

**Free Trade Agreement (FTA) and Investment Agreement
between Hong Kong (HK) and
the Association of Southeast Asian Nations (ASEAN)**

Frequently Asked Questions

I. General

Q1. How can HK benefit from the FTA and the Investment Agreement?

A1. ASEAN is a very important trading partner of HK. It was HK's second largest trading partner in merchandise trade in 2019 and the fourth largest in services trade in 2018. Forging an FTA and an Investment Agreement with ASEAN is in line with HK's goal of strengthening trade and economic partnership with the ten ASEAN Member States (AMS). We believe that the FTA and the Investment Agreement can create more business opportunities beneficial to HK's long-term economic growth, and help strengthen HK's role as an international trade, commerce and financial centre.

Q2. When will the FTA and the Investment Agreement enter into force?

A2. The dates of entry into force of the FTA and the Investment Agreement are as follows:

FTA

- 11 June 2019: Hong Kong, Laos, Myanmar, Singapore, Thailand and Viet Nam
- 13 October 2019: Malaysia
- 12 May 2020: The Philippines
- 4 July 2020: Indonesia
- 20 October 2020: Brunei Darussalam
- 12 February 2021: Cambodia

Investment Agreement

- 17 June 2019: Hong Kong, Laos, Myanmar, the Philippines^[Note], Singapore, Thailand and Viet Nam
- 13 October 2019: Malaysia
- 4 July 2020: Indonesia
- 20 October 2020: Brunei Darussalam

- 12 February 2021: Cambodia

(Note: The part relating to the Philippines took effect from 12 May 2020 onwards.)

Q3. Are there any legislative procedures that HK has to complete before the FTA and the Investment Agreement enter into force?

A3. The Secretary for Commerce and Economic Development has published a notice in the gazette to amend Schedule 1 of the Trade Descriptions Ordinance (TDO) (Cap. 362), so that the FTA becomes a scheduled trade arrangement which enables HK traders to mark or label relevant goods as HK origin in accordance with the rules of origin (ROOs) under the FTA. The Notice came into force on 1 July 2018.

For the entry into force of the Investment Agreement, no legislative procedure is needed.

Q4. For some of the Chapters, a number of issues will be discussed in the Work Programmes. Why is it so? Are there any specific timelines for implementing the Work Programmes?

A4. On ROOs, for some products which require more time to deliberate, the two sides will continue negotiations on their ROOs after the entry into force of the FTA. It is targeted to be concluded within one year, unless the Parties to the FTA agree otherwise. In the interim, HK traders can still enjoy the preferential tariff treatment for these products if their goods are made with not less than 40% of materials sourced or value added in HK or ASEAN or a combination of these places.

On Economic and Technical Co-operation (ECOTECH), ASEAN and HK have drawn up a Work Programme, which is a reference document to provide guidance for the effective implementation of ECOTECH within the scope of the FTA. The Work Programme lays down the framework that ECOTECH will be implemented through annual programmes over five years, and that a joint review will be conducted towards the end of the five years.

Under the Investment Agreement, there is a Work Programme for the Parties to further discuss certain issues after the Agreement's

entry into force. This arrangement was adopted as a few complicated issues would require more time to resolve. HK and ASEAN target to conclude the Work Programme within one year of the entry into force of the Investment Agreement, unless the two sides agree otherwise later.

II. Trade in Goods

Q1. When will the tariff reductions of AMS commence?

A1. AMS will start reducing their tariffs on HK's originating products after they have implemented the FTA. Since the ratification procedures of AMS vary, the commencement date for each AMS may be different. The most up-to-date information is available at website of the Trade and Industry Department (TID).

Q2. What are the tariff reduction commitments of AMS?

A2. AMS' tariff reduction commitments cover different kinds of commodities, including jewellery, articles of apparel and clothing accessories, watches and clocks, toys, etc. The following are some examples:

- **Apparel and clothing accessories (HS Chapters 61-62):** Brunei Darussalam and Malaysia will provide duty-free treatment to all HK originating products within 3 years and 10 years respectively. Within 10 years after the FTA enters into force, Thailand and Viet Nam will eliminate customs duties for 98% of their tariff lines.
- **Precious metal and jewellery (HS Chapter 71):** Laos and the Philippines will eliminate all their customs duties within 8 years and 10 years respectively. Malaysia and Thailand will eliminate their customs duties for over 93% of tariff lines within 3 years. Viet Nam commits to cutting customs duties for over 96% of its tariff lines within 10 years.
- **Watches and clocks (HS Chapter 91):** Thailand and Viet Nam will eliminate all their customs duties within 3 years and 10 years respectively. Malaysia and the Philippines will remove customs duties for over 92% of their tariff lines within 3 years.

- **Toys, games and sport requisites (HS Chapter 95):** The Philippines will remove all its customs duties within 10 years, whereas Viet Nam will eliminate customs duties for over 98% of its tariff lines within the same period.

Q3. *Are HK exporters required to follow any specific procedures to claim tariff preference under the FTA?*

A3. HK exporters who comply with the relevant origin rules and fulfil the requirements set out in the ROOs of the FTA can benefit from the preferential tariff treatment for exports to AMS. In order to claim preferential tariff treatment under the FTA for goods exported to AMS, HK exporters will need to take out a certificate of origin (CO) from the TID or one of the Government Approved Certification Organizations (GACOs)¹ and transmit the CO to the relevant importer in AMS so that the latter may lodge the claim for preferential tariff treatment in accordance with the procedures on the importation requirements applicable in AMS. To help Hong Kong exporters make good use of the preferential tariff treatment under the FTA, trade circulars have been issued to inform the trade of the relevant preferential rules of origin and the related requirements. The circulars can be accessed at www.tid.gov.hk/english/ita/fta/hkasean/hkasean_press.html.

III. Trade in Services

Q1. *Can you briefly introduce the services commitments under the FTA?*

A1. We have achieved a balanced outcome on trade in services, building on both sides' commitments under the World Trade Organization (WTO).

AMS' commitments encompass sectors where HK has strengths for further development, such as:

- (a) professional services;
- (b) business services;

¹ The five GACOs are the Hong Kong General Chamber of Commerce; the Federation of Hong Kong Industries; the Chinese Manufacturers' Association of Hong Kong; the Chinese General Chamber of Commerce; and the Indian Chamber of Commerce, Hong Kong.

- (c) telecommunications services;
- (d) construction and related engineering services;
- (e) educational services;
- (f) financial services;
- (g) tourism and travel related services;
- (h) transport services; and
- (i) arbitration services.

HK's commitments cover a similar range of services and address also the specific interests of AMS, such as in computer and related services, specialty design services, and spa services.

Q2. How are our commitments to ASEAN compared with HK's existing FTAs with foreign economies?

A2. Our overall commitments to ASEAN are comparable to those in our FTAs signed with overseas trading partners. The level of commitments reflects the different dynamics and balance of individual negotiations.

Q3. What are the respective commitments of HK and ASEAN in respect of movement of natural persons under the FTA?

A3. In respect of movement of natural persons, the commitments of AMS and HK cover the temporary entry and stay of business visitors as well as intra-corporate transferees in a wide range of sectors. In addition, commitments of some AMS also extended to the categories of independent specialists/experts/professionals and contractual services suppliers.

Q4. What are the scope and coverage of the Trade in Services Chapter under the FTA?

A4. The scope and coverage of the Trade in Services Chapter is generally in line with those under the WTO. It applies to

measures affecting trade in services taken by:

- central, regional or local governments or authorities; and
- non-governmental bodies in the exercise of powers delegated by central, regional, or local governments or authorities;

but does NOT apply to:

- services supplied in the exercise of governmental authority, i.e. any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers;
- measures affecting natural persons seeking access to the employment market of HK or AMS;
- measures regarding citizenship, residence or employment on a permanent basis;
- in respect of air transport services, traffic rights however granted; or services directly related to the exercise of traffic rights, other than measures affecting:
 - (i) aircraft repair and maintenance services;
 - (ii) the selling and marketing of air transport services;
 - (iii) computer reservation system services;
- government procurement ;
- cabotage in maritime transport services; and
- subsidies or grants.

Q5. What are the disciplines on domestic regulation (DR) agreed in the Trade in Services Chapter under the FTA?

A5. Building on the General Agreement on Trade in Services (GATS) provisions on DR, the DR disciplines in the Trade in Services Chapter (i.e. Article 5) require the Parties to ensure that measures affecting trade in services are transparent, administered in a reasonable, objective and impartial manner. Such measures shall

be based on objective and transparent criteria; not more burdensome than necessary to ensure the quality of the service; and in the case of licensing procedures, not in themselves a restriction on the supply of the services.

Q6. What is the significance of the regular review mechanism under the Trade in Services Chapter of the FTA?

A6. The progressive liberalisation provision (i.e. Article 23 on Review) paves the way for HK and ASEAN to, where necessary, negotiate further improvements to specific commitments under the Trade in Services Chapter so as to progressively liberalise trade in services between the Parties after the entry into force of the FTA.

IV. Investment

Q1. What are the main features of the Investment Agreement?

A1. The Investment Agreement provides for -

- (a) non-discriminatory treatment of investments in non-services sectors (which will enter into effect when related reservations, to be negotiated in the Work Programme, enter into effect);
- (b) protection of investment in all sectors;
- (c) dispute settlement (DS) mechanisms (i.e. Party-Party DS mechanism and investor-Party DS mechanism, the latter to be negotiated in the Work Programme); and
- (d) promotion and facilitation of investments.

Q2. What protection does the Investment Agreement provide?

A2. The Investment Agreement provides investors of the Parties with the following protection –

- (a) fair and equitable treatment of investments;
- (b) protection and security of investments;

- (c) compensation according to agreed standard in case of expropriation of investments and, if requested, in a freely usable currency as determined by the International Monetary Fund;
- (d) non-discriminatory treatment in compensation for investment losses or damages owing to war, armed conflict, civil strife, or similar events; and
- (e) free transfers of investments and returns.

Q3. How will investment disputes be resolved before Article 20 (Settlement of Investment Disputes between a Party and an Investor) is agreed in the Work Programme?

A3. Before the investor-Party DS mechanism is available, the Party-Party DS mechanism under Article 21 (Consultations and Dispute Settlement between the Parties) will be used to resolve possible investment disputes.

Q4. Will the existing HK-Thailand Investment Promotion and Protection Agreement (IPPA) remain in force upon the entry into force of the Investment Agreement?

A4. The existing HK-Thailand IPPA will remain in force upon the entry into force of the Investment Agreement. This maximises the protection for relevant investors.

Q5. Note that the definition of “natural person of a Party” is to be agreed by HK and ASEAN under the Investment Agreement’s Work Programme. Are natural person investors not covered by the Investment Agreement before that definition comes into effect?

A5. The Investment Agreement shall protect the investments of both juridical person investors and natural person investors. However, before the Investment Agreement’s definition of “natural person of a Party” comes into effect, the protection of investments of natural person investors only applies among HK, Brunei Darussalam, Malaysia and Singapore pursuant to a side agreement among these four Parties. Under that side agreement, natural

persons of HK include all the permanent residents of HK.

HK and ASEAN target to conclude the Work Programme within one year of the entry into force of the Investment Agreement, unless the two sides agree otherwise later.

It should also be noted that although the investments of a juridical person investor are protected under the Investment Agreement, a juridical person investor that is a “shell company” owned or controlled by an investor of a non-Party or of the host-Party may not be accorded benefits of the Investment Agreement.

V. ECOTECH

Q1. What is the objective of the ECOTECH Chapter under the FTA?

A1. In pursuit of mutual benefits for ASEAN and HK, the objective of the ECOTECH Chapter is to facilitate, implement, expand and enhance the benefits of the FTA. ECOTECH activities includes capacity building or technical assistance programmes which may be conducted in the form of experience sharing seminars, thematic symposiums, exhibitions and networking events, etc.

Q2. What is the reason for including the ECOTECH Chapter under the FTA? Do other FTAs signed by ASEAN include provisions on ECOTECH?

A2. Noting the different level of economic development amongst AMS, it is a shared goal of both ASEAN and HK to enhance the benefits of the FTA through capacity building and technical assistance programmes. All FTAs signed by ASEAN with its trading partners (including Australia, China, Japan, Korea, India and New Zealand) include specific provisions on ECOTECH.

Q3. How to implement the ECOTECH Chapter upon the entry into force of the FTA?

A3. The Chapter will be implemented through an ECOTECH Work Programme which aims to provide guidance for the effective implementation of ECOTECH within the scope of the FTA. The Work Programme also includes indicative ECOTECH activities to be carried out.

Q4. What are the ECOTECH projects that would be conducted upon implementation of the FTA?

A4. ASEAN and HK agree to undertake projects in pursuit of mutual benefits in five priority areas, including customs co-operation, professional services, small and medium enterprises co-operation, trade facilitation/logistics, and e-commerce co-operation. Projects may be carried out in the form of seminars, workshops, exhibitions and visits, etc. We will formulate projects, in partnership with AMS, after the entry into force of the FTA.

Q5. What are the benefits to HK from the ECOTECH Chapter?

A5. The continual engagement with AMS in various ECOTECH projects will reinforce the longstanding harmonious commercial relations between HK and AMS and open up new business opportunities in the ASEAN markets with enormous potential.

VI. Intellectual Property

Q1. What are the key outcomes of the Intellectual Property (IP) Chapter of the FTA? Is there any implication on HK's IP regulatory regime?

A1. Under the IP Chapter, apart from reaffirming the rights and obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights, HK and ASEAN would strengthen co-operation in the area of IP in order to enhance their economic and trade relations. The obligations are compatible with HK's IP regime and will not require any change to our IP legislation and enforcement work.