

MALAYSIA

Completion of ASEAN Chairmanship*

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The Association of South East Asian Nations (“ASEAN”) was launched in 1967 merely as a regional organization among a few neighboring States. Today, however, the ASEAN is a legal person founded on three fundamental pillars, namely Political-Security Community, Economic Community, and Socio-Cultural Community.¹ The combined aim of these three Communities is “to live in a region of lasting peace, security and stability, sustained economic growth, shared prosperity and social progress, and to promote our vital interests, ideals and aspirations.”²

Pursuant to Article 31 of the ASEAN Charter, the chairmanship of the Association rotates every year among the Member States by alphabetic order. Myanmar held the Chairmanship for 2014. The position passed to Malaysia for 2015 with the handover of a figurative gavel associated with the ASEAN Chair to Malaysian Prime Minister, Dato’ Sri Haji Mohammad Najib bin Tun Haji Abdul Razak on November 14, 2014 by Myanmar President Thein Sein in Naypyitaw.³ The Chair assumes the responsibility for a great people-centric theme, “Our People, Our Community, Our Vision.” This was due to the Malaysian position to turn the ASEAN from its hitherto elite-centric status to a people-centric one.

Of all the Malaysian priorities as the Chair, regional community building was on the top, which has been made possible. The Kuala Lumpur Declaration on the Establishment of the ASEAN Community was adopted in November 2015. This led to the formation of the Community on December 31, 2015. The Community is targeted to be achieved by 2025. According to this Declaration, the ASEAN will be

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¹ ASEAN Charter, Art 3.

² *Id.* pmb1.

³ Razak Ahmad, *Malaysia Assumes 2015 ASEAN Chairmanship*, STAR ONLINE, NOV. 14, 2014.

one Community combining all the three pillars mentioned above.

In line with the people-centric theme of “Our People, Our Community, Our Vision,” the 27th ASEAN Summit adopted some important measures, including a convention against trafficking, a joint statement on climate change, declarations on aging and higher education, and regional plans of action on eliminating violence against women and children.⁴

Of all the achievements, the formation of the ASEAN Economic Community (“AEC”) is worth noting. Its purpose is to “create a single market and production base” consisting of five freedoms such as free movement of goods, services, investment, capital and skilled labor.⁵ In other words, the free movement of these ‘five’ will turn the ASEAN into a single market - an integrated economy. This integration will bring benefits to the Community Members in many ways, such as increase in open competition among business enterprises across the border, generating GDP and also employment for the people.⁶ However, the ASEAN is “still far from creating a truly single market and production base with a free movement of goods and services.”⁷ “As of October 31, 2015, the ASEAN had only completed 79.5 percent of a full AEC scorecard of over 600 measures.”⁸ The completion of a single market needs time. Accordingly, ten years’ time has been given by the leaders. Malaysian Prime Minister, Najib Razak said: “The ASEAN Community was a marker rather than the end of the region building process, and that leaders had set the 2025 target to give them the necessary time and space for even deeper integration.”⁹

AEC is just in the beginning. A lot more has to be done. The fiscal aspect of creating the market has been achieved so far, i.e., tariffs on the ASEAN goods and services have been reduced or removed. As a result, goods and services can move across the border freely. But that is not all. A more difficult barrier is still there, namely the technical barrier and legal barrier. Technical barriers include dissimilar professional standards of the Member States like accounting and auditing standards. Among all legal barriers, the number one is the divergent laws of the Member States relating to the sale of goods transactions. If the ASEAN traders enter into a sale of goods contract, which law should govern that contract? There is no ASEAN law of

⁴ Prashanth Paramesweeran, *ASEAN Creates New Community under Malaysia’s Chairmanship*, DIPLOMAT, Nov. 23, 2015.

⁵ ASEAN Charter art 1(5).

⁶ ASEAN Economic Community Blueprint, art. 6.

⁷ *Supra* note 4.

⁸ *Id.*

⁹ *Id.*