

RCEP and Investment Facilitation: Rules, Assessment and Implications

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Investment facilitation *(Picture: Axel Berger et al.)*

Policy Area	Description
Transparency and Predictability	<ul style="list-style-type: none"> • Provide full, clear and up-to-date picture of investment regime, including advance notice of proposed changes. • Promote legislative simplification including plain language drafting.
Electronic Governance	<ul style="list-style-type: none"> • Establish single window and use information and communication technology. • Apply new technology to improve information, application and approval processes.
Cooperation	<ul style="list-style-type: none"> • Make use of international and regional initiatives aimed at building investment expertise, including information sharing. • Provide institutionalised mechanism to support domestic inter-agency coordination.
Application Process	<ul style="list-style-type: none"> • Establish clear criteria and transparent procedures for administrative decisions including investment approval mechanisms. • Reduce the number and complexity of fees and charges.
Outward Investment	<ul style="list-style-type: none"> • Provide comprehensive information available to the foreign investors by home countries.
Focal Point and Review	<ul style="list-style-type: none"> • Provide mechanisms to improve relations or facilitate contacts between host governments and relevant stakeholders. • Receive complaints from investors and/or help them solve difficulties or to carry out policy advocacy. • Encourage development of effective mechanisms at reasonable cost for resolving disputes including private arbitration services. • Provide framework to identify and address problems encountered by investors.

Investment facilitation in global rule-making

- Multilateral: (1) UNCTAD: 2016 Global Action Menu for Investment Facilitation, identifying 10 different types of actions. (2) WTO: Investment Facilitation for Development Agreement, negotiations, Ester text, identifies several categories of investment facilitation rules
- Bilateral/Regional: (1) Brazil: model of Cooperation and Facilitation of Investment Agreement (CFIA), stressing institutional cooperation and facilitation, no ISDS; (2) Existing IIAs contain various provisions relating to investment facilitation, such as: improving the investment climate, removal of bureaucratic impediments to investment, facilitation of investment permits, facilitation of entry and sojourning of personnel related to investment, capacity-building on investment issues, investment financing, insurance programs, pre-establishment investor servicing, transparency, post-establishment investor aftercare, relations with investors and the private sector, and cooperation and treaty bodies on investment facilitation.
- National: many states take measures, China SEZs etc.

RCEP Investment Facilitation Provision

Article 10.17: Facilitation of Investment

1. Subject to its laws and regulations, each Party shall endeavour to facilitate investments among the Parties, including through:
 - (a) creating the necessary **environment** for all forms of investment;
 - (b) simplifying its **procedures** for investment applications and approvals;
 - (c) promoting the **dissemination of investment information**, including investment rules, laws, regulations, policies, and procedures; and
 - (d) establishing or maintaining **contact points, one-stop investment centres, focal points, or other entities in the respective Party** to provide **assistance and advisory services** to investors, including the facilitation of operating licences and permits.
2. Subject to its laws and regulations, a Party's activities under subparagraph 1(d) may include, to the extent possible, assisting investors of any other Party and covered investments to **amicably resolve complaints or grievances with government bodies** which have arisen during their investment.
3. Subject to its laws and regulations, each Party may, to the extent possible, **consider establishing mechanisms to make recommendations to its relevant government bodies addressing recurrent issues affecting investors of another Party**.
4. The Parties shall endeavour **to facilitate meetings between their respective competent authorities aimed at exchanging knowledge and approaches** to better facilitate investment.

Assessment of RCEP IF Provision

- The term “subject to its laws and regulations” seems to suggest that the investment facilitation obligations for each RCEP members should be denoted by its national legislations. Flexibility, but could limit regional collective efforts in investment facilitation.
- The terms “to the extent possible” and “shall endeavor to” show that the investment facilitation obligation of RCEP members is “best-efforts” in nature. Regulatory autonomy, but could hinder enforceability of the provision.
- The measures reflect a narrow understanding of investment facilitation and a strong state-orientation, helpful to states, but neglects investor obligations (RBC or CSR).

Policy suggestions to Asian economies

- The current situation now calls for more and more forceable investment facilitation measures especially by developing and least developed countries: balance between economic development and post-Pandemic recovery, supply chain transfers.
- Promoting investment facilitation, especially for development, is a multistakeholder process that also serves investors, necessary to engage investors in policy/rule-making and implementation
- Asian economies have different development levels and priorities, it is necessary to strike a smart balance between regulatory autonomy and regional IF standard.
- Communication and cooperation bilaterally and multilaterally is important, in WTO process and at bilateral levels. Coordination between national efforts with the international process.

The End, Thank You.