

# Research on the Impact of RCEP Signing on China-ASEAN Investment Facilitation and Countermeasures under the New Development Pattern of "Dual Circulation"

Qiuying Zhu

School of Law, Guangxi normal University, Guangxi, 541006, China

## Abstract

In November 2020, RCEP was finally signed after 31 negotiations for eight years. RCEP not only has accelerate the new development structure of "dual circulation", but also has push forward the level of investment facilitation. This article will stress disuss the investment facilitation provisions in RCEP. As well as its impact on China-ASEAN investment facilitation. Then analyze the shortcomings of China-ASEAN investment facilitation legal mechanism, and under the background of RCEP, how to make further efforts to ameliorate the China-ASEAN investment facilitation legal mechanism.

## Keywords

New development pattern; Investment facilitation; China-ASEAN.

## 1. Introduction

The signing of RCEP brings opportunities to China, but also challenges to China. The treaty relates to a great quantity rules and clauses, one of area is worth paying close attention to is investment and its facilitation measures. What are the new requirements in this regard, and what are the impacts on China-ASEAN Investment Facilitation? These are urgent questions to answer.

## 2. The Significance and Influence of RCEP Signing under the New Development Pattern

Since the concept of "dual circulation" new development structure was first put forward in May 2020. It has provided guidance for China to deal with the sophisticated international and domestic situation, and timely promote China's economic development. After the RCEP was signed, it provided a good environmental foundation for the construction of a new development pattern of "dual circulation", and gave strong impetus to the construction of an open world economy. At the same time, it provides a more open and prosperous market for Chinese and ASEAN enterprises, and promotes a mutually beneficial and win-win partnership. The signing of RCEP sufficiently shows the strong willingness of China, ASEAN and other members to cooperate and encourage to broaden investment areas. RCEP, which provides new legal dependence for Chinese and ASEAN enterprises to promote investment development. The investment facilitation measures related to the agreement provide new development space for deepening cooperation between China and ASEAN.

## 3. Analysis of RCEP Investment Facilitation Clause

In the early days, BIT usually focused on investment protection. With the development of the times, the global focus on investment began to be different. Countries are now very interested in "investment facilitation". Investment facilitation is one of the highlights of RCEP, which integrates the contents of investment facilitation in various free trade agreements signed

between members, and adds some facilitation measures. It is the most detailed of many agreements.

Among them, simplifying the investment application and approval process is the most conventional facilitation measure. Coordination measures to solve complaints or dissatisfaction are innovative measures of investment facilitation. Countries may, base on their own laws, actively explore the establishment of investment facilitation agencies, provide special complaint channels for foreigners, and actively solve the complaint problems. It is of great significance to prevent and resolve the investment disputes between investors and the host country at an early stage and avoid the step of "arbitration".

Transparency Clause is the first investment facilitation clause introduced and actively promoted by the Western developed countries, which has been generally accepted by all countries and has become one of the basic clauses of IIA. The transparency provisions of RCEP are mainly found in Chapter 17 (general provisions and exceptions), which stipulates four aspects of publication, provision of information, administrative procedures, review and appeal. RCEP's Transparency Clause is very specific and detailed, which belongs to the high level of Transparency Clause.

At present, the relevant norms of investment facilitation are very weak compared with others (such as investment liberalization), and IIA pays little attention to the issue of investment facilitation. In the past two or three years, it has been put on the agenda. Among the 194 investment promotion and facilitation measures newly introduced by various countries, only 20% of them are investment facilitation measures. In more than 3000 IIAs, except for the entry and transparency provisions, most agreements do not provide specific and detailed investment facilitation provisions. It can be said that Asia's exploration, practice and experience in investment facilitation deserve attention. Since 2013, China has been actively exploring, promoting and promoting investment facilitation in various aspects and at various levels, and has made good progress. Generally speaking, RCEP investment facilitation clauses have obvious Asian characteristics, reflecting the positive exploration and successful experience of ASEAN, China and other countries.

## **4. Insufficiency of China-ASEAN Investment Facilitation Legal Mechanism**

### **4.1. The Legal Mechanism Presents A State of "Fragmentation"**

"Fragmentation" is due to the diversity of legal sources of investment between China and ASEAN member countries. due to the different national conditions of each country, as well as the conflicts of interests between countries, there are different views on the same issue.

The investment system construction of Member States is not perfect; Lack of investment facilitation system or need to be clearly defined and improved, which is inconsistent with the international trend; In particular, the market system of some developing member countries has not yet been fully formed, and it is difficult to achieve the coordination and agreement of various policies and measures related to investment facilitation in one stroke. The trend of the current investment system is investment facilitation, but most of the past is about investment protection and investment promotion. At present, few bilateral investment agreements signed by China contain investment facilitation clauses. Moreover, as for the China-ASEAN Investment Agreement, some member states have not approved it, which leads to inconsistency of application and "fragmentation" phenomenon, which is adverse to the improvement of the whole level of China-ASEAN Investment Facilitation.

## **4.2. There Is No Leading Institution and Constructive Participation Mechanism for Investment Facilitation**

IIA adopts the traditional arbitration system, which is a confrontational system. This system is not beneficial to the host country and investors retain a good partnership. Therefore, in order to prevent investment disputes or to adopt other methods to resolve disputes, we can appoint a leading agency to be specially responsible for managing, preventing and resolving disputes. And the agency should feedback information to government department in time, then help them adjust laws or policies related to investment.

The China-ASEAN economic ministers' meeting is the leading and coordinating body of the whole China-ASEAN Investment Agreement. However, the above-mentioned leading institutions are not specifically responsible for investment facilitation, but coordinate the whole agreement. The responsibilities of the one-stop investment center or similar mechanism under Article 21 (2) of the agreement do not include the settlement of suggestions or complaints from investors and their home countries. Therefore, the agreement lacks a leading agency specializing in investment facilitation.

APEC "Investment Facilitation Action Plan", UNCTAD "Global Investment Facilitation Action List" and other documents clearly emphasize that a good investment facilitation legal mechanism needs to include the constructive participation of stakeholders. Regrettably, the above-mentioned constructive participation mechanism is lacking in the China-ASEAN investment facilitation legal framework.

## **4.3. Lack of Regular Consultation Mechanism in International Cooperation**

On the one hand, the host country should not only attract investment, but also retain foreign investment and make it reinvest, which means that the legal mechanism of investment facilitation should penetrate into the whole investment cycle to provide convenience for investors. On the other hand, investment facilitation has not only the perspective of investors, but also the perspective of contracting parties. Therefore, considering the different needs between the two and various reasons, regular consultation mechanism is very important for their international cooperation.

Although Articles 20 and 21 of the China-ASEAN Investment Agreement involve international cooperation on investment facilitation to a certain extent, they do not involve the establishment of a regular consultation mechanism, which will not only affect the parties'timely grasp of investment facilitation The specific implementation of the measures and the timely resolution of the specific problems faced, but also affect the agreement and implementation of future policies for investment facilitation between the contracting parties.

## **5. Research on Countermeasures**

### **5.1. Mitigating the "Fragmentation" of Legal Mechanisms**

Relevant data can be obtained through the latest business environment report released by the World Bank, and its ranking has a profound impact on countries' attracting foreign direct investment. Several of the 10 indicators on which the ranking is based are related to investment facilitation. Therefore, through the data ranking, we can know that there are great differences in the level of investment facilitation between China and ASEAN member countries, and the signing of RCEP can alleviate the fragmentation of the legal mechanism of investment facilitation in China-ASEAN region, and promote the development of regional investment in China-ASEAN region. Based on RCEP, China should use more complete international rules to promote domestic reforms, and promote ASEAN countries to take actions to help ASEAN countries build a good investment environment. Through RCEP, China can actively start negotiations with ASEAN countries to revise and improve Relevant bilateral investment

agreements have made their investment facilitation related clauses increasingly consistent with RCEP or the China-ASEAN Investment Agreement.

## **5.2. Establish A Lead Institution for Investment Facilitation and A Constructive Participation Mechanism**

After the RCEP is signed and passed, it is foreseeable that the investment fields of various countries will further expand and open up, which means that investment facilitation will be enhanced. China-ASEAN can actively create a lead agency for investment facilitation under the background of the RCEP approval. The agency is mainly responsible for the full implementation of investment facilitation. It is not only responsible for providing various institutional information related to investment, promoting the transparency of investment rules, providing a fair and just investment environment, but also responsible for adopting the suggestions of relevant stakeholders or settling disputes. In addition, the agency should also be responsible for timely feedback to relevant government departments so that the government can use appropriate methods to coordinate solutions.

In addition, the establishment of constructive participation mechanism should take into account the following points: first, to promote consultation and effective dialogue between stakeholders and the host country to solve relevant problems; Second, the host country actively listens to public opinions, brainstorming and improving investment rules; Third, encourage investors to be responsible for their own behavior.

## **5.3. Continue to Strengthen the Investment Facilitation System and Cooperation in Capacity Building**

First, China and ASEAN countries should actively carry out exchanges, consider and analyze the investment situation of each country, compare and put forward suggestions to each other, so as to build a good investment environment. Second, if the conditions of each country permit, coordinate, renew and improve the rules of investment facilitation. Finally, strengthen cooperation. All of these require a regularly negotiated international cooperation mechanism for investment facilitation. The mechanism can effectively achieve the following functions: solving the doubts of investors in the process of investment, push forward investment activities in various countries and designing relevant action plans. As RCEP is signed, ASEAN should be its biggest beneficiary. Because the agreement is carried out under the leadership of ASEAN, ASEAN is its active partner. In this context, we should give full play to its strong cooperation, actively communicate with China, build an international cooperation mechanism of investment facilitation through regular consultation, help some member countries optimize the investment environment, strengthen infrastructure construction in the investment field, and then improve their investment facilitation level.

## **6. Conclusion**

Although China has concluded several IIAs with ASEAN and its member countries, the growth level of its bilateral investment is far from the expected level. This is because the level of investment facilitation is not high. Therefore, with the help of the investment convenience of RCEP, we can actively play a promoting role, so that China and ASEAN can continue to strengthen cooperation, update and improve the investment agreements signed between them, promote countries to improve the level of investment facilitation, and promote China to build a new "dual circulation" development pattern.

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