

INDONESIA- AUSTRALIA

COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT



Outcomes: Investment

The Indonesia-Australia Comprehensive Economic Partnership Agreement (IA-CEPA) provides a framework for the investment relationship between Australia and Indonesia to reach its full potential.

Indonesia is seeking more foreign investment, especially in priority sectors such as energy and infrastructure, to meet its ambitious economic development plans. Australia is a natural partner for Indonesia, as a close neighbour with considerable expertise in these sectors. IA-CEPA provides greater certainty and protection for Australian investors and investments in Indonesia.

Indonesia currently is not a significant investor in Australia. But, as a rapidly developing country and the largest economy in South East Asia, this is likely to change in the future. Indonesian investors will benefit from Australia's commitment under IA-CEPA to an open investment environment.

IA-CEPA improves opportunities for Australian investors in Indonesia

- Indonesia's commitments on investment in IA-CEPA provide greater certainty for Australian investors through specific commitments in key sectors including energy and infrastructure.
- IA-CEPA also provides greater certainty for Australian investors by limiting the scope for Indonesia to make key regulations governing foreign investment more restrictive in the future, for example on minimum capital requirements.
- If Indonesia provides better outcomes to investors from a third country under a future trade agreement, Australian investors will gain that better treatment under IA-CEPA.

IA-CEPA includes high quality rules to promote and protect investments

The IA-CEPA Investment Chapter contains a set of high-quality, modern rules governing the treatment of investors and their investments, balanced with robust safeguards to preserve the right of the Government to regulate in the public interest. These rules:

- Protect against discriminatory treatment
- Require payment of fair compensation where an investment is expropriated
- Ensure investment-related capital transfers can occur freely and without delay
- Guarantee that investors and their investments will be accorded a minimum standard of treatment in accordance with the accepted international law standard.



ISDS in IA-CEPA protects investors, while preserving the Government's right to regulate in the public interest

- The IA-CEPA Investment Chapter includes an Investor-State Dispute Settlement (ISDS) mechanism which provides investors from both countries with access to an independent arbitral tribunal to resolve disputes for breaches of these investment rules.
- An ISDS claim concerning IA-CEPA may only be brought in relation to commitments in the Investment Chapter. ISDS cannot be used to enforce other provisions of the agreement.
- IA-CEPA preserves each Government's right to regulate in the public interest:
 - Public health measures cannot be challenged under ISDS, including those relating to tobacco, the Pharmaceutical Benefits Scheme, Medicare Benefits Scheme, Therapeutic Goods Administration and Office of the Gene Technology Regulator
 - Australia's foreign investment framework, including decisions of the Foreign Investment Review Board, cannot be challenged under ISDS
 - Australia reserves the right to maintain existing and introduce new measures in key policy areas, including:
 - Social services established or maintained for a public purpose, such as social welfare, public education, health and public utilities
 - Measures with respect to creative arts, Indigenous traditional cultural expressions and other cultural heritage
 - General exceptions also apply to the Investment Chapter.
- The ISDS mechanism in IA-CEPA also includes modern procedural safeguards to better balance the right of an investor to bring a claim with the right of Governments to regulate in the public interest, including:
 - Expedited review of claims that are frivolous or manifestly without legal merit
 - Mechanisms to deter unmeritorious claims, including through the award of costs against a claimant
 - On request, the Parties may issue interpretations of the Agreement, which must be followed by ISDS tribunals
 - Time limits on bringing a claim, and
 - A requirement for arbitrators to comply with rules on independence and impartiality, including on conflicts of interests.