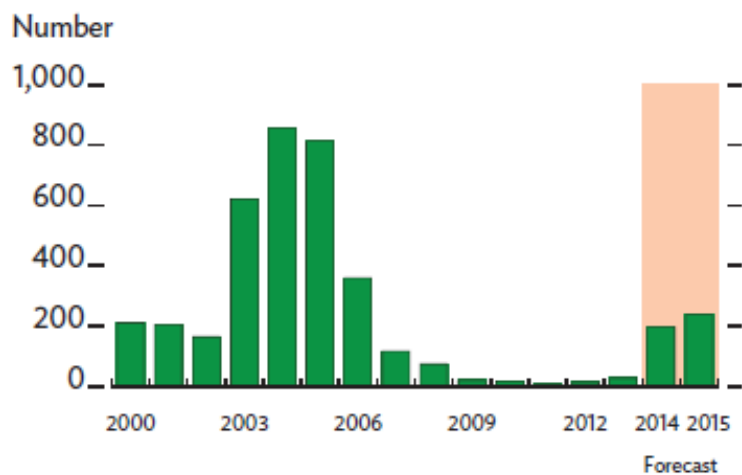
3.31.8 Foreign direct investment by sector

- Registered other foreign direct investment
- Registered real estate foreign direct investment
- Registered manufacturing foreign direct investment



Source: General Statistics Office of Viet Nam.

3.31.12 State-owned enterprises equitized



Source: Ministry of Finance.

3.31.2 Ranking of infrastructure, selected economies

	2013-2014
Malaysia	29
Thailand	47
Indonesia	61
Viet Nam	82

Source: World Economic Forum. 2013.
The Global Competitiveness Report 2013-2014.
<http://www.weforum.org>

- Communist party – Government – National Assembly
- Hierarchy of documents/administrations, drafting habits
- Implementation by lower level/local administrations/decentralization
- Independence/competence of local courts?

- Licensing of foreign invested projects: technical barriers, red tape, etc.
- IP rights and enforcements
- Land matters, land use right issues
- Foreign exchange: control and remittance, devaluation

- Court of First Instance (at the District or Provincial Level)
- Court of Appeal (at the District or Provincial Level)
- Supreme Court is the court of last resort
- Review of Judgments decided by the Supreme Court
- Judgments reviewed either through an established process of Judicial Review or Re-trial

- Vietnamese Arbitration: Progress through the recent Law of Arbitration
- One Remaining Concern of Law of Arbitration: “*cannot be contrary to principles of Vietnamese law*”
- Advantages of Vietnamese arbitration: cheaper, parties are now able to select their arbitrator, **enforcement**
- VIAC: Most notable forum in Vietnam
- VIAC Disadvantages: inexperienced, questionable ability to handle large multinational disputes

- International Arbitration - Regarded as appropriate for large disputes
- Singapore or Hong Kong widely considered seats for foreign arbitration
- Higher costs but with advantage of transparency and efficiency
- Challenge - Award enforcement: is it “*contrary to the principles of Vietnamese law*”? This has been an issue for years BUT recent positive changes

- Recent renewed activity from foreigners
- Burdensome and time consuming licensing steps when acquiring beyond 49%
- Tender offer requirements when acquiring public company
- Asset deal vs. share deal - when and why?

Part 2

Foreign direct Investment:

What foreign investors can (and cannot) do in various sectors



- **TRADING RIGHTS:**
 - Right to Import: Right to import products into Vietnam and sell them to licensed distributors in Vietnam (wholesale)
 - Right to Distribute:
 - Right to import products into Vietnam
 - Right to sell such imported products to both licensed distributors (wholesale) and final consumers (retail) in Vietnam

- **PRODUCTS:** all legally imported and domestically produced products, except for certain listed goods such as tobacco, pharmaceuticals, crude oil, processed oil, books, newspapers, magazines, precious stones, etc. which shall be subject to specific restrictions

- POSSIBLE MARKET ACCESS:
 - 100% foreign owned company
 - Joint Venture Company with Vietnamese Partner(s)
 - Acquiring shares in an existing Vietnamese domestic trading company
 - Business cooperation agreement with Vietnamese distributors

- LICENSING AUTHORITIES:
 - Provincial Departments of Planning and Investment
 - Authority for Industrial and/or Export Processing Zones
 - Ministry of Industry and Trade

- SPECIAL NOTES:
 - **Second Outlet and Economic Needs Test:** A Foreign owned company specializing in retailing business is allowed to open one sale outlet. If the foreign owned company applies for opening a second outlet, Vietnamese authority will reserve the right to decide whether to authorize such second outlet based on the so-called “**Economic Needs Test**” – exception in theory for small outlets, but hurdle remains in practice
 - **49% Limitation:** if the target company is a public or listed company, foreign investment capped at 49% of the target’s registered charter capital



- **AUTHORIZED PHARMACEUTICAL RELATED BUSINESS:**
 - Manufacturing of Pharmaceutical Products: allowed and encouraged
 - Import & Export of Pharmaceutical Products: allowed
 - Preservation of Pharmaceutical Products: allowed
 - Testing of Pharmaceutical Products: allowed

- **UNAUTHORIZED PHARMACEUTICAL RELATED BUSINESS**
 - Retail of Pharmaceutical Products: foreign investors are not yet allowed to conduct the pharmaceutical retailing business in Vietnam

■ REQUIRED CERTIFICATES

– General Certificates:

- Certificate of Satisfaction of Conditions for Conducting Drug Business: granted to pharmaceutical companies in Vietnam
- Pharmaceutical Practicing License: granted to individual persons involving in the management of pharmaceutical business in Vietnam

– Specific Certificates:

- Certificate of Good Manufacturing Practices (GMP) required for pharmaceutical manufacturing
- Certificate of Good Distribution Practices (GMP) required for pharmaceutical distribution
- Certificate of Satisfaction of Good Storage Practices (GSP) required for pharmaceutical preservation
- Certificate of Satisfaction of Good Laboratory Practices (GLP) required for pharmaceutical testing

■ REGISTRATION OF DRUGS

- Drugs must be registered with the Ministry of Health before they can be distributed in Vietnam:
 - Applicants: either Vietnamese pharmaceutical company or offshore pharmaceutical company
 - Requirements :
 - ✓ Vietnamese applicant must hold a Certificate of Satisfaction of Conditions for Conducting Drug Business in Vietnam;
 - ✓ Offshore applicant must hold License for Foreign Companies to Conduct Operations in Drugs and Raw Materials for Drugs in Vietnam

- LICENSING AUTHORITY
 - Provincial DPs;
 - MOIT; and
 - Ministry of Health (“MOH”)/Department of Pharmaceutical Management



- Infrastructure and power development are expressly encouraged by the Vietnamese government
- Decree 108: legislative framework to implement infrastructure investment
- Power Sector: Vietnam's Roadmap Objective is to develop electricity infrastructure to meet development demands

BOT Contracts in Vietnam

- BOT arrangements are preferred investment arrangement over BTO or BT type contracts
- BOT Contract formats in Vietnam are consistent with the international standard
- Bankability of the project is the bottom line

BOT arrangements:

- BOT Advantages: tax incentives, risk allocation with government, long-term PPA, Government Guarantees
- BOT Disadvantages: long negotiations, complicated procedures

A few words about PPP arrangements in Vietnam:

- Legislative Framework was setup in 2010 through Decision 27, but progress is slow
- A solid institutional framework is required to make the PPP model work – which is lacking

100% sub possible (in theory)

Acquisition in existing banks:

- Caps of 5%, 10%, 15% 20% and 30% —→ soon 49%?

Securities firms and asset management firms:

- From 49% cap to 100%

Part 3

Recent Changes in VN legislation



Foreign exchange: Ordinance of 2013, and Decree and Circular of 2014 – denomination, calculation, variation, advertisement, quotations and agreements on price must be in VND

New Land Law and a series of Decrees – improves or clarifies the rights of foreign investors, but uncertainties remain pending implementing regulations

Renewed ambitious plan of Gvt on equitisation of SOEs – likely that foreign players will stay out of most

Thank you



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