

2019-2020 European Business Position Paper

"Trade and Investment Issues and
Recommendations in Support of a
Competitive Economy in Thailand."

www.eabc-thailand.org



Tailored Exclusively in the Heart of Bangkok



Ascott Sathorn Bangkok offers stylish comfort and exceptional service in the heart of Bangkok's commercial and financial district. Indulge in the Two-Bedroom apartments featuring spacious décor and exclusive facilities situated in lush surrounds. Get energised at Cascade Club, one of Bangkok's largest private fitness centre, or rejuvenate with wellness treatments at the Spa. Ascott Sathorn Bangkok is tailored exclusively for you. **Because life is about living.**



Enjoy Exclusive Benefits with Ascott Star Rewards | www.the-ascott.com | (66) 2204 4343

Ascott Sathorn Bangkok is managed by The Ascott Limited is a member of CapitalLand. It is one of the leading international lodging owner-operators with more than 670 properties in over 170 cities spanning more than 30 countries across Asia Pacific, Europe, the Middle East, Africa and the U.S. Its portfolio of serviced residence and hotel brands includes *Ascott*, *Citadines*, *Citadines Connect*, *Somerset*, *Quest*, *The Crest Collection*, *lyf* and the *Tauzia* portfolio of brands.

Contents

Message from the President	2
Executive Summary	4
Acronyms and Abbreviations	19
Introduction	23
Automotive	31
Cross Sectoral Issues (CSI)	47
Digital Economy / ICT	65
Energy	97
Food and Beverages	102
Healthcare and Pharmaceuticals	110
Insurance	120
Intellectual Property Rights (IPR)	128
Rail and Road Infrastructure	137
SME	142
Tourism	155
Transport and Logistics	159

Message from the President

Bangkok, October 2019

The European Association for Business and Commerce (EABC), was established in 2011 and acts as a 'EuroCham Thailand', representing the interests of the European business community in Thailand, covering all EEA (European Economic Area) states, not just EU states.

EABC proudly presents the European Business Position Paper 2019-2020. This publication is a development of consensus in the European Business community in Thailand, based on research, experience, knowhow and the learning through dialogue and other ways of engaging with many officials of the Royal Thai Government. All of these actions are intended to support enhanced trade and investment between Europe and Thailand and to contribute to making Thailand a more attractive investment destination, hub and trading partner.

The 2019-2020 European Business Position Paper is the unified work of 12 working groups covering Automotive, Cross Sectoral issues (CSI), Digital Economy / ICT, Energy, Food and Beverages, Healthcare and Pharmaceuticals, Intellectual Property Rights (IPR), Insurance, Rail and Road Infrastructure, SME, Tourism, and Transport and Logistics.

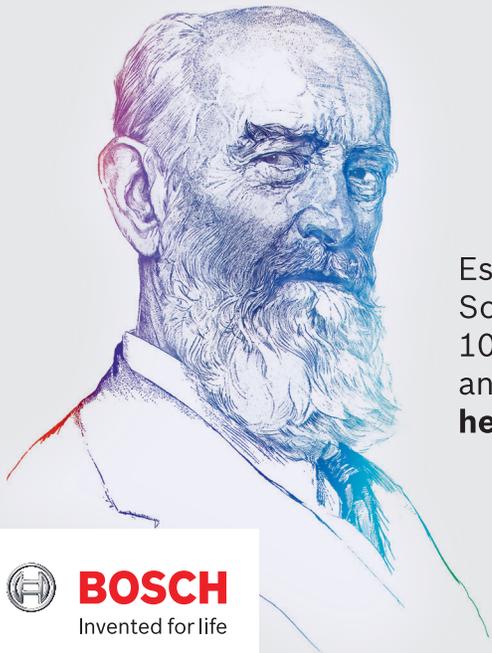
2019 has been a watershed year for Thailand, with the first elections since a military government assumed control in 2014, establishment of a new government, and at the same time Thailand being ASEAN chair. Many legislative and policy developments have occurred since EABC's 2018 publication. In order to involve as many as possible, in addition to its member base, EABC engages with its Advisory Council members (bilateral European chambers of commerce and European foreign missions) twice per year and has made membership more attractive to members of European bilateral chambers, by making being part of EABC complementary to and an enhancement of bilateral chamber membership. Being an EABC member means being part of building consensus in the European business community in Thailand through engagement with others and being part of the central focal point for capturing and articulating issue relevant to FTAs and other treaties, including a Thailand-EU Free Trade Agreement.

On behalf of EABC, I would like to thank the Working Groups Chairpersons and their members, our Board and EABC staff for the work on this publication. My sincere thanks also go to the European Union Delegation to Thailand and everyone else related to EABC in support of the 2019-2020 European Business Position Paper.

Yours sincerely,



Jan Eriksson
President, EABC



100 Years
Bosch in SEA | 1919-2019

Established in
Southeast Asia
100 years ago in 1919,
and continues to
help make a difference.



BOSCH
Invented for life

SIEMENS

Ingenuity for life

Moving Bangkok
into the future

Reliable rail and intelligent traffic
solutions for an ever-growing city

siemens.com/mobility

Executive Summary

The issues identified in this 2019-2020 European Business Position Paper and their Recommendations are the product of sector experience and understanding, consultation, dialogue with government, research and consensus-building. EABC (which acts as a 'Eurocham Thailand') is not a lobby group protecting and defending existing investments and positions.

Rather, the objective of the Recommendations are about contributing to a Thailand which is economically more robust, is an even more attractive destination for investment and a trading partner, is competitive and innovative. The main focus is on European-Thai trade and investment, but almost all recommendations are in support of an enhanced Thailand beneficial to any trading partner or investor and to the Thai economy

The vibrancy of Thailand and its creative, intellectually-equipped and friendly workforce draws partners from around the world. Being open to investments requires more than temporary trade promotion; safeguarding and ensuring the success of existing industries, and also supporting competition and innovation will expand the Thai economy further, qualitatively and quantitatively.

Thailand has grown in head of population and average age. It will thus become increasingly difficult to remain as a contracted-manufacturer country due to shortage of citizens in the workforce. Enhancing competitiveness especially in the services sector is the basis of a number of recommendations. This includes liberalization of services and ease of employment to support the sector. Services also support and complement manufacturing.

Expertise and business partners also equip Thai businesses with necessary resources to compete in the global economy. Thailand will benefit from foreign business partners in the areas of technology (in various verticals), engineering and life sciences, which many industries require. Foreign partners for Thai SMEs need supportive policies and friendly regulatory frameworks.

Adaptation and acceptance of widely recognized standards such as EU standards in infrastructure development significantly promote Thailand's ease of doing business and regional interoperability. This allows Thailand to take advantage of time-tested industry standards and to ensure Thailand's shipment of products in the region with product-cost efficiency. Reinventing the wheel for standards and redundancy to the testing will not enhance business efficiencies, or safety levels.

Recurrent themes in the 2019-2020 European Business Position paper include:

- Competitiveness, liberalisation of services; reform
- Skills and capacity building; education refocus on life skills such as critical thinking, collaboration.
- Removing clutter and out-dated rules by fast-track regulatory reform; ease of doing business
- Moving to ‘being digital’ in government, in everyday interactions and in gaining new insights and realizing new technologies; ‘digitisation’ or ‘digitalisation’
- Embracing new economic models such as Digital Economy; Circular Economy
- Broad alignment with Thailand 4.0 which is Thailand’s take on 4IR (Fourth Industrial Revolution or Industry 4.0)
- Support for a rules-based world trading order
- Dealing with new threats such as cyber incursions, fake news and new dimensions of economic competition

The tables on the several following pages summaries each chapter.

ISSUES AND RECOMMENDATIONS

Overall Trade and Investment Policy

- Too many policies retard the strengthening of competitiveness; some industries continue to be protected, notwithstanding various promotional schemes such as EEC, smart city areas and BOI promotions.
- Liberalization of the services sector is a key enabler of competitiveness, skill development, enhancement of productivity, avoiding the middle income trap, and would be a boost for capacity building and resilience. A bold move to overcome resistance is needed.
- Effective market access, minimising NTBs, NTMs in areas which are meant to be open
- Removal of out-dated and cumbersome rules needs to be done in a fast track way in order for a Thailand 4.0 goals to be realised in our lifetimes.
- Technology and know-how transfer to mutual advantage.
- The agriculture sector has 40% of labour and 11% of GDP. It has huge potential with structural reform, reskilling and smart technology.
- Contribution to a meaningful, value-adding EU-Thailand FTA.

ISSUES AND RECOMMENDATIONS

Automotive

1. Trade and EU - Thailand FTA Negotiations.

- Reaffirming our position in the 2018 European Business Position Paper, EABC & TEBA continue to support any possible development towards an EU - Thailand FTA. We encourage Thailand to strongly reaffirm its interest in the FTA and explore ways to re-engage in the negotiations. At least, Thailand shall continue to do the groundwork, i.e technical review, impact study, public outreach, etc., so negotiations can resume without delays in the process.
- Taxation should not be the only benefits of the EU - Thailand FTA. Thailand should also focus on reducing, eliminating, and preventing non-tariff barriers.
- Develop the benchmarking report comparing with other FTA such as JTEPA, EU-Vietnam, Thai-China, ASEAN-China and use as the guideline for the EU-TH which will be resumed.

2. Technical Regulations

2.1 Emission & Fuel and Road Safety

- EABC & TEBA recommend Thailand to implement the WP29 - 1958 Agreement by adopting the UN Regulations and recognizing type approval certificates and test reports issued in accordance with UN Regulation standards to enhance safety and foster the auto industry's competitiveness, with priority to facilitate export performance.
- Actively engage in developing and implementing ASEAN MRA for automotive products and accelerate ASEAN MRA timeline for implementation.
- Government should consider putting roadmap to harmonize national with international automotive standards (UN regulations).

2.2 Emission & Fuel

- EABC & TEBA Automotive Working Group support clarity regarding – and a clear timeline for – the improvement for automotive emissions standards and fuel quality to promote environmental and public health enhancement.
- Government should provide a clear roadmap on the emission regulation and fuel quality improvement for all types of new vehicles. The roadmap should include direction for implementation and enforcement.
- Timeline of implementation requires mutual alignment among Government's agencies i.e. Ministry of Energy, Ministry of Industry and Ministry of Natural Resources and Environment.
- We encourage the government to implement EURO5 emission standards as soon as possible. By the time of its fuel nationwide launch in 2024, carmaker shall have adequate period for business preparation.
- Preparation of EURO6 requisition of additive Urea for pollution controlling maintenance, which government should encompass a nationwide launch in fuel stations.

ISSUES AND RECOMMENDATIONS

- Higher biodiesel content above B7 may create technical impact for the advance emission technology.
- The actual exhaust emissions of in-use Diesel 1-ton Pickup Trucks and Commercial Vehicles (3.5-ton and above) should be more stringently measured the Periodic Technical Inspection (PTI). Compliance with the respective exhaust emission levels shall be more strictly enforces, since they are the most polluting vehicles. All modifications to the vehicles original exhaust system shall lead to non-compliance
- Adoption of a requirement for an earlier Periodic Technical Inspection (PTI) for in-use Diesel 1-ton Pickup Trucks and Commercial Vehicles (3.5-ton and above) starting from e.g 3rd year of registration
- Apply increasing rate of annual vehicle registration tax per year of vehicle age for Commercial Vehicles (3.5-ton and above) as a penalty for operating an older vehicle (starting from the 3rd year of registration).

2.3 Road Safety

- The product certification for automotive products should be simplified, transparent and open for full acceptance of relevant international certificates and document without additional testing and inspection.
- EABC & TEBA recommend that the Thai government introduce a demanding plan for mandatory vehicle safety measures to reduce accidents and to get Thailand off the top-ten charts of countries with highest road fatalities.
- Propose to the Expressway Authority of Thailand to allow the Big Bike to use the Express Way.
- Adoption of a requirement for an earlier Periodic Technical Inspection (PTI) for all vehicles, starting from e.g. 3rd year of registration. This would also identify illegal modifications that could influence the road safety of the vehicle.

3. Taxation

- 3.1 To accelerate the process of contemplating CFZ eligibility criteria, to give priority to attracting new investment as well as to promoting foreign investments, protecting existing investments, and support the concept of ease of doing business environment in the CFZ.
- 3.2 Stringent regulations on the assembly process alone might not respond to future technology changes, but would create obstacles to future investment opportunity led Thailand to lose its challenge destination to be EV centric in ASEAN.
- 3.3 With the significant PM2.5 crisis, to reaffirm urgent cooperation of all relevant sectors to resolve the problem and operational issues to enable a smooth implementation process.
- 3.4 To establish the used EV battery's fund, we consider as burden towards business operators because European vehicles are already met with global standards in term of our end-of-life battery.
- 3.5 Encourage the Government to review the VAT calculation for the sale of used vehicle.
- 3.6 Encourage the Government to raise the ceiling of the deductible expense when buying the vehicles.

ISSUES AND RECOMMENDATIONS

4. Labour

- Developing mid- and long-term strategies to promote effective vocational training and incorporate practical industry training in the higher education curriculum. This would raise the number of qualified graduates across the board to meet industry requirements.

5. Investment

- 5.1 Government must ensure the transparency and monitors the effectiveness of the licensing grant process.
- 5.2 Safeguarding existing investments requires long-term support and true commitment from BOI, and clarity to investment promotion is required to avoid unnecessary delay to investment decisions.
- 5.3 BOI as business facilitation center, should be consistent in relevant regulations and encourages the ease of investment climate as well as strong confidence towards investors.
- 5.4 Thailand should continue to raise standards for safety and environmental requirements in the automotive sector to help attract green technology and new investments.
- 5.5 We recommend the Royal Thai Government continues dialogue with EABC & TEBA automotive working group about improving ease of doing businesses and consists of industry experts that can provide policy recommendations to boost Thailand's competitiveness.
- 5.6 Government to eliminate duplicated dividend taxation to be more competitive among ASEAN countries.

6. Electric Vehicle (EV)

6.1 Supply Incentives

- Sufficient and attractive incentives are necessary for xEV investment and faster market penetration. Incentives should focus both on PHEV and BEV, since support of both technologies will increase the customer base and lead to a faster development of charging infrastructure (at home, work and in public spaces).
- The government to develop clear long-term outlook on planned automotive legislation, technology incentives and EV supply chain to ensure industry can make long-term investment decisions.
- Regulatory & Tax instruments that help to realize further efficiency potential of combustion engine but offers also a reliable perspective for e-mobility (CO₂ based taxation, CO₂ limits, Fuel Standards).
- Incentivize local content to attract suppliers.
- Provide opportunity for the European Association to be part of the working group of xEV under the TISI.

6.2 Demand Incentives

- Setup priority lanes, priority parking and charging spaces for xEV and e-Scooter, waiver of highway tolls and congestion charges (if applicable).
- Adopt international safety standards for consumer's awareness e.g. battery.
- Encourage Government's agencies to lead the use of xEV.

ISSUES AND RECOMMENDATIONS

6.3 Infrastructures

- The government should increase the availability of Electric Vehicle Charging Infrastructure (EVCI) or public charging nationwide networks as one of the intrinsic buying decisions, set up an appropriate standardization framework to minimize infrastructure investment and ensure a fair competition. Financial incentives for improvements to utility infrastructure (e.g. smart grids, smart meters) is necessary.
- Clarity of EVCI standards, guidelines, permits
- Enforcement of interoperability of charging station.
- Establish laboratory facility to promote local EV's high-voltage battery testing.

6.4 EV's Battery Waste Management / Environment Awareness

- Support for renewable energy generation
- Promote the efficient management system of used EV battery for environment sustainability.

Cross Sectoral Issues (CSI)

Cross sectoral or 'horizontal' issues are re-organised around Clusters. Five are covered

1. Tax Regime – Competitive, Efficient, Inclusive and Fair

- Implement a number of efficiency enhancements
- Reduce then remove domestic withholding tax
- Make timelines for tax audits
- binding tax rulings

2. Foreign Investment

- Take a bold approach to List 3 of the FBA – refer to EABC June 2018 submission
- Review other consequential legislation impacting allowing foreigners to do certain jobs
- Maintain FBA standard as the basis for FDI

3. The Legal System

- Promote 'Rule of Law'
- Court reporting enhancement
- Arbitration should be available for all categories of government contracts
- Complete phase 2 (licences) and then enhance Guillotine project

ISSUES AND RECOMMENDATIONS

4. Work Permit & Visa – focus on skilled workers

- For Business Visitors – change ‘work’ definition to make it in line with APEC business mobility principles, allow a wide range of activity with no work permit.
- For those living and working in Thailand, a range of specific changes is needed
- For smart visa, make it less cumbersome and more attractive.
- Complete the removal of TM.28; ultimately remove TM.30 (any remaining parts to be done on-line); TM.6 via on-line; 90 day reporting only for change of residence.

5. Anti Corruption

- Greater education and collectively saying ‘no’ are needed amongst a range of other measures
- Implementation of internal controls
- Strengthen whistleblowing and witness protection

Digital Economy / ICT

EABC analyses the Digital Economy in three layers which are building blocks (1,2,3 here). The definition includes the role of the telecoms industry.

1. Infrastructure

- 1.1 Industry reform including wholesale and SOE reform
- 1.2 An holistic plan for national broadband infrastructure
- 1.3 Liberalising international gateways fully
- 1.4 Spectrum plan and economic-based pricing; avoid artificial scarcity
- 1.5 5G: Why the rush? – first need a long term spectrum plan, industry restructure and SOE reform, new spectrum pricing model
- 1.6 MVNO policy to support innovation
- 1.7 Cease the Foreign Dominance Notification

2. Operating and Support Systems, Digital Governance

- 2.1 Promote Trusted Internet by MSM governance models.
- 2.2 Cybersecurity – MSM principles and state accountability
- 2.3 Data Privacy – check PDP operationally for practicality of operation and compliance
- 2.4 Digital Government – a visible, workable strategy for whole-of-government
- 2.5 Fake News – primary tool is education; avoid government being arbiter of truth
- 2.6 Skills development is a multi-pronged plan; Digital Literacy essential
- 2.7 Procurement and Anti-Corruption – enhancements and positive steps to be built on

ISSUES AND RECOMMENDATIONS

3. Applications and Digital Services

- 3.1 Enhanced support for Fintech and Start-Ups
- 3.2 Clearing roadblocks with eCommerce registration and making it attractive.
- 3.3 eCommerce Tax clarity needed – full VAT benefits for an indirect tax system

Energy

1 Energy Policy – Mix; Renewables and Alternative sources

- Energy Mix—While the 2018 PDP (released 2019) sets renewable targets, EABC recommends an on-going review so that percentages of overall energy supply represented by renewables is higher. EABC supports diversification of energy sources and focus put on more renewable energy, including solar, wind, hydrogen and others (with natural gas as a back-up and transition energy).
- Specific roadblocks and impediments to alternative and renewable energy sources need to be addressed and removed.
- Reliance on LNG will continue and efficient and effective infrastructure and operational rules need to be enhanced.
- Policy upgrades are needed to support more Waste to Energy development

2 Energy Security & overseas supply; Competitiveness

- The best possible arrangement for overseas supply need to include factors such as security (reliability) and pricing
- Competitiveness factors need to include security and effective cost
- Reliance on more and more private sources are to be encouraged, more sophisticated management systems will be needed over time.

Food and Beverages

1. The Thailand Alcoholic Beverage Market

2. Regulatory Environment and Non-tariff Barriers to Trade

- Graphic health warning on alcoholic beverage packaging
- Labelling notification

3. Tariff Barriers to Trade: Excise tax

4. Illicit Alcohol

5. Social Responsibility

ISSUES AND RECOMMENDATIONS

Healthcare and Pharmaceuticals

1. Fostering investment attractiveness for innovation and research collaboration

- Tax and non - tax innovation incentive schemes for foreign and local companies.
- Enabling viable and accessible local market with available skilled workers to advance R&D and ensure access, viability and sustainability of the investment.
- Amending the inclusion criteria to the innovation list to include international innovators to reap full benefits and position Thailand as an innovation hub.

2. Enhancing regulatory ecosystem and removal of technical barriers to support ease of doing business

- Continued dialogue between the Royal Thai Government and stakeholders in the sub-regulation development under regulatory reform for medicinal products and medical devices to enhance transparency, involvement and practical resolutions.
- Enabling fast track registration and new regulatory frameworks to improve and facilitate access of new technology.
- Improve regulatory efficiency through encouragement of regulatory framework and requirements according to risk-based approach including simplified registration.

3. Appropriate Intellectual Property ecosystem; key enabling factor of pharmaceutical innovation

- Recommendation to increase number of competent patent examiners in particular the fields of chemical, device and pharmaceutical researches to speed up review process.
- Aligning the amended Patent Law with international standards and practices enabling efficient registration and protection for increased technology transfer and investment.
- Adopting patent term restoration and data exclusivity to create a holistic framework enticing innovation.

4. Enabling market environment and sustainable healthcare financing approaches to support innovation

- Transparent procedures for healthcare and pharmaceutical products pricing and reimbursement, with due consideration for the value of innovation to therapeutic outcomes and clinical needs rather than purely cost saving.
- Level playing field in government procurement, removing local and government preferential treatment.
- Exploring solutions to enhance patient access including alternative access models, innovative and value-based financing models, as well as promoting self-care policy as contributing solution to promote sustainable healthcare financing, access and budget management.

ISSUES AND RECOMMENDATIONS

- Further liberalization of the Trade Competition Law to enable trade and investment.
- Development of appropriate policies and regulatory framework in coordination with ASEAN countries for Digital Health in order to maximize the benefits to Thai populations.

Insurance

1. Liberalisation of insurance industry

- Key areas of liberalisation
- Major principles of a liberalised insurance market

2. Enhancing the development and competitiveness of the insurance industry

- Increase capital requirements
- Improve regulations and product approval process to encourage innovation
- Remove investment restrictions and encourage foreign investment in the sector to promote skills and bring expertise
- Remove the restrictions on pricing by removing the use of tariffs
- Promote insurance knowledge to create well-informed and empowered consumers as well as qualified insurance professionals
- Promote higher standard of ethics with the insurance industry

Intellectual Property Rights

1. Amendments to IP-related legislation

- Amendment of the Trademark Act on accession to the Madrid Protocol and illegal refilling practices
- Amendment of the Geographical Indications Act B.E. 2546 (2003)
- Amendment of the Patent Act to enhance research-based ecosystem for innovation development
- Trademark elimination via plain packaging policy and excessive measures restricting normal use of trademarks
- Labelling regulation and excessive health warning

2. IP Law Enforcement

- Enhance enforcement through more effective techniques and tools

ISSUES AND RECOMMENDATIONS

3. Responsibilities of on-line intermediaries

- Monitor effectiveness of changes to Computer Crimes and Copyright Acts
- Consider including financial intermediaries as regulated ISPs

Rail and Road Infrastructure

- The Royal Thai Government shall consider modern technologies in design and procurement, including Life-Cycle-Management. Focusing only on initial investment costs and ignoring operating costs and life spans could lead to unmanageable future burdens.
- Let take Central Railway Authority / Railway Department the lead.
- Reduce investment costs significantly by evaluation of Infrastructural Projects by international experienced experts.
- Quickly implement the Know-How submitted by European Institutions and Countries, including European Standards.
- Liberalization and international co-operation for education will bring huge benefits.
- Reduce road congestions by Intelligent Traffic Solutions.

Tourism

1. Arrival experience be done on-line.

- Dispense with a paper form TM.6
- Taxi solution using an on-line tool

2. Fair price competition in the hotel industry

- To strengthen the implementation of existing hotel operations rules and regulations.
- A further emphasis on registrations, licenses, and insurances that will help ensure minimum quality standards and provide visible ratings.

3. Training and Skills

- A framework for a structured cooperation with the government to train new and local talent through apprenticeships. This is with the focus to train the workforce of the future while companies participating, getting certain specific benefits like tax cuts and more relaxed visa regulations.

ISSUES AND RECOMMENDATIONS

SME

1. Access to finance

- Monitor new crowd funding and peer to peer lending regulations for policy effectiveness and develop further
- Develop a Credit Guarantee Scheme

2. Enhance tax incentives for R&D, Innovation, Productivity

3. Facilitate collaborate on innovation

4. Utilize non personal information on SMEs.

5. Enhance Ease of Doing Business

- Work permit and visa reform
- Liberalise services sector
- IPR protection enhancement – especially on patents

6. Trade and Customs

- Complete National Single Window (NSW)
- Simplify customs procedures
- eCommerce – support cross border movement of goods better
- Simplify issuing CoO; self certification, streamline audits

7. Treat 'foreign' SMEs as just as eligible as Thai SMEs for various programmes.

Transport & Logistics

1. Strategic goals for customs facilitation

- Improve Transparency and Predictability in the drafting and implementation of policy, rules and regulations through the involvement of all stakeholders and affected parties in a fair and open consultation process starting well before Laws and Regulations are drafted.
- Clearly state the service commitments of Thai Customs vis-à-vis the trading community and likewise the expected commitments from the trading community to Thai Customs.

ISSUES AND RECOMMENDATIONS

- Clearly indicate ways in which companies can comply with regulations and Customs can accept the concept of “reasonable care”. Thai Customs to accept voluntary disclosures from importers / exporters / agents / any other concerned parties of errors and breaches of all and any regulations with reduced / waived penalties. Customs to publish guidelines for Compliance to aid much-needed transparency.
- Set up an external, impartial legal channel with equal participation from both Governmental and Private sector to settle disputes between Thai Customs and importers / exporters / agents, bonded warehouse holders or any other concerned parties.
- Limit the application of Customs Penalties for “Smuggling” (up to 4 times cargo value) to cases where Intent to avoid, evade, or defraud duties can be proven (Burden of Proof on Customs). Administrative faults or simple errors with no intended gain to be subject to much smaller administrative fines. This ruling to apply not only to cargo imported or exported but also to stocks held in Bonded warehouses.
- Establish that Transit of goods under Customs Bond by an ASEAN Authorised Economic Operator (AEO) between Customs-free zones of any type, on the borders or inland, be free of restrictions as to routing, transshipment, tracking and tracing, sealing of vehicles, or loading together of goods having differing Customs status. The only obligation of the Cargo Owner or his Agent to be the delivery, intact and correct, at the specified destination Customs-Free zone within a reasonable period, of the goods listed on the manifest. Penalties from non-observance of this obligation to be charged against the guarantee lodged by the AEO with Customs
- Uncouple the regulations on movement of goods by road in Bond from /to/between Thai border crossing points from the existence or not of Bi-lateral road transport agreements. Subject them to liberal domestic in-bond transport regulations as listed in 1.6
- In line with ASEAN rules, change the requirement that all documents required for Customs clearance of cargo into Thailand, especially Import Licenses, be presented immediately when goods enter Thai sovereign territory. The requirement to become that the documents must be presented if and when the cargo moves from a Customs-free area in to duty-paid free circulation in Thailand.

ISSUES AND RECOMMENDATIONS

2. Individual measures in customs and trade facilitation reforms

- Customs declarations in Thailand to be either in Thai or in English language but not in both languages
- The Thai Customs Department to allow in principle that consolidated shipments be break- bulked within Customs-free areas as a matter of policy. Operational details to be worked out with the logistics service providers.
- Thailand to separate tariff codes for controlled (needing an import license) and non- controlled items to facilitate the import of non-controlled items. This is particularly important for products within the Life-Sciences Sector.
- Goods in Customs custody or Bond for any reason to be allowed to stay in the Bonded warehouse up to one year to allow for the economical operation of Hub-distribution warehouses.

3. Rules on foreign direct investment

- We recommend that Thailand study opening the postal market to Private Sector and International competition.
- We encourage Thailand to review its regime for foreign investment, in particular in the services sector and the Logistics industry in line with ASEAN policy. World-class Service
- industries play a critical role in supporting the growth of strategic manufacturing sectors. The desired major investments from Foreign Logistics Services Providers are unlikely to materialise as long as foreign investors are restricted to minority holdings.

4. Other areas of Interest

- EABC recommend that Thailand study European best-practice in Taxi and Ride-hailing technology with an eye to drawing up development-friendly regulations for the industry combining High Service standards with economic sustainability for the operators and drivers.
- We recommend that Thailand commission a thorough Feasibility study to evaluate the Costs, Benefits and Commercial feasibility of the Thai (Kra) Canal linking the Gulf of Thailand to the Andaman sea.
- We believe that Thailand would benefit from accessing European expertise on the formulation and implementation of regulations on TAPA, the AEO and Counter-Party evaluation.



**TECHNICAL SOLUTIONS
FOR CONSTRUCTION**

Established in 1983 by French entrepreneurs, Dextra developed itself to become a **global solution provider for the construction industry** by encouraging innovation and always putting quality and customer satisfaction first.

MANUFACTURING



> 900 people worldwide



> 15,000 mega projects



Commercial presence
in more than 55 countries

TRADING

FORWARDING

Dextra Asia Co., Ltd.
Dextra Manufacturing Co., Ltd.
Dextra Industry and Transport Co., Ltd.

5th Floor, Lumpini 2 Building, Sarasin Road,
Lumpini, Pathumwan, Bangkok 10330, Thailand

Tel : +66 2119-4400
Fax : +66 2651-8000
Email : thailand@dextragroup.com



To learn more about
dextra
Please **visit us** @

WWW.DEXTRAGROUP.COM



European Association for Business and Commerce

Acronyms and Abbreviations

ACCA	Asia Cloud Computing Association
ACFS	National Bureau of Agricultural Commodity and Food Standards
ADB	Asian Development Bank
AEC	ASEAN Economic Community
AEDP	Alternative Energy Development Plan
AFAS	ASEAN Framework Agreement on Services
AFTA	ASEAN Free Trade Area
AHN	ASEAN Highway Network
APG	ASEAN Power Grid
ASEAN	Association of Southeast Asian Nations
BSA	Business Software Alliance
CAP	Certificate of Approval for Protection
CBI	Confidential Business Information
CEA	Comité Européen des Assurances
CEPEA	Comprehensive Economic Partnership for East Asia
CEN	European Committee for Standardization/ Comité Européen de Normalisation
CJEU	Court of Justice of the European Union
CMO	Collective Management Organisation
DBD	Department of Business Development
DEDE	Department of Alternative Energy Development and Efficiency
DIP	Department of Intellectual Property, in MOC
DIW	Department of Industrial Works
DoE	Department of Employment, in Ministry of Labour
EAFTA	East Asian Free Trade Area
EEDP	Energy Efficiency Development Plan
EFTA	European Free Trade Association
EGA	Electronic Government Agency
EPO	European Patent Office
EPPO	Energy Policy and Plan Office

ETDA	Electronic Transactions Development Agency
ETSI	European Telecoms Standards Body
EU	European Union
FBA	Foreign Business Act B.E. 2542 (1999)
FDA	Food and Drug Administration
FDI	Foreign Direct Investment
FEL	Foreign Equity Limits
FIDF	Financial Institutions Development Fund
FTA	Free Trade Agreement
FTI	Federation of Thai Industries
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GCI	Global Competitiveness Index
GDP	Gross Domestic Product
GDP (PPP)	Gross Domestic Product at purchasing power parity
GIs	Geographical Indications
GIPC	Global Intellectual Property Centre
GMS	Great Mekong Sub-region
GSMA	The GSM based industry association for mobile operators
GSP	Generalised system of preference
IEA	International Energy Agency
IEAT	Industrial Estate Authority of Thailand
IEEE	US based standards body, publishing standards for WiFi for example (802.11)
IHQ	International Headquarters
IMD	International Institute for Management Development
IMF	International Monetary Fund
IPR	Intellectual Property Rights
ISO	International Standardisation Organisation
ITC	International Trading Centre
ITIL	IT Infrastructure Library
itSMF	IT Service Management Forum

ITU	International Telecommunications Union (UN agency)
JFCCT	Joint Foreign Chambers of Commerce in Thailand
JSCCIB	Joint Standing Committee on Commerce, Industry and Banking
JTEPA	Japan-Thailand Economic Partnership Agreement
LTE	Long Term Evolution - the 4G standard in the GSM world
LWP	Last Wholesale Price
MB, GB	MegaBytes, GigaBytes (a size)
Mbps	Megabits per second (a speed)
MEPS	Minimum Energy Performance Standards
MFN	Most favoured Nation
MHz, GHz	Typically used to refer to wavelengths or parts of the spectrum
MICT	Ministry for Information and Communications Technology
MOC	Ministry of Commerce
MOF	Ministry of Finance
MOPH	Ministry of Public Health
Mbps per MHz	A measure of spectral efficiency - speed per amount of bandwidth available
MRA	Mutual Recognition Arrangement
MSC	Manufacturer Self-Certification
NBTC	National Broadcasting and Telecommunications Commission
NECTEC	National Electronics and Computer Technology Centre
NEPC	National Energy Policy Commission
NESDB	National Economic and Social Development Board
NLEM	National List of Essential Medicine
NSTDA	National Science & Technology Development Agency
NSW	National Single Window
NTBs	Non-Tariff Barriers
NTC	National Telecommunications Commission, the predecessor to the NBTC
OECD	Organisation for Economic Co-operation and Development
OIC	Office of Insurance Commission
OPDC	Office of Public Sector Development Commission
PDP	Power Development Plan

RBC	Risk-Based Capital
ROO	Rules of Origin
SFIs	Special Financial Institutions
SIPA	Software Industry Promotion Agency, under MICT
SOE	State Owned Enterprise
SPS	Sanitary and Phytosanitary Measures
SRP	Suggested Retail Price
TAGP	Trans-ASEAN Gas Pipeline
TBA	Telecom Business Act
TBT	Technical Barriers to Trade
TCC	Thai Chamber of Commerce (one of constituent bodies of Trade)
TDRI	Thailand Development Research Institute
TFP	Total Factor Productivity
Thai IOD	Thailand Institute of Directors www.thai-iod.com
TISI	Thai Industrial Standards Institute
TRIDI	Telecommunications Research and Industrial Development Institute (part of NBTC)
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
UNECE	United Nations Economic Commission for Europe
VAT	Value-Added Tax
WEF	World Economic Forum
WHO	World Health Organisation
WTO	World Trade Organisation

Introduction

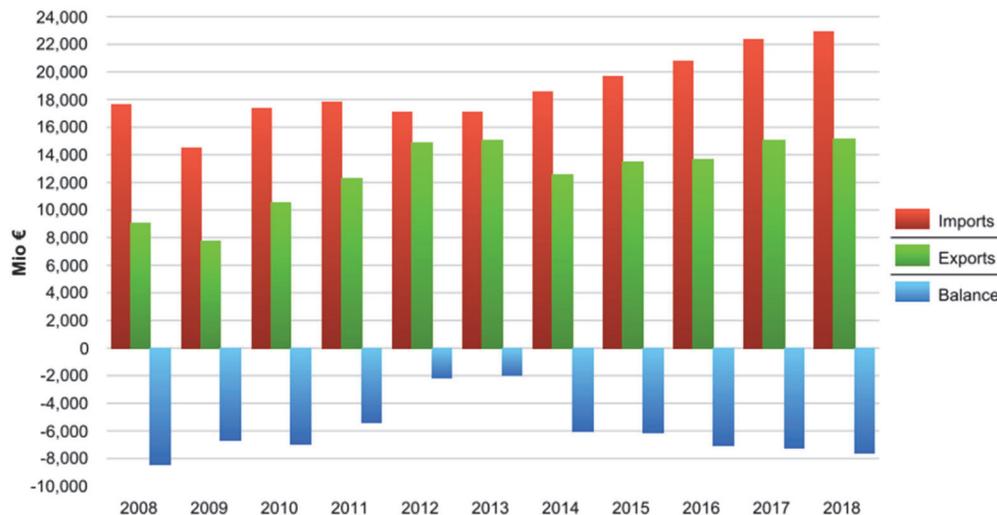
The details are in the chapters

Several high level economic and policy matters are covered in this Introduction. The details are in the chapters of this 2019-2020 European Business Position Paper.

European Trade

The European Union (EU) is Thailand's third-biggest trade partner after China and Japan. Total trade in 2018 was approximately 38 million euro. EU imported goods and services from Thailand were valued at 22.8 million euro, while EU exports to Thailand were valued at 15.1 million euro, resulting in a positive trade balance for Thailand of 7.7 million euro.

Figure 1: Total goods: EU – Thailand Trade flows and balance, annual date 2008-2018



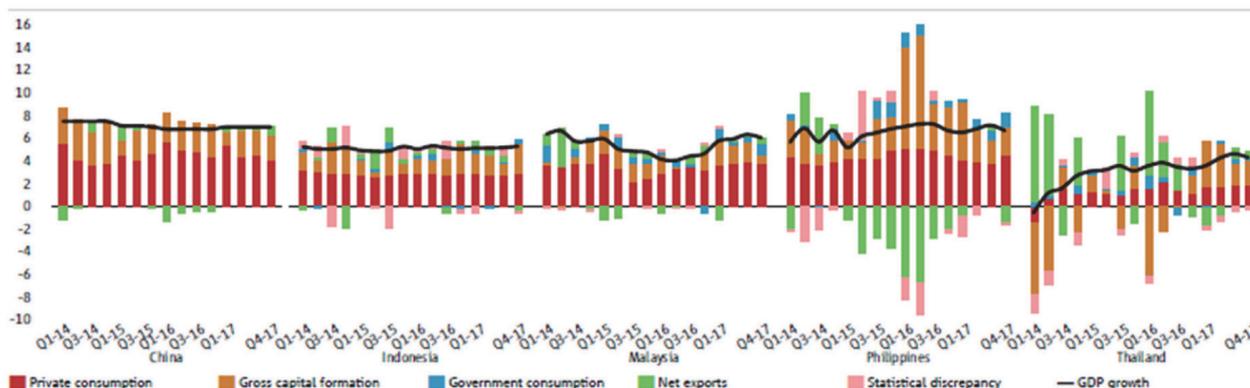
Source: Eurostat Comext – Statistical regime 4

GDP Growth and impacting factors

Early in 2019 the Thai Economic Board report for 2019 projected the country's growth to range from 3.5 to 4.5 percent. Later in 2019, whole year forecasts were downgraded (World Bank 2.7% as at October 2019, due to decline in exports, dip in Chinese tourists and ebbing farm income; 2.8% Bank of Thailand; 2.7% to 3.2% NESDC; 3% ADB).

Thailand was also expected to record a current account surplus of 5.8 percent of its GDP. Thailand's export market largely depends on the global market, especially China which is the country's largest export destination accounting for 11.4 percent in the third quarter of 2018. Thus, export value will continue to see the impact from the global economy due to rising trade tensions between the US and China.

Figure 2: East Asia and Pacific GDP growth projections



Source: Haver Analytics; World Bank staff estimates.

Conditions across regional economies remain strong and private consumption remained solid in 2017 and early 2018.

Figure 3: East Asia and Pacific: GDP growth and projections (as at early 2019)

	Forecast					Change from October 2017 Update ^a		
	2016	2017	2018	2019	2020	2017	2018	2019
Developing EAP	6.3	6.6	6.3	6.1	6.0	0.2	0.1	0.0
China	6.7	6.9	6.5	6.3	6.2	0.2	0.1	0.0
Developing EAP excl. China	4.9	5.4	5.4	5.3	5.3	0.3	0.2	0.1
Developing ASEAN	4.9	5.4	5.4	5.4	5.4	0.2	0.2	0.2
Indonesia	5.0	5.1	5.3	5.3	5.4	0.0	0.0	0.0
Malaysia	4.2	5.9	5.4	5.1	4.8	0.7	0.4	0.3
Philippines	6.9	6.7	6.7	6.7	6.6	0.1	0.0	0.0
Thailand	3.2	3.9	4.1	3.8	3.8	0.4	0.5	0.3
Vietnam	6.2	6.8	6.5	6.5	6.5	0.5	0.1	0.1
Cambodia	7.0	6.8	6.9	6.7	6.6	0.0	0.0	0.0
Lao PDR	7.0	6.7	6.6	6.9	6.9	0.0	0.0	0.0
Myanmar	5.9	6.4	6.7	6.9	7.1	0.0	0.0	0.0
Mongolia	1.5	5.1	5.3	6.4	6.5	2.3	2.2	-0.9
Fiji	0.4	3.8	3.5	3.4	3.3	0.0	0.0	0.1
Papua New Guinea	2.4	2.1	2.5	2.7	2.9	0.0	0.0	0.3
Solomon Islands	3.5	3.2	3.0	2.9	2.8	0.2	0.0	-0.1
Timor-Leste ^b	5.3	-1.8	2.2	4.2	4.0	-4.2	-2.0	-0.8
<i>Assumptions about the external environment:^b</i>								
World	2.4	3.1	3.2	3.1	2.9	0.2	0.3	0.2
Advanced economies	1.6	2.2	2.3	2.0	1.7	0.1	0.4	0.3
Emerging and developing economies	3.7	4.4	4.6	4.7	4.7	0.3	0.1	0.1
Crude oil (spot, US\$/barrel)	43	53	60	61	62	0.0	4.0	2.0
Non-energy commodities (index, 2010 = 100)	79	84	86	87	87	0.0	1.0	2.0
Food (index, 2010 = 100)	90	91	92	93	94	-1.0	-1.0	-1.0

Source: World Bank data and staff estimates.

Thailand has been losing attractiveness for certain types of new investments, and higher labour costs make Thailand less competitive. To be attractive for new investments, increased deployment of technology and efficiency gains are needed, as are deeper trade integration (FTAs), and fostering innovation particularly in services sector. Thailand is an upper middle income economy. To break free from the middle income trap, various actions are needed, including research and development (R&D) enhancement through collaboration between universities and the private sector. R&D can also come from the private sector bringing in expertise and knowhow to the country. This requires creating an environment attractive to skills. More on R&D below.

Almost all economies are avowing commitment to some version of the fourth industrial revolution (4IR), or Industry 4.0. Thailand's version is Thailand 4.0 which identifies 10 'S' curve industries as a core which are then added to depending on the programme (eg the Eastern Economic Corridor Office has 10 + 2 = 12; BOI for the purposes of Smart Visa has 10+ a slightly different 3=13). The Thailand 4.0 vision, if realised, would avoid middle income trap issues. There is some difference between the vision and the policy gaps however.

Thailand held its first general election since the 2014 coup in March 2019. For at least the more recent years of the military government (to March 2019), considerable efforts were made to improve ease of doing business and cause certain other efficiencies. Not all areas were so positively impacted. Government leaders included many professionally trained senior managers as technocrats which made a positive difference to understanding and competence. Following the election, a 19 party coalition resulted, with power sharing in the cabinet by early July by three main parties and a number of others. Policies have become slightly more focused on national type, populist issues with less stated emphasis on foreign trade and investment or improving ease of doing business.

The success story of the 1980s – liberalisation of manufacturing and the Eastern Seaboard is the locale for the new Eastern Economic Corridor (EEC) with its own investment promotion measures. EEC is especially designed to boost targeted investment activities in designated areas in three provinces: Chachoengsao, Chonburi and Rayong.

R&D

Figure 4: Asian R&D Investment, 2018-2019* (Forecast Figure)

	2018		2019	
	GDP BIL USD	R&D BIL USD	GDP BIL USD	R&D BIL USD
China	24,646.00	485.53	26,223.30	519.22
Japan	5,469.90	191.45	5,519.10	193.17
India	10,146.10	86.24	10,937.50	94.06
South Korea	2,087.90	90.19	2,148.35	93.46
Australia	1,272.10	29.77	1,311.54	30.82
Taiwan	1,197.30	29.33	1,221.25	30.04
Singapore	528.60	13.85	542.87	14.33
Malaysia	975.20	12.48	1,023.96	13.21
Indonesia	3,414.90	10.58	3,602.72	11.17
Pakistan	1,115.10	7.02	1,167.51	7.24
Bangladesh	728.40	5.10	774.29	5.42
Thailand	1,276.90	4.47	1,325.42	4.64
Hong Kong	469.30	3.33	484.32	3.49
New Zealand	191.10	2.46	196.64	2.56
Vietnam	686.40	2.20	731.02	2.34
Philippines	933.10	1.49	996.55	1.59
Myanmar/Burma	351.10	1.05	373.22	1.12
Sri Lanka	300.70	0.48	319.64	0.51
Nepal	83.40	0.25	88.65	0.27
North Korea	40.00	0.20	40.00	0.20
Cambodia	68.10	0.15	72.39	0.11
Afghanistan	72.80	0.15	76.15	0.15
Macau	78.80	0.04	83.61	0.04
Laos	52.20	0.03	55.49	0.03
Total	56,185.3	977.84	59,315.5	1,029.19

Source: R&D Magazine Survey (2018).

To create new innovations, countries need continued R&D investments. Global R&D Funding forecasted R&D, ranking increasingly 3.6% in 2019 to \$2.3 trillion in purchasing power parity (PPP). With four highest R&D spending countries located in Asia—China, Japan, India and South Korea—can claim that this region is the global R&D driver nearly 40% of the total global R&D. However, in Thailand, R&D expenditure remains between 0.51%-1.00% of the GDP.

To improve Thailand's competitiveness, the country needs to catch up with the rest of Asia in R&D. To improve R&D as a percentage of GDP, the Royal Thai Government cannot alone fund public research institutions – public and private sector collaboration is needed to bring in more investments and expertise. R&D in the fields of bio sciences, engineering and ICT are most important but expertise is limited in Thailand. Collaboration with foreign institutions and the private sector will help bring knowhow and expertise to improve the country's R&D as a percentage of GDP. Investment in human capital is the key driving force to improve the country's competency. Real incentives are needed.

ASEAN

Thailand has been ASEAN chair for 2019 (Singapore 2018, Vietnam 2020) with the theme “Advancing Partnership for Sustainability.”

Many policies were announced in late 2018 and it has been a challenge, with the election in March 2019, new government in July 2019, to focus on bolstering it all, in spite of major Summits. Several new ASEAN agreements,

MoU and other instruments have nevertheless been created in 2019.

Thailand's central location is important for goods and some services but is largely irrelevant in terms of its digital economy aspirations, which are determined by other factors.

Improving connectivity through rail and road infrastructure, maritime and air transport. The three airports (BKK, DMK and UTP – the last servicing the EEC, to be connected by high speed rail, will see a large trade and development area). To realise these infrastructure investments, changes to customs regulation and service sector liberalisation are needed.

Many ports are to be built in neighbouring countries using Thailand as a gateway to trade within ASEAN and to other continents. Explosions in greater connectivity are strongly tied to energy consumption as they tend to increase energy and power requirements. Cross-border trade is expected to improve local incomes to more than US\$10 per square kilometre. The key challenge lies in the establishment and maintenance of Thailand as a logistics hub and trading nation. Taking a leadership role in ASEAN is a necessary step to improve soft infrastructure (regulations and central authorization). Without effective soft infrastructure, efficiency cannot be managed and the goal of reducing logistics and transport costs shall never be realized for ASEAN. The Royal Thai Government has the power and influence to develop an ASEAN logistics hub. Without Thailand, connectivity and efficiency will not meet; ASEAN will not have an economic frontier and will lose attractiveness.

Skills

The Thailand 4.0 vision relies on a massive upgrade to skills. The demand can be met by a combination of welcoming foreign skills, education and training and more flexible means of allowing collaboration with foreign universities and engagement in Thailand of higher education centres.

According to the World Bank Human Capital Index, which measures the productivity level for the next generation of workers relative to their full potential if all education and health outcomes were maximized, uneven education quality is a big challenge for Thailand. A Thai child born today can expect to obtain 12.4 years of schooling before the age of 18. However, once adjusted for quality of learning, that only amounts to 8.6 years of schooling, indicating a gap of 3.8 years.

Competitiveness

The overall world economy is facing economic downturn, trade barriers and some nationalistic sentiment. To improve situation, the country needs to enhance its competitiveness and attractiveness. While the BOI has developed some specific programs to attract Chinese investment in the face of the US-China trade frictions, the fundamentals of being competitive are needed. Competitiveness has several elements.

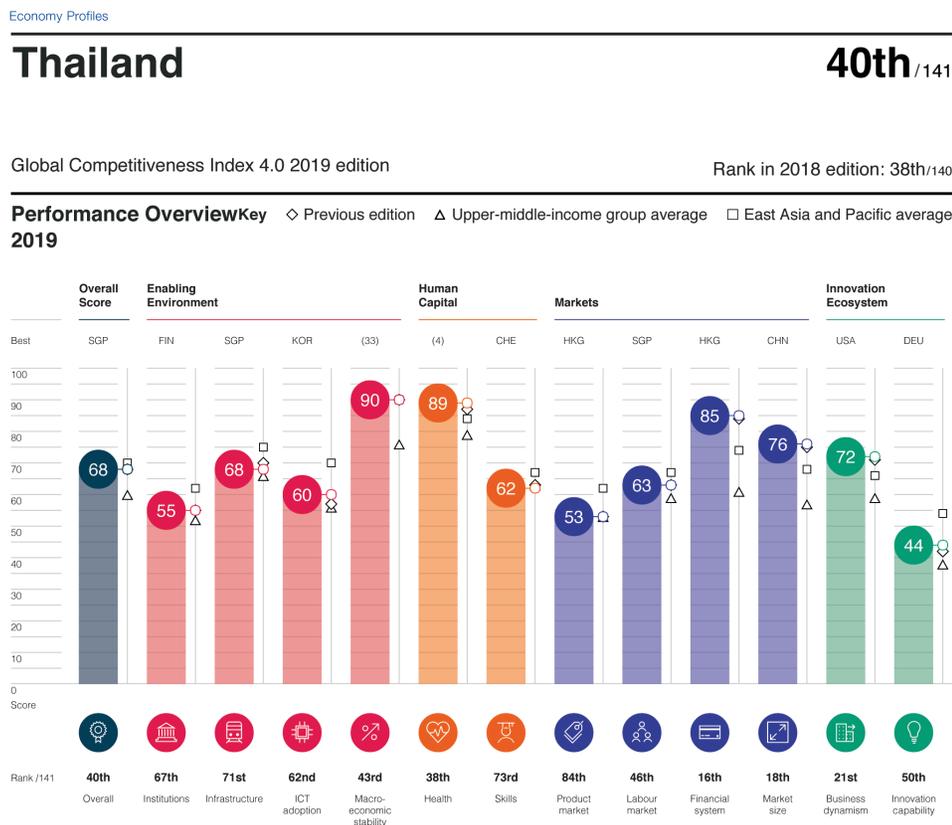
IMD's World Competitiveness Centre has ranked Thailand 25 / 63 economies for 2019, up five places from 2018.

The World Economic Forum (WEF) Global Competitiveness Index 4.0 (GCI) 2019 Rankings show Thailand as 40 / 141 (down 2 places on 2018). To put this in context:

“Introduced in 2018, the GCI 4.0 is the fourth and latest iteration of the methodology used by the Global Competitiveness Report, which has been assessing countries every year since its first edition in 1979.¹ The GCI 4.0 is a compass for policy-makers and other stakeholders: it provides guidance on what matters for long-term growth. It can inform policy choices, help shape holistic economic strategies and monitor progress over time. By competitiveness, we mean the attributes and qualities of an economy that allow for a more efficient use of factors of production. The concept is anchored in growth accounting theory, which measures growth as the sum of growth in the factors of production—that is, labour and capital—and of total factor productivity (TFP), which measures factors that cannot be explained by labour, capital or other inputs. The GCI measures what drives TFP.”¹

¹ WEF, *GCI 4.0 2019 Report*, p.2

Figure 5: GCI of WEF



Source: WEF Global Competitiveness Index 4.0 (GCI) 2019 Report p. 550

The challenging factors for Thailand's competitiveness, especially in three areas; political issues, transparency of government agencies and country's infrastructure have undermined business environment. Problematic factors such as health and primary education, reduce ability for Thailand to compete in the world economy.

The competitiveness landscape indicates the country's ability to compete in the world economy and Thailand's ability to attract investments. There is a declining score

in international trade. Thus policies to support international trade, such as open more free trade with other countries would be positive. Overall indicators shows a drop in efficiency in government performance. Especially for the institutional framework, the ranking declined from 30th to 35th in 2018 and then 40th on this index. Development of digital government, operating systems and reducing complexity of operation processes.

Ease of Doing Business

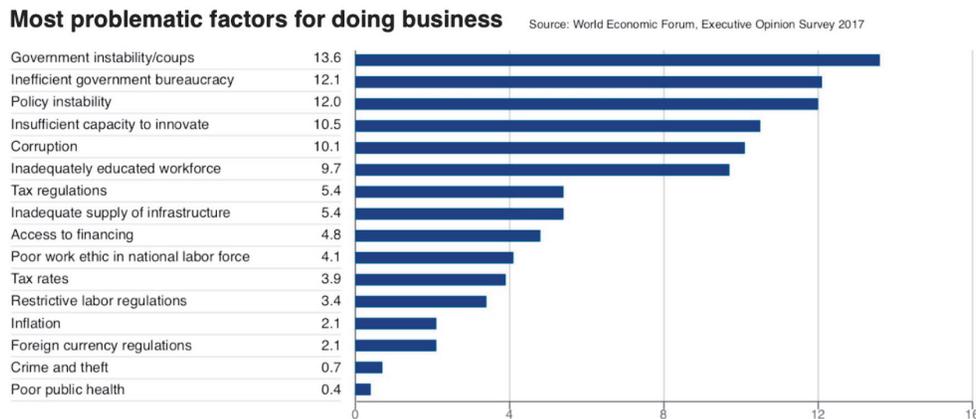
The World Bank Ease of Doing Business rankings rely on a relatively narrow (globally standardized) set of ten criteria (being increased to 12). The index includes factors such as starting a business, getting construction permits etc but does not include everyday issues such as work permits and visas, which are often cited as the number one irritant in doing business. The changes over the past few years are worth knowing.

- 2015: 26th (before remeasurement)
- 2017: 44th (after one remeasurement)
- 2018: 26th /190 (after a remeasurement)
- 2019: 27th
- 2020: 21st

It is understood that the 2020 result is in part due to the implementation of some of the recommendations from the first phase of the Guillotine Project (Simple and Smart License Project, more of which in the Cross Functional Issues chapter).

The World Bank has a significant advisory relationship with Thailand, separate to assessing world economies and publishing the Doing Business report.

Figure 6: Thailand's most problematic factors for doing business



Source: World Economic Forum (2018)

These factors also impact competitiveness.

Trade Liberalization under the EU-Thailand FTA: Mutual Economic Gains

Negotiations for an EU-Thailand Free Trade Agreement were formally launched on 6 June 2013 but put on hold following the 2014 coup. Following the 2019 Thailand General Election, and subject to certain conditions being met, the EU has indicated openness to resuming negotiations. This is a significant step to improve EU-Thai economic relations. The FTA would make Thailand an attractive destination for a new wave of high-tech investment and enhance the capacity of Thailand's supply chains to support the manufacturing of advanced-technology products in the future. It is an opportunity for the services sector to be opened which could be an essential aspect of this FTA.

The EU has concluded FTAs with Vietnam and Singapore, and many ASEAN member states are already in negotiations.

EABC has been preparing for the re-engagement.

EU-Thailand: Partnership towards Mutual Prosperity

The 2019-2020 European Business Position Paper is the unified work of EABC's twelve working groups contributing to the improvement of European-Thai economic relations, trade and investment and covering a broad range of industries. This Paper provides important recommendations that will strengthen Thailand's competitiveness towards more prosperity. Policymakers today acknowledge the benefits of useful information presented in this Paper, as identifying optimal solutions to complicated problems

require input from business leaders. The 2019-2020 European Business Position Paper is unique that it is derived from the extensive efforts and serious commitment from more than 80 European business leaders in Thailand. This Position Paper is a resource for the Royal Thai Government's regulators and policymakers to appreciate the perspective of the European business community and, it is hoped, to assess the issues and to find the optimal approaches. The 2019-2020 European Business Position Paper is EABC's sincere contribution to improve Thailand's competitiveness for the mutual benefit of the two economies, and for long-term European investment in Thailand.

Automotive

SUMMARY OF RECOMMENDATIONS

1. Trade and EU - Thailand FTA Negotiations

- 1.1 Reaffirming our position in the 2018 European Business Position Paper, EABC & TEBA continue to support any possible development towards an EU - Thailand FTA. We encourage Thailand to strongly reaffirm its interest in the FTA and explore ways to re-engage in the negotiations. At least, Thailand shall continue to do the groundwork, i.e technical review, impact study, public outreach, etc., so negotiations can resume without delays in the process.
- 1.2 Taxation should not be the only benefits of the EU - Thailand FTA. Thailand should also focus on reducing, eliminating, and preventing non-tariff barriers.
- 1.3 Develop the benchmarking report comparing with other FTA such as JTEPA, EU-Vietnam, Thai-China, ASEAN-China and use as the guideline for the EU-TH which will be resumed.

2. Technical Regulations

2.1 Emission & Fuel and Road Safety

- EABC & TEBA recommend Thailand to implement the WP29 - 1958 Agreement by adopting the UN Regulations and recognizing type approval certificates and test reports issued in accordance with UN Regulation standards to enhance safety and foster the auto industry's competitiveness, with priority to facilitate export performance.
- Actively engage in developing and implementing ASEAN MRA for automotive products and accelerate ASEAN MRA timeline for implementation.
- Government should consider putting roadmap to harmonize national with international automotive standards (UN regulations).

2.2 Emission & Fuel

- EABC & TEBA Automotive Working Group support clarity regarding – and a clear timeline for – the improvement for automotive emissions standards and fuel quality to promote environmental and public health enhancement.
- Government should provide a clear roadmap on the emission regulation and fuel quality improvement for all types of new vehicles. The roadmap should include direction for implementation and enforcement.
- Timeline of implementation requires mutual alignment among Government's agencies i.e. Ministry of Energy, Ministry of Industry and Ministry of Natural Resources and Environment.

- We encourage the government to implement EURO5 emission standards as soon as possible. By the time of its fuel nationwide launch in 2024, carmaker shall have adequate period for business preparation.
- Preparation of EURO6 requisition of additive Urea for pollution controlling maintenance, which government should encompass a nationwide launch in fuel stations.
- Higher biodiesel content above B7 may create technical impact for the advance emission technology.
- The actual exhaust emissions of in-use Diesel 1-ton Pickup Trucks and Commercial Vehicles (3.5-ton and above) should be more stringently measured the Periodic Technical Inspection (PTI). Compliance with the respective exhaust emission levels shall be more strictly enforces, since they are the most polluting vehicles. All modifications to the vehicles original exhaust system shall lead to non-compliance
- Adoption of a requirement for an earlier Periodic Technical Inspection (PTI) for in-use Diesel 1-ton Pickup Trucks and Commercial Vehicles (3.5-ton and above) starting from e.g 3rd year of registration
- Apply increasing rate of annual vehicle registration tax per year of vehicle age for Commercial Vehicles (3.5-ton and above) as a penalty for operating an older vehicle (starting from the 3rd year of registration).

2.3 Road Safety

- The product certification for automotive products should be simplified, transparent and open for full acceptance of relevant international certificates and document without additional testing and inspection.
- EABC & TEBA recommend that the Thai government introduce a demanding plan for mandatory vehicle safety measures to reduce accidents and to get Thailand off the top-ten charts of countries with highest road fatalities.
- Propose to the Expressway Authority of Thailand to allow the Big Bike to use the Express Way.
- Adoption of a requirement for an earlier Periodic Technical Inspection (PTI) for all vehicles, starting from e.g. 3rd year of registration. This would also identify illegal modifications that could influence the road safety of the vehicle.

3. Taxation

- 3.1 To accelerate the process of contemplating CFZ eligibility criteria, to give priority to attracting new investment as well as to promoting foreign investments, protecting existing investments, and support the concept of ease of doing business environment in the CFZ.
- 3.2 Stringent regulations on the assembly process alone might not respond to future technology changes, but would create obstacles to future investment opportunity led Thailand to lose its challenge destination to be EV centric in ASEAN.

- 3.3 With the significant PM2.5 crisis, to reaffirm urgent cooperation of all relevant sectors to resolve the problem and operational issues to enable a smooth implementation process.
- 3.4 To establish the used EV battery's fund, we consider as burden towards business operators because European vehicles are already met with global standards in term of our end-of-life battery.
- 3.5 Encourage the Government to review the VAT calculation for the sale of used vehicle.
- 3.6 Encourage the Government to raise the ceiling of the deductible expense when buying the vehicles.

4. Labour

- Developing mid- and long-term strategies to promote effective vocational training and incorporate practical industry training in the higher education curriculum. This would raise the number of qualified graduates across the board to meet industry requirements.

5. Investment

- 5.1 Government must ensure the transparency and monitors the effectiveness of the licensing grant process.
- 5.2 Safeguarding existing investments requires long-term support and true commitment from BOI, and clarity to investment promotion is required to avoid unnecessary delay to investment decisions.
- 5.3 BOI as business facilitation center, should be consistent in relevant regulations and encourages the ease of investment climate as well as strong confidence towards investors.
- 5.4 Thailand should continue to raise standards for safety and environmental requirements in the automotive sector to help attract green technology and new investments.
- 5.5 We recommend the Royal Thai Government continues dialogue with EABC & TEBA automotive working group about improving ease of doing businesses and consists of industry experts that can provide policy recommendations to boost Thailand's competitiveness.
- 5.6 Government to eliminate duplicated dividend taxation to be more competitive among ASEAN countries.

6. Electric Vehicle (EV)

6.1 Supply Incentives

- Sufficient and attractive incentives are necessary for xEV investment and faster market penetration. Incentives should focus both on PHEV and BEV, since support of both technologies will increase the customer base and lead to a faster development of charging infrastructure (at home, work and in public spaces).
- The government to develop clear long-term outlook on planned automotive legislation, technology incentives and EV supply chain to ensure industry can make long-term investment decisions.

- Regulatory & Tax instruments that help to realize further efficiency potential of combustion engine but offers also a reliable perspective for e-mobility (CO₂ based taxation, CO₂ limits, Fuel Standards).
- Incentivize local content to attract suppliers.
- Provide opportunity for the European Association to be part of the working group of xEV under the TISI.

6.2 Demand Incentives

- Setup priority lanes, priority parking and charging spaces for xEV and e-Scooter, waiver of highway tolls and congestion charges (if applicable).
- Adopt international safety standards for consumer's awareness e.g. battery.
- Encourage Government's agencies to lead the use of xEV.

6.3 Infrastructures

- The government should increase the availability of Electric Vehicle Charging Infrastructure (EVCI) or public charging nationwide networks as one of the intrinsic buying decisions, set up an appropriate standardization framework to minimize infrastructure investment and ensure a fair competition. Financial incentives for improvements to utility infrastructure (e.g. smart grids, smart meters) is necessary.
- Clarity of EVCI standards, guidelines, permits
- Enforcement of interoperability of charging station.
- Establish laboratory facility to promote local EV's high-voltage battery testing.

6.4 EV's Battery Waste Management / Environment Awareness

- Support for renewable energy generation
- Promote the efficient management system of used EV battery for environment sustainability.

EABC & TEBA appreciate the Royal Thai Government's various policies and measures which have enabled the country's automotive industry to achieve its current position. We are very keen to strengthen and support the competitiveness of Thailand's automotive position in the regional and global market by underlining our long-term commitment to the country. The success of the automotive industry contributes greatly to Thailand's GDP, creating and promoting jobs and developing the supply chain industry. In this paper, EABC & TEBA continue

its famous series of policy recommendations in 2018 Position Paper to strengthen Thailand's automotive industry.

Recommendations:

1. Cost efficiency must be considered for manufacturers to reduce production and transaction costs, which is beneficial for investment expansion in developing markets.

2. Thailand's strategic location for potential markets and an efficient production base in the region must be included in the Thai industry development strategy.
3. Supply chain creation must be considered in building a production network in response to the realization of ASEAN Economic Community (AEC).

1. Trade and EU - Thailand FTA Negotiations

Thailand and the EU have committed to a bilateral FTA since its first launch in March 2013, marking an important step in EU - Thailand trade and investment relations. In 2015, progress in the EU - Thailand FTA negotiations were somewhat limited due to Thailand's domestic political situation. Given duty reductions under Thailand's existing FTAs such as JTEPA, AIFTA and ACFTA, where duty rates imposed on Japanese, Indian and Chinese CBUs have been lowered, this could lead to higher trade distortion that undermines the efficiency of the Thai Economy.

The Thai coup d'état in 2014 installed a military-led government. On 24 March 2019, the first Thai General Election since then was held. EABC & TEBA expect the Royal Thai Government to re-open EU – Thailand FTA negotiations in 2019, after the new government has been formed since July.

The EU-Thailand FTA would bring benefits in terms of harmonization standards, preferential rules of origin, tariff reductions, mutual recognition arrangements, decrease of non-tariff barriers to the FTA, which will create fair competition.

Recommendations:

1. Reaffirming our position in the 2018 European Business Position Paper, EABC & TEBA continue to support any possible development towards an EU - Thailand FTA. We encourage Thailand to strongly reaffirm its interest in the FTA and explore ways to re-engage in the negotiations. At least, Thailand shall continue to do the groundwork, i.e. technical review, impact study, public outreach, etc., so negotiations can resume without delays in the process.
2. Taxation should not be the only benefits of the EU - Thailand FTA. Thailand should also focus on reducing, eliminating, and preventing non-tariff barriers.
3. Develop the benchmarking report comparing with other FTA such as JTEPA, EU-Vietnam, ASEAN-China, Thai-China and use as the guideline for the EU-TH which will be resumed.

2. Technical Regulations

Significant progress in Thailand's adoption of UN Regulation plan under the 1958 Agreement is clearly observed in 2018 for automotive and automotive parts manufacturers. Department of Land Transport (DLT) announced to adopt the UN regulation, beginning with the UN R39 (Speedometer) in 2020. Thus, redundant work processes will be eliminated as re-certification is no longer required. The Thai government has agreed to adopt UN Regulation for approvals and certifications, but it is still a requirement from TISI to conduct re-testing at its accredited laboratories for some regulations.

EABC & TEBA welcomed the new Product Certification procedure announced in June 2017, adding more approval options by accepting accredited laboratory testing results and UN R Certificates for product testing as well as ISO 9001 certificate and other quality control certificates for factory audit. This implementation helps reduce some redundant testing and plant inspection, resulting in faster licensing processes and product launch. TISI has initially accepted the UN R Certificate for the EURO6 vehicle or the vehicle with a higher emission standard, and to accept ISO 9001 or ISO 16949 Certification in replacement of auditing the manufacturing plant. However, the surveillance process, both for the product testing and the factory audit are still required after the license is issued and received by the business operator. TISI has planned to transfer their surveillance process to the accredited Inspection Body.

We strongly recommend TISI to allow the transfer of test report, factory audit report and license among affiliated companies or suppliers as well as extend the policy scope of full acceptance to all automotive products and to accept the relevant UN R certificates without further conditions as this will reduce unnecessary trade barriers and facilitate product certification, thus, improving the ease of doing business in Thailand.

Moreover, when contemplating new industrial standards for automotive and automotive parts, EABC & TEBA urge Thailand to adopt the UN Regulation standards. For Thailand to be the top player in the world automotive industry, having a harmonized and internationally - accepted standards will greatly facilitate investments and ensure that Thailand remain competitive in the global market.

Recommendations:

1. EABC & TEBA recommend Thailand to implement the WP29 - 1958 Agreement by adopting the UN Regulations and recognizing type approval certificates and test reports issued in accordance with UN Regulation standards to enhance safety and foster the auto industry's competitiveness, with priority to facilitate export performance.
2. The product certification for automotive products should be simplified, transparent and open for full acceptance of relevant international certificates and document without additional testing and inspection, as well as allow the transfer of test report and license among affiliated companies.

ASEAN Mutual Recognition Arrangement (MRA) for Automotive Products

Harmonization of standards under the MRA is vital for the ASEAN Economic Community (AEC) automotive market. This will provide greater market access for Thailand's automotive products in ASEAN. This should extend to harmonization of safety standards, emissions and fuel property standards under a common regulatory framework based on UN Regulation. Achieving the MRA, the Thai automotive industry will benefit from significant time savings for obtaining test certifications. It will also enhance investor confidence on conformity assessment results among other ASEAN member states.

Removal of regulatory barriers to the movement of goods will improve Thailand's regional competitiveness and reduce compliance costs for businesses. We admire

Thailand's active engagement in developing the first phase of ASEAN MRA for automotive products covering 19 standards based on the UN Regulation standards, and we strongly wished to see implementation in 2020. We also urge Thailand to continuously engage in further development of the MRA, including its second phase encompassing 22 standards. Thailand should avoid complexity and inefficiency in the implementation of the ASEAN MRA and accelerate the content revision process and the final official endorsement.

Recommendation:

We urge Thailand to continue its active engagement in further development of the ASEAN MRA, which should provide recognition of UN Regulation. An acceleration of the ASEAN MRA timeline is highly encouraged.

Clarity on Fuel Plan, EURO Standards and Implementation Schemes

The energy industry significantly influences the vibrancy and sustainability of the automotive industry. It is important that the industry has clarity and certainty about the sustainable and alternative emission and energy development plan. This will provide automotive manufacturers and automotive parts manufacturers with investment clarity and time for adaptation to meet the emissions and energy regulatory demands. Extending the vehicle emissions and fuel-quality standards already in force among ASEAN and throughout the rest of the world, will promote public health benefits for Thailand. In addition, it provides the added benefit of reducing carbon emissions and reducing the impact of climate change in the long-term.

In early 2019, the Prime Minister put air pollution of Particulate Matter (PM2.5) on the national agenda. All relevant sectors were urgently asked to collaborate in order to resolve air pollution issues in Thailand and as well to meet global CO₂ reduction targets. The corrective measures to reduce PM2.5 in Thailand were endorsed by National Environment Board (NEB) in August with action plan for short and long terms. Short term (2019-2021) focuses to implement EURO5 emission standard by 2021, develop public transport network, tighten vehicle inspection criteria and frequency, and promote the xEV production and usage. Long term (2022-2024) attributes to implement EURO6 emission standard by 2022, launch EURO5 fuel by Jan 2024, adjust annual road tax for in-used vehicles, as well as replace BMTA's public fleet for Battery Electric Vehicle (BEV). In addition, all xEV under Board of Investment (BOI) promoted scheme must also comply with Euro 6.

The Office of Industrial Economics (OIE) announced an acceleration plan in February 2019: all vehicles in Thailand have to comply with EURO 5 by 2021 and EURO 6 by 2022. In addition, all xEV under Board of Investment (BOI) promoted scheme must also comply with Euro 6. On the other hand, the Ministry of Energy settled a national plan to upgrade the EURO5 fuel by 2024, which is aligned with the National Environmental Board's timeline.

Furthermore, to resolve the air pollution PM2.5 crisis, the government has taken measures to increase the proportion of Biodiesel in fuel to resolve the surplus of palm oil production. Department of Energy Business (DOEB) officially announced the Notification on Specification for Appearance and Quality of Diesel B10/ B100 B.E.2562 (2019), published in the Government

Gazette on May 14th. The Alternative Energy Development Plan (AEDP) for 2018-2033 was drafted to align with Thailand Power Development Plan (PDP) and the trend of future energy usage focusing on electrification cars. Targets of biofuel usage, both ethanol and biodiesel, are to be decreased taking into consideration the expected increase of xEV, biofuel production technology, and other automotive related policies, i.e. Crude Palm Oil Strategy Roadmap B.E.2561-2580 (2018-2037), Oil Fund Act B.E.2562 (2019) and EURO 5 and EURO 6 emission standards enforcement planned in 2021 and 2023 respectively. The plan is to minimize fuel grades and define E20 and B10 as base grade for gasoline and diesel fuels from late 2020 onwards while B7 and B20 would remain as optional grade. EURO 5 fuel would be available in 2024, only after the enforcement of EURO5 emission standard.

Recommendation:

1. EABC & TEBA Automotive Working Group support clarity regarding – and a clear timeline for – the improvement for automotive emissions standards and fuel quality to promote environmental and public health enhancement.
2. Government should provide a clear roadmap on the emission regulation, fuel quality improvement, depollution and technical challenges for all types of new vehicles. The roadmap should include direction for implementation and enforcement for both EURO 5 and EURO 6.
3. Timeline of implementation requires mutual alignment among Government’s agencies i.e. Ministry of Energy, Ministry of Industry and Ministry of Natural Resources and Environment.

4. We encourage the government to implement EURO5 emission standards and quality of fuel as soon as possible.

5. Preparation of EURO6 requisition of additive Urea for pollution controlling maintenance, which government should encompass a nationwide launch in fuel stations. To be ready in 2022, fuel stations should start to upgrade themselves now.

6. Higher biodiesel content above B7 may create technical impact for the advance emission technology.

In-Use Vehicles Inspection

In addition to stricter emissions standards for new vehicles, EABC & TEBA recommend a stricter monitoring and control of exhaust emission testing for in-use vehicles during the Periodic Technical Inspection (PTI). Old vehicles are a major source of emissions and are the most polluting vehicles on the road. Policies to discourage the use of old vehicles should be considered to gradually remove these vehicles from the car population.

Recommendation:

1. The actual exhaust emissions of in-use Diesel 1-ton Pickup Trucks and Commercial Vehicles (3.5-ton and above) should be more stringently measured the Periodic Technical Inspection (PTI). Compliance with the respective exhaust emission levels shall be more strictly enforces, since they are the most polluting vehicles. All modifications to the vehicles original exhaust system shall lead to non-compliance.

2. Adoption of a requirement for an earlier Periodic Technical Inspection (PTI) for in-use Diesel 1-ton Pickup Trucks and Commercial Vehicles (3.5-ton and above) starting from e.g. 3rd year of registration. This would also discover possible illegal modifications of the ECU parameter or exhaust cleaning system
3. Apply increasing rate of annual vehicle registration tax per year of vehicle age for Commercial Vehicles (3.5-ton and above) as a penalty for operating an older vehicle (starting from the 3rd year of registration).

Road Safety

According WHO official statistics in 2018, Thailand has the sixth highest road traffic fatality rate in the world with 32.7 fatalities per 100,000 inhabitants including 74.4% among motorcyclists. By contrast to passive safety systems such as helmets, airbags, and seatbelts which come into play once a crash has already taken place, modern vehicle technologies play a critical role in avoiding crashes and reducing the likelihood of injuries or fatalities in a crash. Nowadays there is an increase in new and inexperienced motorcycle riders and four-wheel drivers who benefit the most from improvements in vehicle safety technologies.

The Expressway Authority of Thailand announced in 2012 that motorcycles (2-wheelers) are not allowed to use toll express ways. The reason is mainly due to safety concerns. However bigger, modern motorcycles are much different than traditional 2-wheelers, and are equipped with advanced safety features. Hence, EABC & TEBA suggest that such Big Bikes should be granted an exemption for

use on Expressways (Big Bikes could be defined as motorcycles with big engine size, e.g. ≥ 500 cc). Users of such modern bikes potentially ride a long way or upcountry, and would very much like to use the toll-way to get to their destination. Changes to this regulation could help domestic sales as well as export of Big Bikes.

Recommendations:

1. EABC&TEBA recommend that the Thai government investigates making a variety of vehicle safety measures mandatory. Most notably we recommend to investigate possible ABS requirement for power 2-wheelers ≥ 125 cc, and for ABS and ESC for passenger cars of vehicle class M1/N1, given the fact that these systems are standard equipment in several vehicles already today, and these technologies can support to reduce human errors in order to mitigate road accident in Thailand.
2. Thai government to consider putting roadmap to harmonize national with international automotive standards (UN regulations).
3. Propose to the Expressway Authority of Thailand to allow the Big Bike to use the Express Way.
4. Adoption of a requirement for an earlier Periodic Technical Inspection (PTI) for all vehicles, starting from e.g. 3rd year of registration. This would also identify illegal modifications that could influence the road safety of the vehicle.

Note: The UN's World Forum for Harmonization of Vehicle Regulations has identified seven priority safety standards for increasing vehicle safety 1) seat belts 2) seat belt anchorages 3) front impact 4) side impact 5) electronic stability control 6) pedestrian protection 7) child seats

3. Taxation

Customs Free Zone's Rules

In December 2016, The Office of Industrial Economics (OIE) issued the Notification on Essential Manufacturing Process of Goods in Customs Free Zone (CFZ) and Free Trade Zone B.E.2561, effective in July 2019 onwards. The automotive resolution of Notification's interpretation was clarified in June by OIE and Customs Department that a counting period is based on calendar year (Jan-Dec) with 1,000 units in 2019 and 2,000 units from 2020 onwards. Maximum 2 process productions are allowed in parallel before full process volume requirements are met. Units produced for export purpose also qualify as local production. In case respective unit requirements are not met, all produced units will be treated as CBU imports' duties and face an additional fine of 1% per month until the tax paid out of CFZ. In June, OIE also announced the draft of battery module requirement for essential manufacturing process, effective in 2023. Such requirement would affect to the non-compliance of battery module in essential manufacturing process due to different technologies, which could mislead the focus of government towards the electric automotive industry.

EABC & TEBA pointed out that any revision to the CFZ rules shall be mindful of the objective of the CFZ scheme of promoting foreign investment, and shall lead to clear and consistent regulations with fairness to all CFZ operators. Government should collaborate with the industry and the other concerned government agencies to clarify mutual interpretation before releasing any CFZ notification to avoid conflict with a company's business. Moreover, notice period should allow a lead-time for

private sector for adaptation consistently. An unclear notification not only discourages foreign investment, but also increases business uncertainty as Customs Department will now have the right to overrule decisions of other authorities.

Recommendation:

EABC & TEBA urge relevant authorities, i.e. Customs Department, Office of Industrial Economics, Thailand Automotive Institute to accelerate the process of contemplating CFZ eligibility criteria, to give priority to attracting new investment as well as to promoting foreign investments, protecting existing investments, and support the concept of ease of doing business environment in the CFZ. Stringent regulations on the assembly process alone might not respond to future technology changes, but would create obstacles to future investment opportunity led Thailand to lose its challenge destination to be EV centric in ASEAN.

The Excise Tax Restructure and Incentive

The government has committed to ensure tax revenue neutrality, in order to help maintain the automotive industry's competitiveness. The Excise Department has planned to revise tax structure based on CO₂ emission. There will be a working group involved by the stakeholders of automakers and the concerned government agencies such as Board of Investment (BOI) and Office of Industrial Economics (OIE) in brainstorming for the future excise tax restructure. Tax privileges will offer more incentives in alignment with government policy to promote investment in the country to be the centre of motor driven vehicle

manufacturing and bring up core technology transfer. The Excise plans to update the CO₂ emission at least once every 5 years.

According to the anti-air pollution's national agenda (PM2.5 crisis) to reaffirm urgent cooperation of all relevant sectors to resolve the problem, unfortunately, the automotive industry was claimed to play a major role as the air pollution contributor, especially for vehicles with Diesel engines. In April 2019, Ministry of Finance issued Ministerial Regulation No.5 to stimulate Battery Electric Vehicle (BEV) production's project, whose manufacturers register to the BOI promoted scheme, by eliminating the excise tax from 2% to zero during 2020-2022. As for Hybrid Electric Vehicle (HEV) and Plug-in Hybrid Electric Vehicle (PHEV), the excise tax reduction was granted from 8 to 4% for a BOI registered company under localization of battery manufacturing at least 5 years.

Recently, Excise Department is considering to establish the used EV battery's fund, by collecting money from each EV unit sold domestically. This initiative aims to ensure environmental efficiency of end-of-life xEV.

EABC & TEBA, however, make it clear position that European vehicles are already met with global standards in term of our end-of-life battery. Therefore, we consider the used EV battery's fund as burden towards business operators.

Recommendations:

1. With the significant PM2.5 crisis, to reaffirm urgent cooperation of all relevant sectors to resolve the problem and operational issues to enable a smooth implementation process.
2. To establish the used EV battery's fund, we consider as burden towards business operators because European vehicles are already met with global standards in term of our end-of-life battery.

Revise Tax Structure and Regulations to Help Stimulate the Domestic Demand

With recent slow growth of the automotive market, EABC & TEBA would like to suggest a revision of tax- and financial mechanisms. Changes to these regulations would help to stimulate domestic sales.

If a customer buys a used car from a showroom or used car dealer, or uses a loan to finance the purchase, a 7% VAT is added to the bill. Since the customer wants to avoid the VAT, this has led to the vast majority of used car business in Thailand being done between private sellers and buyers. The VAT incurred on used cars makes it very difficult for business entities in Thailand to engage in the used car business. As a result, there is less competition in the used car market. This is negative both for customers, for the automotive industry and for the Government's revenue. A better solution would be that of a differential VAT, where the business entity would only pay VAT on the profit that is made through the used car transaction.

For companies buying corporate vehicles (for business purpose), the government already allows tax deductions for the depreciation. However, since this policy was issued in 1997, the maximum deductible expense limits are no longer up to date, as the market price of cars have significantly increased. Currently the maximum deductible expense is set at 1,000,000 THB for cash buyer and 2,160,000 THB for leasing. Increasing these limits would have a positive impact on corporate sales.

Recommendations:

1. Encourage the Government to review the VAT calculation for the sale of used vehicle
2. Encourage the Government to raise the ceiling of the deductible expense when buying the vehicles.

4. Labour

Despite an increase in the number of graduates and qualified vocational workers, Thailand continues to experience labour shortages due to continually increasing requirements for higher skilled and technology-intensive manufacturing.

We support the Royal Thai Government's policy on promoting vocational training e.g. mechatronics. Efforts to increase graduates in areas of new technology via higher education curriculum including engineering technical training e.g. electrics, electronics, software engineering, IT, to support Electrified Vehicle (EV), Autonomous Vehicle (AV). In addition, we encourage

public-private internships for at least 6 months instead of 3 months before graduation. In order to maintain sustainability for qualified graduates above, we highly recommend the promotion of international dual study programs; for example, oversea expert invitation to conduct local trainings.

In addition, we call for the Thai Government to consider developing plans for the mid- and long-term to provide sufficient a workforce of qualified graduates to match industry requirements as well as incentives for education, are commendable. Enhancing collaboration between government i.e. Ministry of Labour, Ministry of Education and Ministry of Higher Education, Science, Research and Innovation together with Thailand Professional Qualification Institute (Public Organization) to establish professional qualification and meet requirement for the next generation automobile.

Such a holistic approach would help raise Thailand's overall labour productivity in correspondence with wages/ labour costs, and enhance Thailand's competitiveness, particularly in light of further AEC integration.

Recommendations:

Thailand should take a holistic approach in developing mid- and long-term strategies to promote effective vocational training and incorporate practical industry training in the higher education curriculum. This would raise the number of qualified graduates across the board to meet industry requirements.

5. Investment

Licensing Facilitation Act (LFA)

Thailand's ease of doing business stands at 27th place in 2019, remained the position last year. The government is taking an active response to reducing business and investment barriers, with the aim of increasing foreign investment in Thailand. The first step towards improving ease of doing business was the Ministry of Commerce and Ministry of Labour's commitments to shorten the business registration process via the introduction of a one-stop service at the ministries. To promote industries nationwide in terms of investment and human resource, the Department of Industrial Works under Ministry of Industry has already announced the new Factory Act B.E.2562 (Edition 2 and 3), which the 5-year renewal for Factory Operating Licence (Ror Ngor 4) is no longer required. However, only self-certification through a third party is necessary. Such revocation also positively affects SMEs no longer required to obtain the licence.

This facilitates a business operator by removing unnecessary burden and greatly enhances ease of doing business in the country.

EABC & TEBA welcomed the implementation of the LFA, which helps industry to obtain government licenses more easily. Since the Licensing Facilitation Act has become effective, relevant authority are required to produce a licensing manual for the public and disclose the processes as well as evaluate such implementation on regular basis. This is a positive contribution to the foreign business community, where extensive paperwork is normally

required. As such, this would defeat the purpose of having LFA. We highly recommend Thailand to cooperate with the EABC & TEBA Automotive working group to review the processes.

BOI Investment Scheme

Foreign investment is important for the automotive sector. We welcome that Thailand's Board of Investment (BOI) continues to see the automotive sector as an important industry for the Thai economy. The cluster development policy aims to increase special economic development zones as well as to increase industrial competitiveness in areas with high potential as 12-targeted S-Curve Industries using advanced technology, including next generation automotive of Thailand.

For the next generation automotive industry, clusters are crucial in connecting manufacturers, suppliers, supporting industries, research and academic institutions, and public and private organization within the cluster areas. Strategic development is supported by government agencies including logistics systems, infrastructure readiness, tax and non-tax incentives, amendment of rules and regulations as well as human resource development to facilitate investment. These measures not only support the development of the cluster and Thailand's competitiveness in the world market as an investment destination, but give strategic advantages to investment projects in the cluster areas.

In April 2019, Ministry of Finance issued Ministerial Regulation No.5 to stimulate Battery Electric Vehicle (BEV) production's project, whose manufacturers register to

the BOI promoted scheme, by eliminating the excise tax from 2% to zero during 2020-2022. As for Hybrid Electric Vehicle (HEV) and Plug-in Hybrid Electric Vehicle (PHEV), the excise tax reduction was granted from 8 to 4% for a BOI registered company under localization of battery manufacturing at least 5 years.

Government is recommended to extend investment and incentives schemes based on latest situation of xEV demand. Clarity of terms and conditions is sensitive towards a company's strategy. Therefore, any undercurrent criteria should never appear to impede current business plan and impact investment's decisions.

Green Technology

Green Technology or clean technology is the application of aims to curb the negative impacts of man-made activities. Often these activities cause environmental impact and diminish the quality of public health. Thailand has adopted a political action plan to promote sustainable energy production and to actively encourage alternative energy investment. To promote the development of green technologies, BOI grants significant incentives for investment in energy conservation and alternative energy as well as production of eco-friendly materials and products. For instance, cars are required to disclose CO₂ emissions.

High requirements for cleaner environmental products bring significant gains to the economy. Clean technology not only benefits public health and the environment, it also attracts foreign investment to Thailand. Clean technology also often requires advanced technology, but this technology is not usually found in Thailand. The

European automotive sector is well-known for its high environmental standards and is ready to assist Thailand to develop the green technology industry for the automotive sector.

We are pleased to see the Royal Thai Government has already considered ease of doing business a very important issue and put measures forward to improve in many areas, such as clarity and transparency and shortened time, etc. Significant investments already exist for the automotive sector, and they provide economic impact for Thailand's GDP. EABC & TEBA recommend that Thailand's cluster policy safeguard existing investments, promote technology and standards that help improve the environment and public health, and extend the investment scheme to attract new investment from foreign investors in environmental technology in the automotive sector. Our recommendation aims to promote Thailand's competitiveness and to raise the public health of the Thai people.

Recommendations:

1. EABC & TEBA recommend that the Royal Thai Government ensures the transparency and monitors the effectiveness of the licensing grant process.
2. Safeguarding existing investments requires long-term support and true commitment from BOI, and clarity to investment promotion is required to avoid unnecessary delay to investment decisions.
3. BOI as business facilitation center, should be consistent in relevant regulations and encourages the ease of investment climate as well as strong confidence towards investors.

4. Thailand should continue to raise standards for safety and environmental requirements in the automotive sector to help attract green technology and new investments.
5. We recommend the government continues dialogue with EABC & TEBA automotive working group about improving ease of doing businesses and consist of industry experts that can provide policy recommendationsto boost Thailand's competitiveness.

6. Electric Vehicle (EV)

EABC & TEBA welcome the Royal Thai Government's policy to improve national energy efficiency and environment using electricity to power vehicles. The policy on Electric Vehicle Promotion will bring innovation and improvement to Thailand's environmental standards which the European companies upheld values for sustainability and social responsibility.

While the vehicle taxation system is CO₂-based and technology-neutral, electric vehicle needs a special tax discount to provide OEM with the opportunity to offer the costly technology at customer acceptable prices. The cost of technology transfer for electric vehicle production in Thailand are very high. It will also require investments for manufacturing and aftersales training. In order to facilitate faster penetration of markets with electric vehicle production, incentives are necessary to attract foreign direct investment in the sector.

Due to the excise tax reduction currently available for Plug-in Hybrid Electric Vehicles (PHEV), the PHEV market

in Thailand is growing, especially in the premium segment. PHEVs provide customers with an "easy transition" into E-mobility, since it is not as dependent on public charging infrastructure as Battery Electric Vehicles (BEV). Market research has shown that PHEV customers are very likely to buy another electrified vehicle (PHEV or BEV) as their next vehicle. Furthermore, the introduction of PHEVs in the market help to develop a natural demand for charging infrastructure, both at home & work and in public spaces. This way, policy support for PHEV helps to introduce customers to E-mobility, and can help the market develop step by step into further electrification.

In order for the market to take the next step to full electrification (BEV), a strong governmental support on charging infrastructure development is required. A critical mass of infrastructure is required to overcome the customer's concerns. Standardization on charging standards, a clear roadmap and supporting Government's policies are necessary. In addition, before a sustainable market demand for electrified vehicles can be established, tax advantages or other incentives for customers are required. These can be either be aimed at incentivizing purchase or favourable usage of electrified vehicles. With a natural market demand beginning, such incentives can be phased out after some years.

Furthermore, within the own fleets of the different Ministries Plug-in-Hybrid and full Electric cars should be used in a high share to get a daily experience of use and being a role model for the society. The import of full electric cars with conditions should be without import and excise tax to ensure a fast increase and development of a full electric mobility in Thailand while the full incentives must be connected with local manufacturing

in order to safeguard the transfer of know-how and technology, strengthen the supply industry tier 1 and tier 2 in the sector, and to participate to a long-term sustainability of the automotive industry in Thailand. Given a sufficient demand from the customers and enough establishments of charging infrastructure, the OEM will be able to finally start the production of battery electric vehicles in Thailand.

For Thailand to become the next generation of automotive hub, Thailand will need to develop electric vehicle ecosystem. EABC & TEBA stand ready to assist Thailand on policy discussion and technical support. We recommend the Royal Thai Government to start help bridge technology to full electric drive. Plug-in Hybrid technology is a progressing step that also does not require significant behavioural change from conventional vehicles, therefore, facilitating consumer's adoption to new technology.

Recommendations:

Supply Incentives

1. Sufficient and attractive incentives are necessary for xEV investment and faster market penetration. Incentives should focus both on PHEV and BEV, since support of both technologies will increase the customer base and lead to a faster development of charging infrastructure (at home, work and in public spaces).
2. The government to develop clear long-term outlook on planned automotive legislation, technology incentives and EV supply chain to ensure industry can make long-term investment decisions.
3. Regulatory & Tax instruments that help to realize further efficiency potential of combustion engine but

offers also a reliable perspective for e-mobility (CO₂ based taxation, CO₂ limits, Fuel Standards).

4. Incentivize local content to attract suppliers.
5. Provide opportunity for the European Association to be part of the working group of xEV under the TISI.

Demand Incentives

1. Setup priority lanes, priority parking and charging spaces for xEV and e-Scooter, waiver of highway tolls and congestion charges (if applicable).
2. Adopt international safety standards for consumer's awareness e.g. battery.
3. Encourage Government's agencies to lead the use of xEV.

Infrastructures

1. The government should increase the availability of Electric Vehicle Charging Infrastructure (EVCI) or public charging nationwide networks as one of the intrinsic buying decisions, set up an appropriate standardization framework to minimize infrastructure investment and ensure a fair competition. Financial incentives for improvements to utility infrastructure (e.g. smart grids, smart meters) is necessary.
2. Clarity of EVCI standards, guidelines, permits.
3. Enforcement of interoperability of charging station.
4. Establish laboratory facility to promote local EV's high-voltage battery testing.

EV's Battery Waste Management / Environment Awareness

1. Support for renewable energy generation.
2. Promote the efficient management system of used EV battery for environment sustainability.

Cross-Sectoral Issues (CSI)

SUMMARY OF RECOMMENDATIONS

A. Tax Regime – Competitive, Efficient, Inclusive and Fair (13 items, 3 here)

1. Implement a number of efficiency enhancements
2. Reduce then remove domestic withholding tax
3. Make timelines for tax audits
4. binding tax rulings

B. Foreign Investment (3 items)

1. Take a bold approach to List 3 of the FBA – refer to EABC June 2018 submission
2. Review other consequential legislation impacting allowing foreigners to do certain jobs
3. Maintain FBA standard

C. The Legal System (4 items)

1. Promote ‘Rule of Law’
2. Court reporting enhancement
3. Arbitration should be available for all categories of government contracts
4. Complete phase 2 (licences) and then enhance Guillotine project

D. Work Permit & Visa – focus on skilled workers (several items)

1. For Business Visitors – change ‘work’ definition to make it in line with APEC business mobility principles, allow a wide range of activity with no work permit.
2. For those living and working in Thailand, a range of specific changes is needed
3. For smart visa, make it less cumbersome and more attractive.
4. Complete the removal of TM.28; ultimately remove TM.30 (any remaining parts to be done on-line); TM.6 via on-line; 90 day reporting only for change of residence.

E. Anti Corruption (3 items)

1. Greater education and collectively saying ‘no’ are needed amongst a range of other measures
2. Implementation of internal controls
3. Strengthen whistleblowing and witness protection

Cross-Sectoral Issues (CSI) are those which impact a number of sectors or are economy-wide. This chapter has been re-organised into Clusters, or topic groups, which for the purposes of the 2019-2020 European Business Position paper are:

- A. Tax Regime – Competitive, Efficient, Inclusive and Fair
- B. Foreign Investment
- C. The Legal System
- D. Work Permit & Visa – focus on skilled workers
- E. Anti Corruption

A. Tax Regime – Competitive, Efficient, Inclusive and Fair

1. Overall approach and specific aspects

Since the tax systems significantly impact companies' ease of doing business, the EABC urges the Thai government to develop tax systems that foster business investment and economic growth. Keeping tax rates (for corporates and individuals) at reasonable levels, together with prompt information sharing with the public, will help the private sector in going about their business as well as formalizing robust business. This in turn would expand the tax base and increase tax revenue. Both business and government can benefit from tax systems which are simple to administer and have reasonable compliance costs.

Recommendations – Tax regime

The EABC appreciates Thailand's efforts on tax reforms to strengthen the country's competitiveness. Further concrete actions should be moved toward simplifying tax compliance methods to improve economic efficiency, as well as enhancing transparency in tax collection. The EABC expresses its readiness to closely work with the Government towards addressing hindrances and improving the competitiveness of the country's tax regime and compliance.

Some tax initiatives which could assist in achieving these objectives include:

1. Decrease domestic withholding tax on services from 3% to 1.5%; ultimately remove most types

With the permanent reduction in the corporate income tax (CIT) rate for companies from 30% to 20%, without a corresponding reduction in the domestic withholding tax rate on services of 3%, companies are required to achieve a profit margin of at least 15% before tax, or else they will be in an overpaid tax position.

In the current economic times, achieving a profit margin before tax of 15% is challenging. If the domestic withholding tax rate on services is reduced to 1.5%, a company would need to achieve a 7.5% profit margin. This is more realistic in the current economic climate.

Longer term consideration needs to be given to eliminating the various categories of withholding tax, which apply at varying rates depending on type.

2. Refunds of CIT overpayments

Refunds typically arise due to overpayments of CIT, resulting from the domestic withholding tax rate on services of 3% or due to an overpayment of CIT in the mid-year tax returns. Currently the overpayment of CIT can only be dealt with on a refund basis.

It would be mutually beneficial for both taxpayers and the Revenue Department where the taxpayer could elect to have the overpayment refunded or treated as a credit (similar to VAT), which could be applied to the CIT liability of the following year. Where the credit basis is elected, this would assist taxpayers who are 'out of pocket' as they are required to make payment of the current year's CIT liability whilst still awaiting a refund from the TRD for the prior year. Similarly, the TRD can continue to hold onto the overpayment of CIT without the requirement of a cash refund to the taxpayer.

3. Timelines for tax audits

There are currently no timelines for the Revenue Department which must be adhered to in concluding a tax audit. This creates uncertainty for taxpayers and often, the duration of the audit is extended unjustifiably, sometimes spanning over a year. An administrative process with clear deadlines for the Revenue Department should be introduced to ensure audits are finalized in a timely manner. The legislation can provide for an extension of the timelines if agreed to by both the taxpayer and the Revenue Department.

4. Decrease in the monthly surcharge of 1.5% and availability of deduction for surcharge

During the course of an audit, any additional assessable income will attract a surcharge of 1.5% per month which is payable to the Revenue Department. This amounts to 18% on an annual basis. Considering the return one would normally make on money deposited in a bank account, an 18% return is disproportionate to market conditions and further imposes an unnecessary financial burden on taxpayers. A reduction in the monthly surcharge rate of 1.5% would be welcomed by all taxpayers.

Since the surcharge is payable to the Revenue Department where tax is imposed is akin to interest, the EABC recommends that it be considered to allow taxpayers a deduction of this surcharge in computing their CIT liability.

5. VAT and withholding tax reporting obligations for SMEs

Currently all companies are required to submit monthly VAT, payroll and withholding tax returns (if a payment is due) to the Revenue Department. In the context of SMEs, which typically have limited resources and small tax payments, this is an administrative burden and should instead, be limited to quarterly reporting obligations.

6. Binding advance tax rulings

Before entering into a transaction, taxpayers generally consider the tax consequences which may arise.

Where the numbers involved are substantial and the transaction is complicated, obtaining tax certainty may be an important consideration and may have an impact on the investment decision. In these and others instances it would be beneficial for taxpayers to obtain an 'advance tax ruling' from the Revenue Department which is binding and issued in a timely manner. Currently, the rulings are not binding and are generally only issued for transactions which have already occurred.

7. Consistent and accurate interpretation of legislation by Revenue Officers

There have been instances where the Revenue Officers of the Revenue Department have issued assessments for which the basis in law is unclear. When assessments are issued by the Revenue Department they should be supported with well-reasoned arguments and reference the respective sections of the law. In addition, an assessment should be reviewed by a technical panel to ensure it is technically correct.

8. Legislative incentives vs execution of incentives

There are many beneficial incentives from which taxpayers can take advantage, however, in certain instances, the execution and implementation of the incentives have impacted on their success. For example, to take advantage of the accelerated 300% deduction for R&D expenses, the project must be examined and approved by the National Science and Technology Development Agency (NSTDA). In practice, however, it is very difficult to obtain timely approval from the NSTDA and there are no clear

guidelines on which projects the NSTDA will likely approve. On average, the NSTDA can take six months or longer before granting their decision. This is an example to illustrate that legislating an incentive is not enough to drive investment. Clear and reliable implementation and execution of such incentives is imperative, without which, the incentive will be ineffective.

9. Extension of loss carried forward utilization

Corporate income tax is one of the major factors for a company when it makes a capital investment decision. Without tax benefits, many investments simply will not be competitive when compared to investments in other countries. In Thailand, one of the tax benefits is a carry forward of tax losses for five years. It is generally accepted that in the context of new investments, tax losses in the early years are not uncommon. Extending the period in which tax losses can be carried forward would provide an economic incentive for new investment in Thailand and would further encourage companies with existing tax losses to continue investing in Thailand. Strategic partners may also be more inclined to inject and increase the capital of companies with tax losses since they know such tax losses will not be lost in the short term.

Extending the period for which tax losses can be carried forward and utilized will enhance Thailand's tax competitiveness with other countries. Malaysia, Singapore and Hong Kong (to name a few) allow for an indefinite period to utilize and carry forward tax losses, while many other countries in Asia allow for a carry forward of such losses in excess of five years. Some also allow for loss carry-back.

An extension of the tax loss carry forward utilization period from five years to, at least, ten years will be welcomed by taxpayers and investors.

10. Conversion to IBC (International Business Centre) regime.

As described in the 2018 European Business Position Paper, OECD had reported that the old IHQ/ITC regime (with some other aspects) amounted to ‘harmful tax practices’. TRD’s replacement in 2019 of the IHQ/ITC policies with IBC was done at very short notice, but with some flexibility and accommodation show, at least for corporate tax, the change was quite smooth in most cases. EABC recommends monitoring this situation and for the personal tax side, allowing plenty of notice.

11. eCommerce tax

e Commerce Tax recommendations are covered in the Digital Economy /ICT Chapter.

12. Customs

Customs recommendations are covered in the Transport & Logistics Chapter.

2. Consultation process for Tax and Customs Law Reforms

The EABC appreciates the opportunities granted for its members to offer their perspectives on the draft implementing regulations of various tax and customs regulations. Allowing the private sector to participate in the public hearing during the drafting process helps to ensure that the regulations are practicable and do not cause business disruption.

Under Section 77 of the Constitution of Thailand B.E. 2560, prior to the enactment of every law, the State should conduct consultation with stakeholders, analyse impacts that may occur from the law thoroughly and systematically, and disclose the results of the public consultation and analysis to the public and take them into consideration at every stage of the legislative process. Once enacted and in force, under that same s. 77, “... When the law has come into force, the State should undertake an evaluation of the outcomes of the law at every specified period of time, for which consultation with stakeholders shall be conducted with a view to developing all laws to be suitable to and appropriate for the changing context” .

In addition the Regulatory Impact Assessment Act which came into force six months after gazettal in May 2019 builds on the principles of s. 77 as well as the APEC Good Regulatory Practices (GRP).

Recommendations – consultation – tax and customs

For new laws and regulations, sufficient time should be allowed for consultation to take place and for the results of the consultation to be appropriately considered and the Regulatory Impact Assessment Act to be honoured in ways which support good rule-making.

Subsequent to enactment, assessment and improvement should be done at regular intervals to identify any further issues or practical opportunities for enhancement. Such feedback from the private sector should be disclosed to the Public.

B. Foreign Investment

1. Basis of regulation

Doing business in Thailand has a number of possible formats or means. In this part we focus on Commercial Presence. Commercial presence in Thailand is possible via:

- A local entity which is at least 51% Thai owned and in some cases, depending on the industry, may have other restrictions.
- A local entity which is up to 100% foreign owned, with a foreign business licence (FBL) under the Foreign Business Act (FBA) 1999; the entity may or may not be BOI promoted (with a foreign business certificate- FBC). The FBA has three lists; an FBL is available for activities under List 3 by approval of the Minister of Commerce via a committee; Cabinet approval is needed for List 2 and List 1 is not open to foreigners (ie requiring a change to the law).
- A local entity relying on other sector-specific legislation or possibly Treaty.

The FBA is the base standard for commercial presence. The 'FBA standard' is a test based on first level of shareholding, not on control or other factors.

The FBA standard has become the accepted basis for investment. Standards other than the FBA standard include:

- i) Broadcasting – control and nationality factors
- ii) Foreign Dominance Notification (telecoms) – a shopping list of connecting factors including control, indirect shareholding, banking relationships, staff etc, see also Digital Economy/ ICT Chapter.
- iii) Insurance with some caps at 25% but in practice different – see Insurance chapter.
- iv) Aviation services from January 2017, relying on a 46 year old Decree – restricts nationality, control, shareholding for an Air Operating Licences (AOL), on safety grounds.

2. The wider picture of restrictions on participation

Operating in Thailand (eg services via Mode 4) can be restricted by a number of personal qualification issues, work permit and visa regulation etc. In the ASEAN context (See later in this chapter), some nine ASEAN Mutual Recognition Arrangements (MRAs) purport to allow 9 professions / endeavours to be recognised. But this is usually stymied by regulation relating to each profession. For example nurses must speak Thai and need to have a local test.

The table below is a navigation tool for legislation of what is allowed in terms of business activities of entities, professions not closed to foreigners and then specific profession-level regulation. Engineering for example appears at all three levels.

Layers of regulation (relevant to the context of reviewing the FBA) - simplified

Subject	Effect	Regulatory source
Business activities of entities (eg companies) with more than 49% foreign shareholding	Restricts the business activity of the company using three lists.	Foreign Business Act AD 1999. Foreign Business Licence (s.7) Under IPA (the basis of BOI promotion), a slightly different process applies – a Foreign Business Certificate (s. 12)
Professions which may not be undertaken by foreigners	Prohibits foreigners (individuals) from carrying out 39 professions. JFCCT has identified 8 of interest	AD 1979 Decree
Professional licensing or permits at sector or individual professional level.	An additional barrier which is often overlooked by regulatory moves to liberalise professions. See separate document analyzing each profession and listing relevant laws.	Various sector or profession-specific laws – eg Engineers Act, Accountants Act, Lawyers Act which typically set up a professional licensing authority. JFCCT has a list.

The 39 professions not open to foreigners under a 1979 Decree are being reviewed and as the file notes, this is compounded by the additional filter of profession-specific law and regulation. The situation is complex as each profession has its own regime and issues, and sector-specific legislation apart from the 1979 Decree. EABC has identified some eight professions to open and in mid 2018 has made an analysis and recommendations about removing restrictions.

3. Opening up the Foreign Business Act lists.

List 3 is required to be reviewed annually (ie removing items from List 3 so that they are open to majority foreign ownership) and has been revised four times (2013, 2016, 2017, 2019) with over 20 specific industries or activities (sometimes called ‘sectors’) released from List 3. The releases are considered liberalisation-neutral as there is sector-specific legislation covering the same fields or the items may be trivial.

Press statements in 2018 indicated other releases being imminent at the time, but it is the four which are the reality. To date only the four published revisions to List 3 have been made as at late September 2019. There is a further plan covered in an internal meeting reported about in September 2019 to remove certain activities from List 3 (including for example Type 1 Telecom licences).

An on-going problem is the need in a group often to have multiple FBLs as the activity each covers may be narrowly defined.

EABC has made a detailed submission dated 29 June 2018 to the Ministry of Commerce which includes specific recommendations about List 3, and longer-term observations about Lists 1 and 2. EABC’s recommendations are guided by five Driving Strategies which directly support or are the same as important government policies:

- 1) **Thailand 4.0** is a bold vision which will transform the economy but will require skills that focus on new activities and industries, and being digital at all levels. The resources for this cannot possibly come from within Thailand alone. The 10 ‘S’ curve industries are one aspect of this.
- 2) **Ease of Doing Business** proposes the need for systematically and surgically cutting down various existing government regulatory and bureaucratic processes, many of which would appear to be redundant and costly. EABC welcomes measures to improve doing business generally. The ‘guillotine’ project for example should bring positive outcomes. A review of lists in the FBA provides an opportunity to continue contributing to enhanced ‘doing business’.

- 3) **Thailand promoted as a hub** and a base for the physical production of goods, manufacturing, and services (including those services, such as education, logistics and others, supporting manufacturing and goods). This would build on Thailand's geographical centrality. Many service activities are needed to support this model.
- 4) **Thailand promoted as a centre of innovation and creativity**, which would build capacity, help re-skill the workforce, transfer knowledge and build knowhow, and create higher-end jobs. A 'Made in Thailand' branding for this enterprise, and leading edge, high quality products and services would support this strategy.
- 5) **Service Sector liberalization.** Although manufacturing of goods was liberalized to great success some decades ago, services liberalization has unfortunately stalled. All leading world economists have recommended service sector liberalization to avoid the middle income trap. It stimulates innovation and creativity, as well as enhancing competitiveness of the economy as a whole.

EABC recommends a bold approach to the FBA with a different mindset.

Recommendations – Foreign Investment

EABC recommends major reforms to List 3 and proposes using its 29 June 2018 submission as the basis. A particular emphasis on services is recommended.

The FBA standard should continue to the basis for foreign investment.

The total picture of foreign participation which also includes other laws needs to be reviewed in accordance with, EABC suggests, submissions made by EABC.

C. The Legal System

1. A Rule of Law policy

Respect for the law in Thailand is weak. There is a belief in some quarters that money and connections you can get around an issue. This is not a policy or attitude endorsed or promoted by the government or leading private sector bodies. But a weak Rule of Law understanding and respect for its importance are an investment and 'doing business' obstacle.

The World Justice Project (WJP) Rule of Law Index provides an indication of how strong the Rule of Law is. "Thailand dropped seven positions for overall rule of law performance (from 64 in the 2016 WJP Rule of Law Index) to 71 out of 113 countries in the 2017-2018 edition. Its score places it at 10 out of 15 countries in the East Asia and Pacific region and 23 out of 36 among upper-middle income countries"¹.

"WJP Rule of Law Index[®] is the world's leading source for original data on the rule of law. The Index relies on more than 110,000 household and 3,000 expert surveys to measure how the rule of law is experienced and perceived in practical, everyday situations by the general public worldwide.

¹ https://worldjusticeproject.org/sites/default/files/documents/ROLIndex_2017-2018_Thailand_eng_0.pdf

“Performance is measured using 44 indicators across eight primary rule of law factors, each of which is scored and ranked globally and against regional and income peers: Constraints on Government Powers, Absence of Corruption, Open Government, Fundamental Rights, Order and Security, Regulatory Enforcement, Civil Justice, and Criminal Justice”².

2. Development of Laws and Content

A combination of s. 77 of the Constitution, requiring consultation, and the new Regulatory Impact Assessment Act (referred to in part A of this Chapter), will if practiced in good faith in accordance with requirements, go a long way to improving the quality of laws and respect for the law.

Proper consultation is a key part of the APEC Report on Good Regulatory Practices (GRP)³, authored by Jacobs Cordova & Associates. A regulatory impact assessment is usually needed.

3. Permanent law reform commission

The function of law reform in Thailand itself needs reform. Often there is no real structural reform, but just add-ons – consider a huge hopper with uncatalogued and un cross-referenced laws, into which are dumped new laws. This is called reform but it is not. There are some but few exceptions where there is real structural reform.

² *ibidem*

³ http://mddb.apec.org/Documents/2016/EC/CONF1/16_ec_conf1_005.pdf

A permanent law reform commission in the British Commonwealth / European style which takes references about laws – holistic approach about the subject matter, consultation and reform. This is one of the practices used in Korea after their successful regulatory guillotine approach and a key recommendation of the APEC report and the Korean expert.

One subject or reference could be the Civil Procedure Code. The current Code was inspired by the French CPC of the 1910’s and does not appear ever to have been comprehensively reviewed. Similarly the Civil and Commercial Code. Thailand has for some time been bypassing the Codes to some extent with specific statutes and supporting secondary legislation (Regulations/ Notifications).

4. Court reports

Even though Thailand is essentially a civil law jurisdiction, law reports (reports of court cases) do have precedent and persuasive value and need to be reported clearly so that rules can be discerned and applied.

5. Guillotine or ‘Simple and Smart License’ project

The example of South Korea is used to illustrate how laws and regulations are reviewed to pass the tests of meaningfulness, (i.e. they must serve a purpose), ease of compliance and ease of understanding. In that case, an outside expert was engaged to manage this process, rather than leave it to Sub-Ministries. This occurred after the Asian Financial Crisis, with the aim of lifting Korea’s standing in ease of doing business rankings. The measures got rid of many laws and regulations and streamlined

many others (some 11,000 overall). The strategy worked; overall ease of doing business greatly improved and GDP improved.

The Guillotine project first phase looked at ‘doing business’ issues, focusing on eight of the ten World Bank criteria with some credible contribution to Thailand’s improved Ease of Doing Business ranking to 21st for 2020 (from 27th 2019; 26th for 2018). The second phase covered some 1,000 licence issues with recommendations to remove them or modify them. The detailed work to analyse, discuss and draft the proposed text has already been done.

There was also a successful project with the Bank of Thailand.

EABC considers it most important that the Guillotine project (Simple and Smart Licence) continues.



สำนักนายกรัฐมนตรี
Office of the Prime Minister

6. Arbitration and other ADR

Changes better to support Arbitration are welcome. Smart Visa was changed to include Arbitration. Further enhancements

Removal of restrictions on arbitration as a means of dispute resolution in all categories of government contracts is recommended.

Recommendations:

The EABC urges the Royal Thai Government to:

- (i) Take measures to enhance Rule of Law standing; including establishing, supported by recent legal changes, a more effective consultation procedures; establishing permanent and active Law Reform Commission; enhance court reports; and driving the regulatory guillotine project to remove and revise unwanted and unnecessary laws and regulation; and enhancing arbitration availability (see more in law section above)
- (ii) Make competition regulation (ie fostering a pro-competitive environment through the use of regulated competition) more effective by providing industry education and effective implementation of the amendments to the Trade Competition Act.
- (iii) Further developments to support arbitration especially for on-line disputes is needed.

EABC values the regular consultations held and urges more. EABC’s Cross Sectoral Issues working group welcomes the opportunity to support Thailand and to provide best practices in these areas. Engaging outside experts is often valuable and effective.

D. Work Permit & Visa – focus on skilled workers

1. Ease of employment procedure and law to facilitate free movement of foreign skilled and unskilled workers

Some aspects of Thailand's Work Permit and Visa system go back, unchanged, some 45 years (to 1972). The foreign business community and the local business community, both of which frequently rely on foreign skills, have recommended for many years that major revisions to the system are necessary. Work Permits and Visas continue to be the single most referred-to irritant in doing business and disincentive to foreign investment.

Some changes were made in June 2017 and March 2018 but they do not go far enough.

The issue is not just about convenience or 'ease of doing business'. The current policies and practices impede Thailand's reputation as an attractive place to invest and are out of synch with more recent policies such as IHQ. The many FTAs (Free Trade Agreements) to which Thailand is a party require freer movement of goods and services (including data) and investment. Most if not all have chapters about freer movement of people because goods and services and investment need people to support the objectives. But the Work Permit & Visa regime impedes the full realisation of economic value from these FTAs. These outdated processes are time consuming and often expensive. The overall impact causes economic harm.

These issues are outside the scope of the World Bank's 'doing business' criteria, but are captured by other rankings. Improvements in Thailand's World Bank ranking

may give the wrong impression that these Work Permit and Visa issues have been addressed.

In many cases, the process required for foreigners to gain permission to work and reside legally in Thailand is exceedingly complicated and requires excessive and ultimately unnecessary paperwork. A change of mindset is needed about the content, usefulness, and method of collecting required information, including a fundamental re-design of the system to eliminate duplication. The Smart Visa (which is a limited carve-out rather than a systemic change) may be a good way to kick-start some of the necessary changes. But even the Smart Visa retains some seemingly complicated procedures.

Considering the shared vision for Thailand 4.0, a major uplift in the freer flow of skilled labour and an infusion of talent are needed, as are lower-cost and less labour-intensive administrative processes to accomplish these goals efficiently.

2. There are two groups of people:

Those not working in Thailand (Business Visitors); and 2: Those who need to live and work in Thailand (Employees and others).

a). Group 1: Business visitors

Business Visitors have no intention or need to take up local employment and who are not resident in Thailand. They come to Thailand for various business-related activities which could include attending meetings, seminars, or having business discussions or attending board meetings. In the generally understood and internationally accepted

definition they are not ‘working’. However, under the very broad definition of ‘work’ which has been part of Thai law, in most cases these relevant activities would constitute ‘work’ and thus would currently require a work permit to be undertaken legally.

Not only does this generate unnecessary administrative overhead for government officials with no apparent benefit, it unintentionally casts legitimate business visitors to Thailand as law breakers and can impact the validity of travel insurance.

ADDRESSING GROUP 1: BUSINESS VISITORS

The definition of ‘work’ is too broad and is based on inappropriate principles.

Whether a work permit application (WP-1 or WP-10) is required depends on whether ‘work’ is being done. Trying to support business engagement based on nebulous principles and definitions which produce grey areas and artificial distinctions is time consuming and costly. Interpretation principles are based on a 1972 law (over 45 years old) which was most recently incorporated into the 2008 Foreign Employment Act, such that the following activities were defined as ‘work’:

- (i). If physical effort or knowledge is required in order to complete such activity/task
- (ii). If it has little or no effect on the labour market in Thailand.

A Decree issued on 23 June 2017 (also known as the ‘Management of Foreign Workers Ordinance’ or

‘Emergency Decree on Managing the Work of Aliens’) made changes:

- i) Repealed the Foreign Employment Act
- ii) Continued the basis for the definition of work (see above) but, importantly made it narrower by requiring that the activity must be linked to activities conducted for the purpose of carrying on an occupation or undertaking a business.
- iii) With the aim of reducing human trafficking, greatly enhanced penalties for employers and employees – see Appendix 3 for original penalties from 23 June 2017. (Four key sections only – not the entire Decree -- were deferred by use of a s.44 Order, to come into force on 1 January 2018 and were to be revised, since deferred to 30 June 2018).
- iv) Empowered the Minister of Labour to issue a Declaration or Notification saying what activities were not ‘work’.

There may be different English versions of the important change in (ii) but it is an intentional change which is understood to remove from the requirement for a work permit those situations where, for example, people may be meeting to discuss the business or economic environment, or may be speaking at a conference where they are not carrying on an occupation or undertaking any business. This part of the 23 June 2017 Decree was not deferred and has the force of law

A March 2018 Decree gave further impetus to some changes but neither goes far enough.

There are two quite recent and clear official statements about what can and cannot be done at meetings and conferences (both reported in the English language press in Thailand) under current rules. These issues need to be addressed:

- i) The Dept. of Employment has reconfirmed that a foreign director of a Thai company may not sign accounts (financial statements) at a board meeting unless he has a work permit, and that defect vitiates (undoes the validity of) the accounts. The workarounds proposed are very cumbersome (and one may not even be valid) and add to 'doing business' overhead. This conflicts with what was understood to be the general intent of the March 2015 interpretation, and flies against the very purpose of IHQ policies which are to encourage regional and international headquarters to be established in Thailand -- in other words that people not usually working in Thailand can come here to carry out various business activities. This official statement by the Dept. of Employment directly limits their ability to do so (and presumably would also prevent them from chairing, or even presenting a report at a board meeting). In fact, these are normal business activities for a director of any Thai company, not only those with IHQ status.
- ii) The holder of a business visa was advised that he could not speak at a conference as this was 'working', again contrary to the general understanding of the March 2015 interpretation. According to press reports, the DoE officer said

that the law would be applied to all, regardless of the nature of the work being done or subject matter of the Conference.

Thailand is a sought-after MICE destination with many conference organisers arranging high level conferences, often with high-level visiting speakers. These foreign speakers need a work permit to be in-line with the law, but it is not the practice of such organisers to advise them accordingly or help arrange such a work permit.

In all cases where a business visitor is in Thailand carrying out various 'business visitor' type activities for which a work permit is currently needed, there is a high likelihood that a claim under a travel insurance policy would be denied as the business traveller did not hold all valid permits to perform the activity. For IHQ activities, with frequent, but often short notice visits, there is a business risk due to non-compliance.

Recommendations to support Business Visitors

1. Institutionalise, embed in departmental and agency procedures, and train government officials about the change to law due to the 23 June 2017 Decree and March 2018 Decree which narrowed the definition of 'work'.
2. Without narrowing the scope of action 1, it is requested that the Minister of Labour issue a Declaration about what is not 'work' – the recommended text is provided by EABC which is broader than these decrees provide for.

3. Redefine the relevant Business Visa so that it is available on a Visa on Arrival basis simply by stating the purpose of visit. If there are security concerns for a limited number of countries, an on-line facility such as used by Myanmar could be explored, OR allow 'no visa' business purpose entry for most countries. The validity might be for 30 days, extendable (e.g. once per entry).

4. There should be no need for the WP-10 category for 'urgent and necessary work'; as no work permit would be required for any of the activities contemplated. While the 29 June 2017 Decree provided some streamlining under current arrangements, our recommendation is to dispense with the separate category WP-10.

5. As should be the case for all processes, put everything on-line and eliminate paper-based assessment. Dispense with the use of TM.6 for tourists, Business Visitors, and others.

This is the end of the Business Visitors Group part.

b). Group 2: people with Thailand-based jobs; Employees and others:

People who are employees of local companies (or local affiliates of multinational or other foreign companies), or who are owners of local businesses need to work and reside in Thailand. They are engaged in the generally accepted definition of "work". For those in this category, the concept of a merged work permit and visa (eg to a 'work visa') would be an attractive and logical improvement. A separation into two categories for skilled and unskilled

work would also be useful. In addition, the process of applying for and granting these work visas would need to be streamlined, not least by giving a single government agency full responsibility for the process, rather than requiring interaction with two completely separate (and often conflicting) bureaucracies (i.e. Immigration and Labour) as is currently the case.

The Smart Visa, launched in 1 February 2018, addresses four groups: entrepreneurs; skilled persons; senior executives; investors. It is a big step in the right direction in that it removes 90 day reporting, allows for four year duration and is one instrument ('work visa'). It was intended to address about 1,000 but numbers issued (less than 200 at October 2019) are small. BOI proposes expanding it to include Digital Freelancers.

Some fundamental changes to the structures of work permits and visas are recommended; as much as possible should be put on-line with the opportunity for process re-engineering which that affords, along with many items better to support overall objectives, including removing burdensome actions (a) through (q) – see below.

ADDRESSING GROUP 2: LIVING AND WORKING IN THAILAND

For people who are not Business Visitors (ie people who are living and working in Thailand), a number of changes are needed to the overall system. These are extensive and detailed and are the subject of a separate EABC document (done in collaboration with JFCCT). The recommendation summary for this group is listed here:

Recommendations – work permit and Visa for those living and working in Thailand

The EABC has and will continue to recommend a large number of administrative and legislative remedies; and also structural change in the area of work permit and visa for those working and living in Thailand.

Recommendations about work permits/visa for those needing to live and work in Thailand

Recommendation (a): Restructure permits and licensing into skilled / unskilled categories with different requirements.

Recommendation (b): Noting the listed objectives 1 – 12 in this part (b), and the specific recommendations in some of those objectives, it is recommended to build on the Smart Visa advances. In particular, using one instrument – a ‘work visa’ should be used in all relevant cases.

Recommendation (c): Eliminate unnecessary steps. A ‘whole-of-government’, on-line architecture be devised as soon as possible, to allow introduction of efficiency improvements in high priority areas. Take the opportunity to effect business process re-engineering.

Recommendation (d): Remove location of work restrictions. If zonal-based benefits apply, they can appear in a different instrument, or as a qualification by exception.

Recommendation (e): Eliminate 90 day reporting; change to report (on-line) residential address.

Recommendation (f): Clarify that no additional work permit is needed for a work permit holder to carry

out non work activity; and effect/implement this change in procedures.

Recommendation (g): Cease using capital invested and staff ratios as bases for hiring foreigners.

Recommendation (h): Review and revise procedures for document retention and record keeping. As with Recommendation (c), process re-engineering is needed in the context of a whole-of-government , digital government architecture.

Recommendation (i): If the s. 44 Order about sourcing documents is to be of use (as it should be), include it as part of the review and re-design described in Recommendation (h).

Recommendation (j): Review, consult about and propose a mechanism for Mode 4 service delivery minimal, legal licensing which does not introduce tax complications. Alternatively exempt the requirement in order to foster advanced service sector development.

Recommendation (k): Revise requirements to accommodate groups such as holidaying visiting foreign skilled workers as this easily.

Recommendation (l): Devise a procedures for easy registration for eGate usage for visa holders where information is held on file; linked to a passport, not just for citizens and permanent residents.

Recommendation (m): Harmonise work permit and visa terms; in the longer term, use one instrument (eg work visa).

Recommendation (n): All two year work permits for all chamber of commerce staff.

Recommendation (o): Exempt Permanent Residents from the need for a work permit, or deem a flexible work permit to be included.

Recommendation (p): Participate and consult with the foreign business community and local business community about overdue changes to removing many items from the list of 39 professions, with a view to achieving the skill sets needed for a skilled workforce, that Thailand 4.0 vision and an intelligent society. The issue about the 39 professions are referred to in more detail earlier in this chapter.

Recommendations (q) relevant to unskilled labour are five, including the same recommendations about removing 90 day reporting (reporting only change of residence, which for unskilled labour, often the employer should do), removing location specific work restrictions and other time-consuming requirements.

3. TM 30, TM.28 and related provisions

The Immigration Act 1979 has cumbersome reporting provisions. EABC has made in 2019 a submission to the Ministry of Interior and Prime Minister's Office about the situation. The positive response of government is most welcome.

Recommendations- TM.30 and related.

Completing the removal of TM.28 (foreigner reporting) for all categories

Limiting TM.30 (landlord reporting) only to those situations such as private short stay if necessary as a short term measure, but eliminating it at the earliest time.

Using on-line systems to cover all situations

Change to 90 day reporting to reporting only change of residential address.

Eliminating the paper TM.6 arrival form

4. Smart Visa

The smart visa is a useful instrument, but it should be more attractive and easier to gain. Removing burdensome scrutiny is one important objective.

Smart visa applies to the ten 'S' curve industries and three others. This scope is not currently the main issue. It is positive that it is being applied to digital freelancers.

5. Importance of English and other important language for the Thai workforce

During the past 25 years, countries that surround Thailand have gone through, and continue to go through, major economic development, and liberalisation of their laws that affect foreign investment, but Thailand has not. Thailand faces significant competition. Countries such as Malaysia, Vietnam, Cambodia, Indonesia and now, Myanmar, have all progressed and developed. They are competing with Thailand in areas in which Thailand has substantial economic activity and investment: manufacturing, tourism and agriculture. The ability of the Thai workforce to communicate in English and other languages is poor when compared to its competitors, as many surveys have indicated.

Recommendations – English language

EABC urges Thailand to improve education for younger generations, especially in English language skills, which are a very important tool for communication.

E. Anti Corruption

EABCs objective is the reduction of corruption so that it is no longer considered by some as an easy option or normal way of doing business, with real incentives to avoid corrupt practices.

Transparency International, in its Corruption Perceptions Index 2015, ranked Thailand 76th out of 175 nations on the issue of public sector corruption, previously ranked 85th in 2014. In 2016, Thailand's ranking slipped to 101st out of 176 countries and in 2017, gained slightly to 96th / 180. The government stated at the time that it was not satisfied with that minor improvement and regarded the overall position as not materially changed. The 2018 ranking was 99th/180.⁴

Although private sector bodies such as

- i) ACT (Anti-Corruption Organisation of Thailand), a Foundation from 2014. Formerly ACN⁵
- ii) CAC Collective Action Coalition Against Corruption, a private sector project of Thai IoD which acts as the secretariat⁶

⁴ <https://www.transparency.org/cpi2018>

⁵ www.anticorruption.in.th/2016/en/

⁶ www.thai-cac.com/node/7601

have relevant objectives, membership requirements etc, a small minority of their members may use membership as a kind of CSR checkbox or PR tool. Based on industry experience, it is known that some such members engage in corrupt practices. Neither body condones or supports this.

The Stock Exchange of Thailand has instituted some initiatives also. Various measures including:

- a). Public sector and private sector collaborative efforts,
- b). education,
- c). peer pressure through Codes of Conduct,
- d). promoting understanding of Rule of Law,
- e). increasing the chance of being caught,
- f). understanding the stigma of public exposure and the consequences of being banned from government business,
- g). education about local and foreign extra-territorial legislation and the new Organic Act (see below)
- h). internal controls.

are some of the positive measures. Increasing penalties alone has a limited impact. Also needed are:

- i) Away from a rent-seeking mentality (concession style) in government licensing, project and permits can have a corruptive effect. More can be done to position, present and tender for government projects and value-enhancing investments, moving away from a rent-seeking, concession mentality.

- ii) Education about internal controls (see below) and the need to implement them.
- iii) Change of law. The Licence Facilitation Act is intended as an anti-corruption measure. It may have had some limited success in that respect but has one major weakness: there is KPI or objective for going on-line, which would be needed in this kind of law. Going digital lessens corruption opportunities. The LFA requires paper-based manuals; going on-line means process re-engineering – a major (second) revision. However the LFA is not considered to be a standard currently.
- iv) Compensation of government officials to get a satisfactory wage.
- v) An end to the use of Criminal Defamation is also needed. This is used as a tool to stymie corruption allegations and otherwise improperly.
- vi) Corporate activism – collectively saying ‘no’.
- vii) Rule of Law measures (see this Chapter) especially about consultation.
- viii) Whistleblower protection for NACC investigations and witness protection; better budget
- ix) Symbolic action so that the law applies to all; well connected people are not exonerated.

The new Organic Act on Anti-Corruption B.E. 2561 (2018) largely reflects the United Nations Convention Against Corruption.

Section 176 is most important

“Any person who gives, offers to give, or promises to give any property or benefit to a public official, foreign public

official, official of a public international organization with an intent to induce such person to wrongfully perform, not perform or delay the performance of any duty in his or her office shall be liable to an imprisonment for a term of not exceeding five years or a fine of not exceeding one hundred thousand Baht or to both.

“In case the offender under paragraph one is a person associated with any juristic person and the action was taken for the benefit of such juristic person, provided that such juristic person does not have in place appropriate internal control measures to prevent the commission of such offence, the juristic person shall be deemed to have committed the offence under this Section and shall be liable to a fine of one to two times of the damages caused or benefits received”.

Thus a senior officer of a company and the company itself can both be guilty of an offence due to conduct of an employee (who may be a rogue employee) unless internal controls are effectively implemented.

The NACC has published internal controls guide books in four languages (TH, EN, CN, JP) available by downloaded PDF or hard copy.

Recommendations – Anti Corruption

Greater education and collectively saying ‘no’ are needed.

Implementation of internal controls

Strengthen whistleblowing and witness protection

Digital Economy / ICT

SUMMARY OF RECOMMENDATIONS

See also the yellow Recommendations boxes throughout this Chapter

EABC analyses the Digital Economy in three layers which are building blocks. The definition includes the role of the telecoms industry.

1. Infrastructure

- 1.1 Industry reform including wholesale and SOE reform
- 1.2 An holistic plan for national broadband infrastructure
- 1.3 Liberalising international gateways fully
- 1.4 Spectrum plan and economic-based pricing; avoid artificial scarcity
- 1.5 5G: Why the rush? – first need a long term spectrum plan, industry restructure and SOE reform, new spectrum pricing model
- 1.6 MVNO policy to support innovation
- 1.7 Cease the Foreign Dominance Notification

2. Operating and Support Systems, Digital Governance

- 2.1 Promote Trusted Internet by MSM governance models.
- 2.2 Cybersecurity – MSM principles and state accountability
- 2.3 Data Privacy – check PDP operationally for practicality of operation and compliance
- 2.4 Digital Government – a visible, workable strategy for whole-of-government
- 2.5 Fake News – primary tool is education; avoid government being arbiter of truth
- 2.6 Skills development is a multi-pronged plan; Digital Literacy essential
- 2.7 Procurement and Anti-Corruption – enhancements and positive steps to be built on

3. Applications and Digital Services

- 3.1 Enhanced support for Fintech and Start-Ups
- 3.2 Clearing roadblocks with eCommerce registration and making it attractive.
- 3.3 eCommerce Tax clarity needed – full VAT benefits for an indirect tax system

A. Background about Digital Economy

The Digital Economy grows in two ways:

- (i). By the digitization of processes, services and products which have evolved from an analogue or off-line state, or have new digital equivalents
- (ii). By the entry of 'native' digital services, products or processes.

EABC's concept of the Digital Economy was developed in 2015 and updated in 2019. The EABC definition of Digital Economy ('What is the Digital Economy?') shows how reliance on telecoms infrastructure and a well-structured, well-functioning services sector (including telecoms) are essential to making a digital economy work. The telecoms part (see three-layer schematic below) is often left out of a discussion on Digital Economy.

'Digitisation' or 'Digitalisation' refers to the transformation from older analogue or off-line standard business procedures and capabilities to a state relying on the use of data, platforms and tools which are typically connected (on line). This change needs to occur at four levels: personal, company, industry and economy-wide. EABC ran a seminar about this. There is government support, in particular for SMEs, from Ministry of Industry for example. The Thailand 4.0 vision and objectives (being a national interpretation of the 4 IR – or Fourth Industrial Revolution concept), requires digitalization.

From a government perspective, because more is becoming digital, every ministry will somehow come to be a participant in the digital economy and may have an indirect policy-making role. Governments have at least two, and sometimes three roles:

- (i). As policy makers and policy administrators; as regulators
- (ii). As users
- (iii). Sometimes, as operators of key organs – eg a Cybersecurity Command Centre or a Fake News Centre.

For overall policy making, the Ministry of ICT became the Ministry of Digital Economy & Society (MDES), with some rearrangements. The three main agencies are DEPA (Digital Economy Promotion Agency; previously known as SIPA), ETDA (Electronic Transactions Development Agency) and DGA (Digital Government Agency, previously Electronic Government Agency EGA). The two SOEs (TOT and CAT) continue (somewhat confusingly) as corporatized instruments of policy and as operators in MDES. The merged regulator NBTC (National Broadcasting and Telecommunications Commission) is intentionally independent but must follow government policy. A Digital Economy Committee has become a centralized focus of power and a Digital Economy & Society Commission includes a remit on digital society matters. In time there are to be separate commissions (or committees) for Personal Data Protection and Cybersecurity. A Fake News Centre has been established.

What is the Digital Economy?

The ‘digital economy’ is all economic activity mediated by software and enabled by telecoms infrastructure.

This includes core telecoms services such as **voice, messaging, data, and video.**

The goods and services within the digital economy (whether used via consumer, business, government, civil society or wholesale deployment and whether delivered Machine-to-Machine, Machine-to-Person or Person-to-Person) can be broadly grouped as:

intrinsically digital – streaming video, eBooks, computing services, Software-as-a-Service, social media, Internet of Things, Artificial Intelligence, Machine Learning, Virtual Reality services, games, various intelligent uses of Data to create value,

substitutes for established equipment and services – virtual private communications networks, security services, virtualised PBXs, Platform-as-a-Service and services delivered on-line (e.g. accounting / other business processes, graphic design, software development, data analytics, knowledge-based outsourcing, eCommerce, banking and financial services, on-line payments, telemedicine; industry and home automation),

marketing, sale, logistics, etc. of physical goods – (e.g. Amazon, eBay, Alibaba, Tarad.com, Lazada, Shopee),

marketing and sale of services which are not delivered on line (eg air services, taxi services, hotel bookings).

Digital Economy is the means of enabling everyone’s participation in and interaction with social and economic enterprise, and also includes the role played by governments in developing infrastructure and services

The Digital Economy works in three layers. Descriptions of these may vary. We see it like this - the descriptions build up from bottom to top:

3. Applications and Digital Services
2. Operating and Support Systems, Digital Governance
1. Infrastructure (soft and hard)

Applications and Digital Services:

Individual consumer end-user, business, government, group/organization
B2C, P2P, G2C, B2B, M2P, M2M etc.

Operating and support systems, Digital Governance:

Facilitative and supporting policies and regulation;
Platforms to support eCommerce, payments, information, services,
Data Privacy and Cross border; Cybersecurity, digital government; other enabling factors.

Infrastructure (soft and hard)

Networks, backbone, backhaul, last mile, spectrum.
Properly structured and regulated telecoms sector underpins the Digital Economy.

The Digital Economy will see enormous growth. In keeping with Thailand's commitment to achieving the UN Sustainable Development Goals¹, and as with all industries, circular economy strategies will need to apply. These need to be achieved at the same time as the 'Thailand 4.0' objectives, which is Thailand's take on 4IR or Fourth Industrial Revolution. Thailand 4.0 should result in technologies which can be applied and used (AI, IoT, Big Data etc) in support of circular economy efficiencies.

The nation's take up of ICTs (information and communications technologies) varies greatly – private sector engagement tends to be far deeper than government sector, more of which later. The indices below reflect a level from which Thailand has grown; most but not all indices in the digital area have shown improvements in rankings in the past three years. While Thailand moves forward, so do other economies, sometimes (such as Vietnam) at a faster pace, which can then impact the ranking negatively in spite of improvements.

ITU's ICT Development Index (IDI) 2017	Measures the information society, the ICT Development Index (IDI). Quantitative analysis of the information society and highlights new and emerging trends and measurement issues.	78 out of 176 countries at last publication
World Economic Forum's (WEF's) Networked Readiness Index (NRI) – using 2016	Measures the capacity of countries to leverage ICTs for increased competitiveness and well-being. Considers recent innovation trends, citizen, business and government take-up etc.	62 out of 139 countries when this NRI was last published.
IMD World Digital Competitiveness Rankings 2019	IMD's Competitiveness Centre publishes one of the leading general competitiveness rankings. This ranking is specialized for Digital	40 out of 63; more details below.
United Nations E-Government Development Index (EDGI) 2018	E-Government in Support of Sustainable Development. Snapshot of trends in the development of e-government	2018: 73; 2016: 77 out of 193

IMD World Digital Competitiveness Ranking has three sub-indices as noted. Thailand 40th / 63

OVERALL & FACTORS - 5 years	2015	2016	2017	2018	2019
OVERALL	42	39	41	39	40
Knowledge	48	42	44	44	43
Technology	33	30	30	28	27
Future readiness	50	48	45	49	50

The future readiness ranking is poorer than overall – 50th / 63.

¹ See for example 'Thailand's Voluntary National Review on the Implementation of the 2030 Agenda for Sustainable Development, June 2018'

Recommendation about the Digital Economy concept:

It is worth a continual reminder that a structured, layered approach which recognizes the telecoms system, is necessary for success in the Digital Economy.

B. What is in each layer of the Digital Economy?

1. Infrastructure – major issues

Applications and Digital Services:

Individual consumer end-user, business, government, group/organization
B2C, P2P, G2C, B2B, M2P, M2M etc.

Here in this 2019-2020 Position Paper we highlight seven of the major issues about the telecoms sector which impact the Digital Economy and thus the economy.

(a) Telecoms Industry reform/ restructuring and SOE Reform

The telecoms industry globally works on a tried and tested three layer structure. Thai law (Telecoms Business Act) is consistent with this and consistent in that respect with the Telecoms chapter in GATS.

But the industry in Thailand has never properly evolved. This is because of the long duration (through to 2018 and in other guises, on-going) of concession arrangement whereby two SOEs owned the spectrum and allowed the private sector to use it under concession arrangements. The last concession expired in 2018, but due to inevitable

SOE-private sector special deals, the private sector still relies on use of spectrum from SOEs, under special ad-hoc commercial agreements. This is not how it was meant to work: all spectrum was intended to be licensed directly from the NBTC. As the two SOEs are still 100% state owned, they are used as instruments of policy execution in a variety of ways and still wield effective informal power beyond those of an operator.

A merger exercise is current but this will create a kind of SOE monopoly ('National Telecom Co') without actually reforming; so the reform steps are yet to be done. The objective should not be survival under the current business model (whether merged or not).

Historically the SOE evolutionary path in the sector based on global practice has been:

- i) Government departments providing monopoly post, telephone and telegraph (hence the term 'PTT') services
- ii) A separated regulator which becomes independent.
- iii) Corporatisation, often with postal services restructured to another entity
- iv) At least partial privatisation (we stalled about there in Thailand about 2002-2003)
- v) Injection of different financial targets and seeking out value-adding roles
- vi) The reformation or restructuring of the SOE – a sometimes painful process.

Evolution and reform have been tried a few times, but stalled at stage (iv).

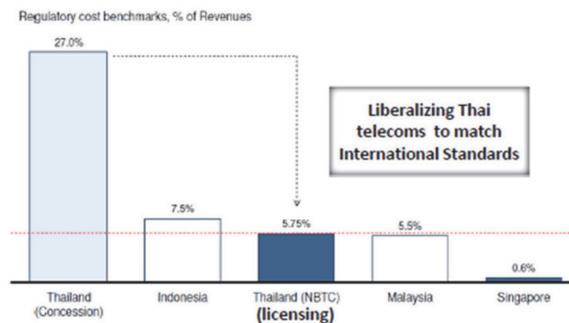
Problems are:

- (i). An industry structure which has not evolved to a single, empowered licensor (NBTC), one which locks in value, has an unfair and unlevel playing field and see two entities striving to survive under their existing structure. Even minor changes to pool certain assets (a step in the right direction agreed in 2015), has been legally challenged even as late as early March 2018, a merger was planned and at time of publication is back on track but will not result in reform
- (ii). Market distortions and upsets to a fair process for allocation of spectrum (before and after auctions, not during) where special deals are done
- (iii). A two-speed industry: direct licensing as promised and an extended de-facto concession-era. (The expected full transition to direct licensing has not materialized; diagram is from NBTC at EABC 'Unlocking ICT' conference July 2013)

High cost of concession

Transcend from Traditional Concessionaire Regime to Licensing Regime

Due to concessionaire regime, spectrum has not been injected into the Thai telecommunications for more than a decade



First time in implementing auction according to NBTC Act (2010). Auction allows basis for fair and transparent spectrum assignment

This spectrum auction is the first act in injecting spectrum supply where demand has been growing exponentially for almost a decade

First milestone to transform from traditional concessionaire regime to licensing regime.

Source: NBTC 2013

- (iv). A poor basis for 5G which relies most importantly on an appropriately structured sector so that infrastructure can be shared.
- (v). Loss of international earnings: We may consider the varied development paths of British Telecom (BT), Telstra, Singtel, Telekom Malaysia (TM), and PLDT (Philippines) and many others. Over some years, all have become listed entities in reasonably to very competitive markets which have strengthened the players in those markets and in most cases enabled the 'PTT' to invest overseas. The TM evolution story in particular is an impressive one (in April 2013 TM won a prestigious regional award for best broadband carrier and has won many similar regional awards since). The transformations may have come with some pain, notably in the industrial area, but they were not ultimately avoided.

These developments have brought benefits to businesses, government and consumers in the home market, strengthened the former 'PTT', added wealth to the home economy, well beyond what it might have enjoyed from an unreformed SOE and the industry with an unreformed SOE, and contributed skills and innovation to the overseas markets in which they have invested. No such development has occurred in Thailand.

Remedies: We believe that, all plans and ideas notwithstanding, no real plan backed by political will from the very top, from all parties, has ever been tried.

For example it may be less costly to promise all workers in the SOEs jobs through to retirement or at least for some years (with whatever re-skilling is needed) under a

restructured model, than to continue with the loss-making activity and activity which stymies innovation and prevents the unlocking of the sector, as we have it today. EABC has recommended that this approach be analysed and applied.

Such structural reforms are possible, as shown by most of the rest of the world in this sector, also the restructuring of JR Central, (Japan Rail), NTT (Japan), BT (UK) and just about every so called 'PTT' (see step (i) above) in the world is a development of a kind not done in Thailand. Unfortunately the two SOEs wield self-centred power which prevents reforms. Corrupt practices are not absent from this sector.

Structural reform means

- (i). creating a workable and regulated **wholesale market** and
- (ii). **re-direction; reformation and re-focus of the two SOEs**. There are two because traditionally one did domestic business, the other international. In days long gone when international was about 'correspondent' business (including much reliance on satellite) this made sense. It no longer does make sense to have two entities, which now seem to pursue just about anything which can be justified via a business plan (including retail mobile, competing with the private sector, which many believe will never be sustainable on a fully costed basis); as stated merger is not real reform.

Reform of the SOEs is a glaring policy omission – for an effective wholesale market, for transparency, to reduce corruption and to support more innovation, to enhance

the overall value of the sector, for 5G which to work effectively according to ITU will need to get the structure right which includes evolving the two SOEs.

(b) National broadband infrastructure

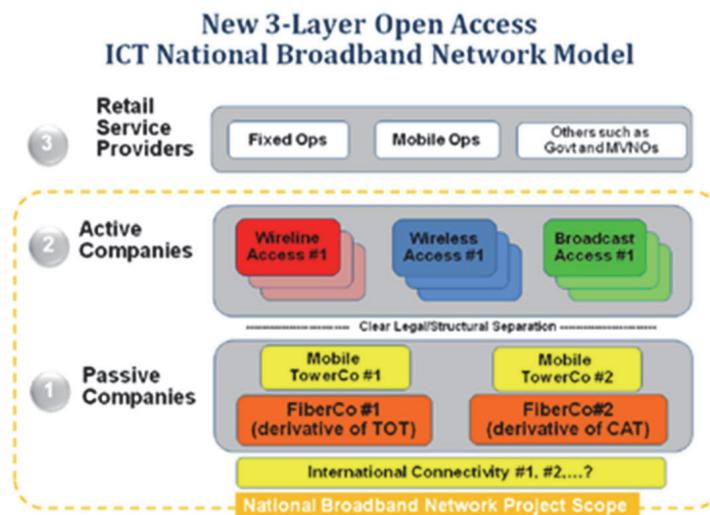
The SOEs continue to be used as public policy tools. While a regional broadband network built and run by an existing SOE may possibly serve some well, the opportunity to do a properly structured national backbone with appropriate wholesale regulation has not been taken. The rural broadband project Net Pracharat² has received well-deserved accolades for its achievements. But it does not provide a whole-of-country solution which would also serve to underpin infrastructure needed for 5G. A structured approach whereby financial returns (and thus funding) varies from different parts of the network is necessary.

Various models were proposed, which illustrate the principles. One is this from 2010 in the chart below. In our recommendation the passive infra companies would include more than just the SOEs but the concept is illustrated. This kind of model has been used elsewhere with success.

(c) International gateways

Liberalising *all aspects* of international gateways and addressing bottleneck issues such as at cable landing stations will improve the ability to access affordable bandwidth for international use. Even with CAT's late entry into the Asia Pacific Gateway (APG) cable,

Model ca 2010 - Thailand



Source: Thailand National Broadband Network Committee

We need something like this...

26

²www.netpracharat.com/Netpracharat_EN/one-page/

Industry collaboration for peering, domestic internet exchange etc are all encouraged, but producing a new government-controlled CAT-led collaboration should be reconsidered.

Thailand has multiple international gateways, as should be the case but internet gateways should be fully liberalized in all respects. Trying to make a single international gateway is not recommended.

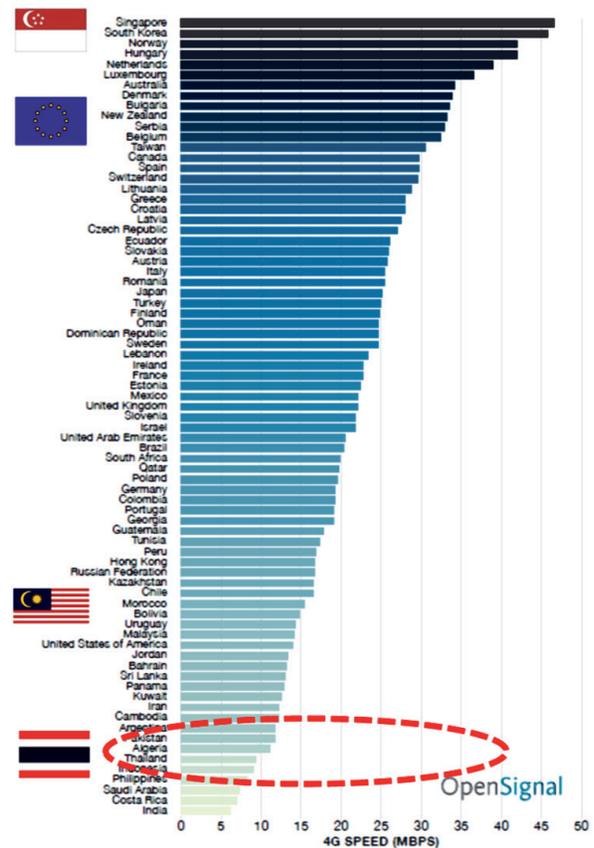
(d) Spectrum

Under the NBTC Act B.E. 2553 (also known as the Frequency Act) s. 4, radio spectrum is defined as a subset of the electromagnetic waves lying below 30 gigahertz (GHz - billions of cycles per second). These support a wide range of business, personal, industrial, scientific, medical research and cultural activities, both public and private. Communications are foremost among those activities and, together with other radio services, are increasingly important to economic and social development. Access to and use of radio spectrum has been highly controlled due to defence and security reasons and for harmonisation of signals by use type. In the last few decades, spectrum management has been gradually changed, the innovation of spectrum regulation tends more to promote public interest. Growth of a variety of beneficial technologies and services drives demand for spectrum, but the regulatory practice has been slow to change. There is an imbalance between the demand of spectrum and the amount of available spectrum, and artificial scarcity increases the high cost of spectrum.

(i) Scarcity and high prices

In Thailand's case a long term plan for spectrum assignment is needed. A national spectrum plan is lacking. Spectrum needs to be freed up from other uses

High spectrum prices can result in lower network quality. A 2019 report from Opensignal shows that all Thailand operators is already fall behind its peers in terms of 4G network speed after the extremely high priced 4G auction for 900 and 1800MHz.



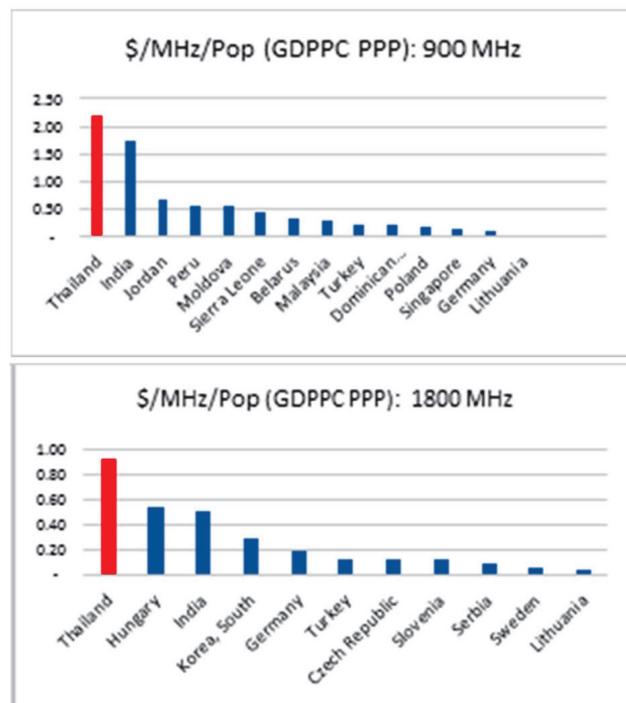
The 2015 and re-run auctions for 4G saw astronomical prices.

700 MHz auction plans in 2019 were based on high prices. NBTC had delayed the 700MHz auction more than once due to a lack of interest from operators. All three major operators objected to the THB17.6 billion (\$562 million) reserve price, for three 2x10MHz blocks licences to be valid for 15 years starting from 1 October 2020. In a messy result, a limited amount of 700MHz spectrum was allocated (30 MHz or 3 x 10 MHz of a total of 45 MHz), with the balance (15 MHz) to be allocated in the February 2020 auction (see below). Proceeds from the auction were intended to compensate the six digital TV broadcasters which recently told NBTC of their intention to return their broadcasting licences.

In addition, the sale of these spectrum slots is connected to the NCPOs policy of relief measures to ease the financial burden of the three existing 900MHz telecom operators, following the high prices paid for 4G spectrum.

Thailand has been experiencing artificial spectrum scarcity due to its complex telecommunication industry. Insufficient new spectrum has been injected into the Thai telecommunications industry since 2000, Thailand has faced unnecessary constraints which impeded the development of its telecommunications industry.

Results of the 900MHz and 1800MHz spectrum auctions for 4G use in the chart below classifies Thailand as an extreme outlier in spectrum prices in both the 900MHz and 1800MHz bands.



Source: GSMAi

The ultimate goal of spectrum allocation policy should be to achieve the most efficient use of the scarce natural resource and ensure the maximum benefit to society and the economy. This is achieved through the comprehensive deployment of the spectrum to increase network capacity and improve the quality of service for consumers

(ii) Spectrum for 5G; plans for 5G services

The 2G, to 3G to 4G development has seen a shift from switched voice to data based services. 5G can be a game-changer which allows a single mobile network to provide a variety of heterogeneous services in various sectors-not

limit only the communication sector as in the past. However, spectrum will remain a crucial and critical resource in the 5G era. 5G needs spectrum within three key frequency ranges to deliver widespread coverage and support all use cases:

sub-1 GHz: Low bands provide favorable radio wave propagation characteristics – useful for coverage in remote areas and into buildings,

1–6 GHz: Mid-bands are particularly beneficial as they offer a favorable “middle ground” between propagation characteristics (coverage) and bandwidth (capacity). Mid-bands within the 3.3GHz to 5GHz range should be made available in 2020.

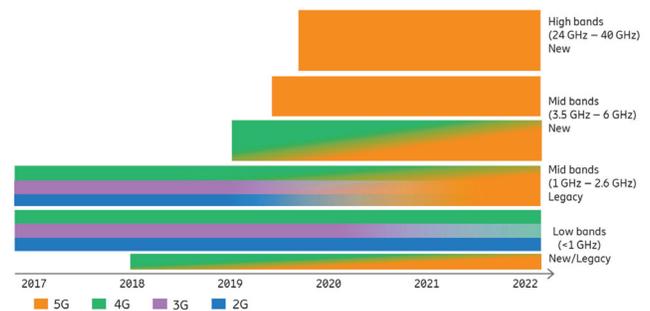
Above 6 GHz. High bands have wide bandwidths essential to serve rapidly growing traffic demands. The high bands expected to be deployed early for 5G include the 26GHz, 28GHz, 37GHz and 39GHz bands.

Operators can be authorized to use all ranges to rollout 5G network efficiently and support the various requirement from different sectors. To avoid the failure of efficient 5G network quality, given the heavy investment required to deliver 5G and provide reliable connectivity for all, it is important to provide a transparent and predictable pro-investment and pro-innovation on regulatory framework. Thus a long term spectrum plan is needed.

At the time of publication, NBTC plans to hold four spectrum auctions for 5G in February 2020: 700MHz, 1800MHz, 2600MHz and 26GHz, to be divided into 56 licences. Some 700 MHz had already been allocated in 2019 (see above). For February 2020, the

700MHz range is the balance after the 2019 allocation divided into three licenses, each containing 5MHz of bandwidth, with a reserve price of THB 8.7 billion.

Figure: Indicative spectrum allocation over time; 2G will be phased out, then 3G (some economies have already phased out both). In November 2019 the NBTC announced plans to defer the cessation of 2G. Source: Ericsson



Achieving the most value from spectrum value realisation requires adopting a licensing process without technology bias, so that the most suitable, efficient and demand-oriented technologies can be deployed. To facilitate achieving that goal, internationally recognized technology standards.

One reason provided for lack of a spectrum plan is that spectrum is currently used for broadcasting (MCOT), satellite or military use. Satellite service provider Thaicom Plc is reported to have agreed, on conditions to vacate the 3400-3700MHz spectrum range to free it up for auction to use for 5G use. Satellite is to move from being under concession to being under a PPP model.

A Bangkok Post editorial in early November 2019 recommended that the “NBTC should learn from its past mistakes of handling of the auctions for digital TV and 4G licences which brought about excessively high bidding prices by operators who subsequently could not afford to pay, leading to state bailouts” ... “Instead [of maximising immediate prices], the regulator should focus on what bidding models can provide optimum benefits for all key stakeholders -- the state, business operators and end consumers”.

In most countries, operators cannot afford not to participate in spectrum allocation programmes (usually done by auction). But the more spent on spectrum licences, the less spent on network upgrades, product innovation and customer service.

At the time of publication the following seem absent from or are concerns about 5G spectrum allocation plans:

- (i). Focus on maximising revenue rather than a balanced approach
- (ii). Emphasis on EEC and smart city zones,
- (iii). Absence of MVNO policy following public hearing held in August 2019
- (iv). Absence of bankable wholesale policy

EABC recommends not rushing ahead with 5G rollout without first getting fundamentals in better shape. There is significant investment in 4G and at the time of publication some of the spectrum is not fully cleared for use. 5G use cases are many, but good high speed bandwidth offered by 4G still has value to be provided until more reliable plans for 5G can be put in place:

- A good pricing with economically-based pricing reflecting the interests of all user groups.
- A long term spectrum plan which can be relied on.
- Industry restructure; a confirmed path for SOE reform and infrastructure.
- Workable plan for MVNOs (a public hearing was held in H2 2019 but the results do not seem to be part of the spectrum plan at time of publication). (more on MVNO’s below).
- Not technologically neutral, requiring operators to use the spectrum only for 5G technology.

In keeping with the globally standard model for the telecoms industry with three licence categories, EABC also recommends considering fewer hard infrastructure based licences. The Singapore model (issued by its IMDA) is an example of this thinking. It is possible under that model that only two infrastructure-based licences will be available. Business justification relies on various use cases; it would be surprising if every operator were able to excel in every use case.

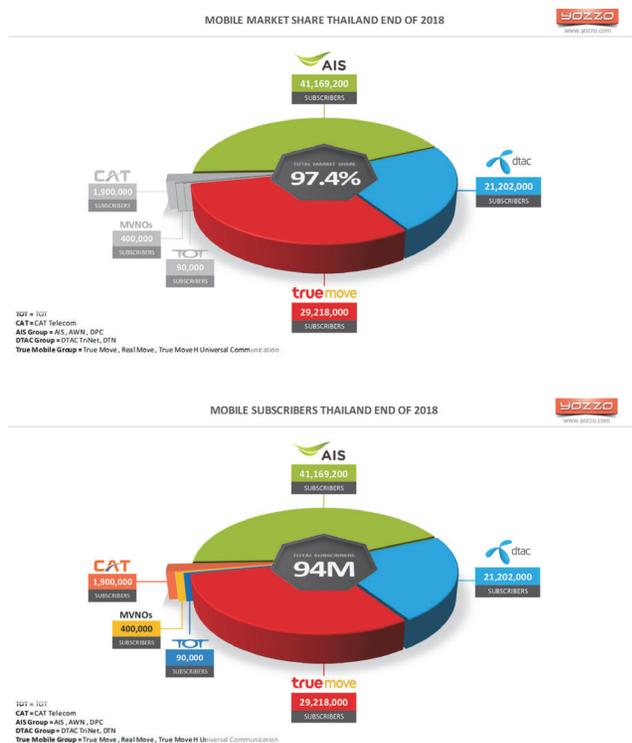
(iii) Regional harmonisation

The benefits of spectrum harmonization include: facilitating economies of scale, enabling global roaming, reducing equipment design complexity, preserving battery life, improving spectrum efficiency and potentially reducing cross border interference. There are a number of bands already in use by operators for earlier access technology generations that are expected to be shared with 5G. Significant efforts are still needed to align allocations between countries to secure the right spectrum. This is an urgent matter, as 5G networks are

already being deployed in new frequency bands. Alignment is crucial for the economics of the emerging 5G ecosystem, as it directly affects costs of devices and infrastructure.

(e) Mobile Virtual Network Operators (MVNOs)

Figure: Mobile market share at end 2018 show the very small numbers of MNVO customers (and small market share of TOT and CAT mobile customers). Source: Yozzo Consulting.



A Mobile Virtual Network Operator (MVNO), offers mobile services, similar to mobile network operators (MNOs). However the MVNO owns neither the spectrum nor most network elements., instead it enters into an agreement with an MNO to pay for bulk access to network services, at wholesale rates, and then sets its retail prices and service offers independently. There are variations on business models—a continuum view can be useful, which also includes a ‘full MVNO’:

VNO models – variety of commercial relationships

	Reseller	Service provider	Partial VNO	Full VNO	Network Operator with spectru.
Radio access					✓
Switching				✓	✓
Transmission				✓	✓
Gateways			✓	✓	✓
Interconnect			✓	✓	✓
Service platforms			✓	✓	✓
Own SIM like card etc		✓	✓	✓	✓
Products and services			✓	✓	✓
Customer management		✓	✓	✓	✓
Billing		✓	✓	✓	✓
Marketing and sales	✓	✓	✓	✓	✓
Device – handset, PDA, PC card			✓	✓	✓

Over 60 MVNO licenses have been awarded in Thailand, with nine launching since the introduction of MVNO in Thailand in 2009. Six remain more or less active with approximately 350,000 – 400,000 subscribers combined; this represents 0.37% or so of market share of subscribers.

The MVNO is not an OTT (‘Over the Top’) service, but has to satisfy - and live up to industry standards and terms - in order to obtain a MVNO license in Thailand. It is an organization bound by local laws and culture, including paying tax and fees as well as adhere to regulations.

The rationale for introduction of MVNOs to a market, include:

- Stimulate competition,
- Efficient utilization of network resources,
- Efficient utilization of investment in network infrastructure,
- Introduce new or better services aligned to lifestyle propositions or to serve specific segments or customer bases in other industries which may currently be unserved or underserved,
- Promote investment opportunities for local and international businesses in the telecom market.

Approximately one third of the companies who have obtained a MVNO license in Thailand have foreign investment/shareholders and include brands like Softbank, BT (British Telecom), Axiata, NTT, DoCoMo, etc.

Somehow the current rules requiring 10% of licensed spectrum to be made available for MVNOs has not resulted in a thriving MVNO sector. A fair and workable policy which addresses the opportunities afforded by MVNOs is needed.

MVNOs tend to be smaller businesses. While SMEs in other sectors enjoy benefits, not so in the telecoms sector. . To assist MVNOs a change in the licensing model to class licenses (dispensing with the need for individual licences) is recommended as first step. As noted in the SME Chapter of this Policy Paper, clearing the regulatory overhead is a key issue for SMEs.

In August 2019 the NBTC invited stakeholders and the public to two days of public hearing regarding MVNO, similar to the notification in 2013 i.e. to promote the entry of MVNOs into the market.

At the time of publication, there has not been any feedback from the NBTC on the responses and suggestions provided from the stakeholders during and after the public hearing and nothing in the spectrum auction plans for February 2020 seem to reflect any such input.

Marketing innovation in Thailand is generally well-regarded. Thailand's economy and consumers could do very well from an innovative and thriving MVNO market, as has been seen in many parts of Europe, Malaysia and other parts of S E Asia.

Recommendations about Spectrum; 5G and MVNOs:

- Industry reform is needed, including wholesale and SOE reform. An holistic plan for national broadband infrastructure
- Liberalising international gateways fully
- Spectrum: needs a long term plan; economic-based pricing; avoiding artificial scarcity
- 5G: Why the rush? Thailand will not gain from rushing in unprepared – first need a long term spectrum plan, industry restructure and SOE reform; spectrum pricing

- For MVNO (Mobile Virtual Network Operators), recommended is developing of a workable and fair policy to stimulate. Abolishing individual licences and rather using class licences (as Europe did from 2009) and many countries do now. Standard benchmarked access offers should be workable. See 2019 business submission

(f) An Independent regulator - NBTC

EABC reiterates the issues about the importance of an independent regulator. The three dimensions to independence (independent of any operator; independent of government edict; operational integrity) means a need for a board which includes outsiders in a non-executive capacity. There are models in SET listed companies, in similar regulators in the region and to some extent in other agencies in Thailand. Such a change would strengthen the regulator.

(g) Foreign Equity Restrictions and service sector liberalisation

Foreign equity caps for category 2 and 3 licencees (s.49) are in the Telecoms Business Act but for category 1, List 3 of the FBA applies which includes a permissive regime for majority foreign ownership via a Foreign Business Licence.. The issues have not materially changed, and are referred to in the Cross Functional Chapter in this Position Paper, which describes restrictions on foreign equity participation, and thus effective competition, in the services sector. It also has a useful description of what

service sector liberalisation means through five elements. A *structured approach* is needed for foreign equity in telecoms, with changes to the law including the Telecoms Business Act which hard wires foreign equity at 49% for category 2 and 3 licencees. Telecoms Business Act needs amendment to lift the equity limits. FBA List 3 or other policy needs revising to make majority foreign equity the norm.

The **Foreign Dominance Notification** (FDN) which applies to category 2 and category 3 telecoms licencees has no place in a competitive market especially when all three major operators have foreign participation. It is an unnecessary and burdensome overhead which is out of thinking with ‘Thailand 4.0’ and the Simple and Smart Licence project objectives. EABC has formally recommended its revocation. It should be frozen immediately and not applied, then repealed in the short term.

With changes in the market, the Foreign Dominance Notification of 2012 continues to be an administrative burden with no value to the economy. It is recommend that it be frozen, then rescinded.

A deep-probing and comprehensive seminar was organized by EABC in February 2019. Detailed materials in a Primer and Backgrounder in the event Booklet are available on the EABC website.

EABC has also made a detailed submission on the Foreign Business Act in June 2018, also available on the EABC website and referred to in the CSI chapter.

Recommendations about NBTC, foreign equity:

- NBTC governance needs revision to include independence and independent thinking focused on the good of the industry, economy and consumers.
- The Telecoms Business Act needs amendment to lift the equity limits. This could be effected via a structured policy; FBA List 3 or other policy needs revising to make majority foreign equity the norm.
- The Foreign Dominance Notification should be frozen, not applied and then rescinded (removed) in the medium term.

2. Operating and Support Systems; Digital Governance**Operating and support systems, Digital Governance:**

Facilitative and supporting policies and regulation;
 Platforms to support eCommerce, payments, information, services,
 Data Privacy and Cross border; Cybersecurity, digital government; other enabling factors.

(a) Trusted Internet concept

The internet is an essential business tool and a key ingredient in an intelligent and well informed society. Both aspects are thus relevant to Thailand as a business destination. Thus EABC has proposed a TRUSTED INTERNET as the basis. This has elements of security, privacy and (with some limits) free expression and comment, all essential in a business context. Internet governance should be by the model the majority of the world supports: the multi-stakeholder model (MSM).

The amended Computer Crimes Act (2007 and amended 2017) grants authorities wide powers to control and censor online content and widens the law about defamation (which can be criminally applied), almost

making possession an offence in itself. Authorities can now access private data without following usual process. Such data includes records of financial transactions, phone calls and text. Records of what is done with such data are not mandatory.

What can be compulsorily removed from the web is too broad. Illegal content includes that which ‘threatens stability’, ‘threatens the economy’, ‘is immoral’ and content violating copyright laws. While powers are needed, the CCA as it is does not well support the TRUSTED INTERNET concept.

(b) Cybersecurity**(i) Background, standards, types of threat**

Cybersecurity standards³ have existed over several decades as users and providers have collaborated in many domestic and international forums to effect the necessary capabilities, policies, and practices - generally emerging from work at the Stanford Consortium for Research on Information Security and Policy in the 1990s.^[3] Also many tasks that were once carried out by hand are now carried out by computer; therefore there is a need for information assurance (IA) and security.

A 2016 US security framework adoption study reported that 70% of the surveyed organizations see the NIST Cybersecurity Framework as the most popular best practice for Information Technology (IT) computer security, but many note that it requires significant investment. There are easily over 15 major standards, some sector specific (eg banking).

³ https://en.wikipedia.org/wiki/Cyber_security_standards

Based on surveys of leading cybersecurity providers, *types of threats* predictions include:

- State actors hacking and distorting national systems
- Identity theft through taking over any of several identifiers, including biometric data
- Blockchain has many uses other than for Cryptocurrencies, but Cyber criminals will focus on Coins and Exchanges
- Cyber Criminals will use Artificial Intelligence (AI) & Machine Learning (ML) to conduct attacks
- Supply chain attacks will become mainstream
- File-less and File-light malware will explode
- Organizations Will Still Struggle with Security-as-a-Service (SaaS) Security
- Organizations will continue to struggle with Infrastructure-as-a-Service (IaaS) Security — More Breaches Due to Error, Compromise & Design
- Financial Trojans will continue to account for more Losses than Ransomware
- Expensive Home devices will be held to ransom
- IoT Devices will be Hijacked and used in DDoS Attacks
- IoT Devices will provide persistent access to Home Networks

(ii) Cybersecurity Act

The Cybersecurity Act came into force in late May 2019. EABC was involved in public hearings and submissions and the government is to be commended for bringing to

closure a law where many had diverse views. The resulting law leaves open some concerns, some are noted:

Governance: EABC sees government having three roles in this context:

<i>Three Roles of Government</i>	<i>What is should be</i>
Policy Maker, Rule Marker	Some critical infrastructure is in private hands. Needs multi-stakeholder model (MSM) of governance with private sector on board
User	Cybersecurity laws apply to all; Government actors should not be exonerated from complying with Personal Data Protection law or Cybersecurity law.
Operator of a Cybersecurity Command Centre	Direct management needs independence from policy making and independence from infra owners, but co-operation with private sector needed – MSM model.

Bodies to undertake these should be separate. Similar to the Personal Data Protection law however, overall governance shows some common and overlapping functions.

Standards for state action. There are three levels of threat, which makes sense. But only one (the least severe) allows for oversight or review. Acting with an immediate response is sometimes necessary. This is no basis for dispensing with due process and oversight. Although the Act does require procedures to be developed, the idea that these can be carried out without court order and absent any other review, will not lend support for trust of the overall system. All state action should be based on proper purpose and standards and should be both administratively reviewable and justiciable.

There is too much power to the National Cybersecurity Committee (NCSC) often apparently without sanction. Government will have the vast and unlimited power to carry out mass surveillance without court approval. This appears to be against the privacy principle under section

32 of the Constitution of Thailand B.E. 2560 as it would not in our recommendation meet the ‘necessity’ test and the Act should not be used as ‘back door’ means of creating the justification for violating privacy under s. 36 of the Constitution. The Act should not be in conflict with the Personal Data Protection Act even acknowledging that there are emergency exemptions.

Overriding Data Privacy Does the Cybersecurity Act override PDPA protections? Validly?

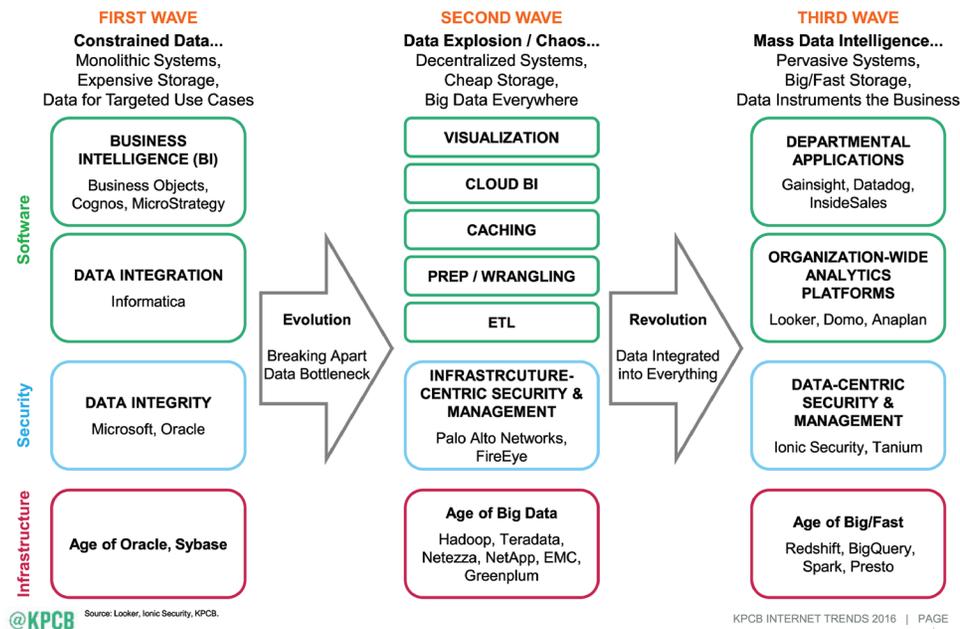
Critical Information Infrastructure and how the private sector gets involved operationally. CII may be in public or private ownership. CII is defined very broadly, exactly how otherwise innocuous infrastructure (eg someone’s laptop) may be designated as CII needs to be based on an objective process. The need for private inputs into planning and operational protocols is well understood.

(c) Personal Data Protection (sometimes referred to as ‘Data Privacy’)

(i) About data

Data is an asset; it is a service in GATS, and also supports the trade in goods and services. New ways of analyzing data and ‘being digital’ show the need for different laws and policy.

The proliferation and wide availability of data (including public data sets) means that data governance become more critical. As with all on-line aspects, EABC recommends a multi-stakeholder model (MSM) of governance which includes business, government, individuals, civil society, industry groups as users all of which need to play some role in setting, implementing and supporting the rules which make the system work.



Source: Mary Meeker, Internet Trends 2016

McKinsey Global Institute calculated the GDP impact of data flows in 2014 was \$2.8 trillion, a figure which is now larger than the trade in goods, and estimates the long-term potential GDP boost for some countries by increasing their participation in global flows as up to 50%. Consequently, countries that fail to recognize and adapt to the new business models and potential risk losing their share.

Data as an asset

Digitization is transforming business models in ways that enable more cross-border activity

		Flow type				
		Data	Goods	Services	Finance	FDI
Cross-border implications of digitization						
Remote monitoring	Remote tracking	●	●			
	Remote maintenance	●	●			
Supply-chain management	Remote inventory management	●	●			
	Supplier management	●	●			
Access to global markets	Cross-border access to customers	●		●	●	
	Cross-border access to labor	●		●		
	Cross-border access to finance	●			●	
Business operations and strategy	Centralized back-office operations	●		●		
	Cross-border digital payments	●			●	
	Real-time communications and collaboration	●		●		
	Data sharing and analytics-driven decision making	●	●	●	●	●

SOURCE: McKinsey Global Institute analysis

Source: McKinsey Global Institute

(ii) Data Hub Fundamentals

Data hub fundamentals were well covered in the 2018 European Business Position Paper. Thailand is well placed geographically as a centre of S.E. Asia. That is helpful for the movement of physical goods, but data services tend not to respect physical geography. For success as a data services hub, other factors are needed including a whole range of policies about data and supporting the Trusted Internet concept.

(iii) Personal Data Protection Act

The Personal Data Protection Act (PDPA) came into force partially in late May 2019, with the balance to come into force in late May 2020. The government, in particular the Ministry for Digital Economy & Society, is to be commended for bringing this long-discussed and important matter to closure.

The PDPA follows well-recognised international norms and is compatible with (in many respects identical to) the EU General Data Protection Regulation (GDPR) which came into force in May 2018. The GDPR continues to apply in Thailand and anywhere else in the world, depending on EU connecting factors. The PDPA requires consent to each stage of collection, use and disclosure and covers cross border rules etc.

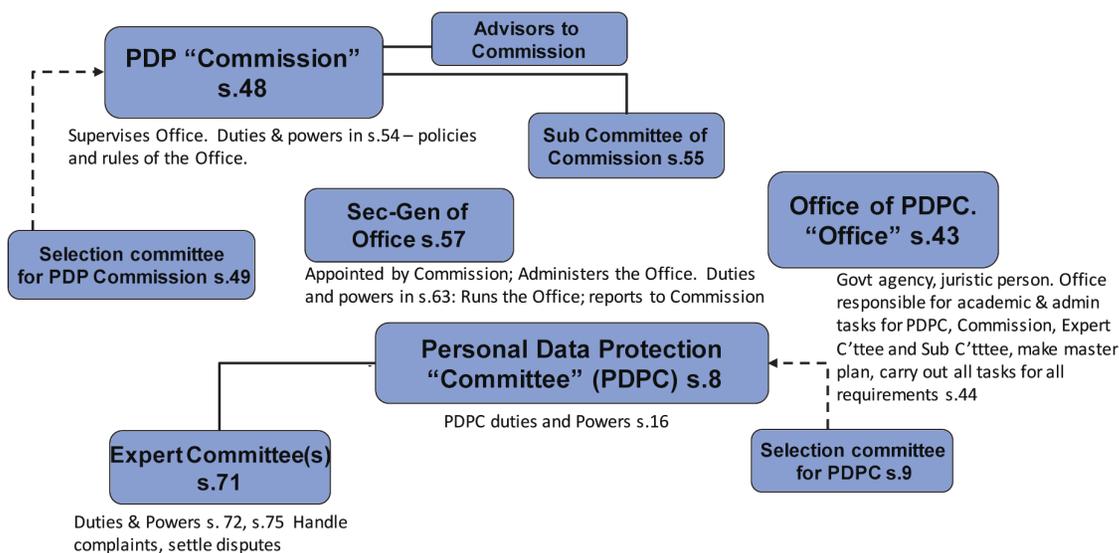
EABC has been involved in all relevant stages of consultation and ran a seminar with experts in late 2018. At the time of publication, MDES is setting up organs and then developing regulations. In this part certain features of the PDPA are highlighted.

Governance The PDP Act sets up many government and private actor duties and rights. At the 10 October 2019

“Privacy for All” event, it was apparent (and stated by the EU expert) that this law involves a change of mindset to that applicable to traditional public administration.

The structures described in the law are quite traditional, except that the Chair of the PDPC, of the PDP Commission and the Secretary-General are all required to have necessary knowledge and experience, which is positive.

Whether the structures really support effective administration in discharging the functions envisaged by the Act is an open question. For example – PDPC role vs. Commission’s role; why enforcement etc is left to an Expert Committee of the PDPC which may not have the best standing to promote the PDPA’s role, and other points.



Source: EABC own analysis

The central body is the PDPC; it is a 'Committee'. The supervising body is a 'Commission'. In English a 'Commission' generally has high level powers and the right to administer laws. Examples: NBTC (TH), SEC (TH), PDPC (SGP). It is generally regarded as having greater authority than something called a 'Committee'. Clarification about how the Committee and the Commission are to function together is needed. Technically the Sec-Gen (like a CEO of this government function) reports to the Commission, not the Committee. There are the usual multiple roles of the same person eg Perm Sec MDES, Sec-Gen.

Consent: The standard model is consent to collect, use, disclose. The purpose to be stated at time of collection. Due to practical issues with express consent at the time of collection, the onus consent to use and disclosure stages becomes greater. Subject to certain specified conditions, some kind of contextually implied consent to collection should be possible. How this is administered has some complexities.

Cross border rules: This is domestic Thai law (PDPA) which regulates the ability to disclose data across borders. The PDPA has a reasonable cross border regime, time will tell how it works out in practice.

The former EU-US 'Safe Harbor' regime (replaced by a 'Privacy Shield'⁴ arrangement) has some applicable principles but the EU-US situation is not easily adaptable to one covering disclosure and use of Thai data abroad. It has extra-territorial reach (based on connecting factors) and reaches European companies doing business in Asia and other companies with European interaction,

⁴ <https://www.privacyshield.gov>

depending on specific circumstances. The concept of 'Adequacy' allows for blanket pre-approval (eg EU-Japan)

Nationalisation/Localisation GATS jurisprudence shows this is not allowed subject to exceptions in medical records, personal financial records, national security. The onus is on the person not disclosing to show why. Some nations aim to nationalize or localize data by preventing disclosure through treating the personal data as a national asset. While that is not part of the PDPA, it is suggested that this is a technical impossibility due to the competing jurisdictional claims about aspects of relevant transactions and the data. Rather the real issue is about the exceptions noted, which are usually covered by specific legislation. As with most economies, Thailand has specific laws about how personal financial records, medical records and sensitive national security data are stored.

Extra-Territoriality: As a separate but related issue, the PDPA applies to relevant data outside Thailand. The PDPA (s.5) has borrowed from GDPR Article 3 and exports too broad a jurisdictional claim. It is up to private international law rules / conflicts of law rules to determine which law applies to various aspect of the system and data. The Internet and Jurisdiction Policy Network www.internetjurisdiction.net/⁵, is a global effort to harmonise cross border and issues of competing systems of law.

EABC also had assistance from an expert in cross border and extra-territoriality, Professor Dan Svantesson⁶ about

⁵ Executive Director Bertrand de la Chapelle spoke at the Fifth Biennial conference of the Asia Society for International Law in Bangkok, Nov 2015

⁶ Professor of Law, Bond University; Managing Editor of International Data Privacy Law, published by Oxford University Press <https://academic.oup.com/idpl>

a useful approach to extra-territoriality which have been provided to MDES. This ‘layered’ approach to extra-territorial application, and may inevitably be needed. This recommends that for major policy issues, the Thai law can apply overseas, but for administrative matters, respect for the local law should be accorded.

EABC was a key part of the Data Privacy and Data Protection seminar in November 2019. The booklet from that event is downloadable from the EABC website, its Primer and Backgrounder compare the GDPR with the Thai law and it includes recommendations about this layered approach to extra-territoriality.

Right to access/correct/delete as relevant is an important aspect of data integrity. The GDPR and PDPA include these concepts in slightly different ways.

Administrative burden A real-life simulation is needed to determine how practical it will be to require full compliance in all cases. There could be a heavy administrative burden for SMEs in particular.

(d) Digital Government

Until recently, just about all ‘eGov’ developments were done by agencies on a ‘silo’ basis. This meant multiple log-ins, lack of one-stop service.

What has been needed is a ‘whole of government’ architecture with phased development of inter-Agency and Citizen to Government (C2G) capability, building to this architecture.

Thailand has ranked relatively poorly on digital government development. While areas such as Bank of Thailand may be leaders, others such as Immigration still rely on large amounts of paperwork. Downloadable apps should not however infringe privacy.

The Digital Government Agency (DGA – formerly Electronic Government Agency) is addressing this challenge which will be a major effort. A National ID programme with a National ID card should turn out to be positive development. Security and privacy are large issues.

Unfortunately the Licence Facilitation Act (while offering some good steps towards standards and reducing corruption) has no eGovernment target. The manuals which Agencies produce under it are based on whatever state the Agency is in in terms of eGov development. As going on-line requires process re-engineering, new manuals would have to be done. It is recommended that the LFA be revised to accommodate these objectives. The LFA may not be seen as the basis for good government development.

Recommendations about Data Governance, Digital Government

- Cybersecurity needs an MSM approach; regulations and organs to support this principle; state actors should have a defined basis for action and be accountable.
- Data Privacy – avoid administrative burden
- A ‘whole of government’ architecture with phased development of inter-Agency and Citizen to Government (C2G) capability, building to this architecture, is needed.

(e) Fake News

The world is developing responses to challenges brought about by the accelerated ability of the on-line world including social media to accelerate the carriage of information, influence and amplify messages. Propaganda is not new but there is now a new threat. Minimising fake news without impairing the important aspects of free speech is a worthwhile economic and social objective, in keeping with the 'Trusted Internet' concept described in this chapter, which relies on a Multi-stakeholder model (MSM) of governance.

First, to be relevant 'Fake News', there should be two elements:

- 1) materially false information is used (it is not about an opinion, or minor errors etc); **and**
- 2) the materially false information relates to certain kinds of negative outcomes or harm (eg impacts national security or destabilises a society, misinforms in ways which cause real harm or undermines informed debate). Nebulous tests such as 'being against the public interest' are not always helpful.

Perpetrators of Fake News may include foreign state actors, foreign criminal groups, governments (including one's own national government), black hat hackers, commercial groups amongst others.

Second, who is to be protected by any Fake News policy needs to be clear. The system cannot be only about protecting the state, or a government, or political leaders. The protection needs to be about institutions (eg trust in

the press; the State of Thailand; the Thai economy; Thai society), persons (citizens, residents, civil society groups, private entities such as companies and trade associations). While not a substitute for defamation remedies, corrective action and other aspects need to be available where material harm has occurred or is likely (the second element in the concept of 'Fake News').

EABC recommends a number of measures:

1. Education and training – understanding on-line business models, learning how to spot Fake News. Primary, secondary and tertiary education should have courses to spot fake news. Guideline should be published for training so that Fake News segments can be included in a wide variety of educational programme. Digital Literacy courses are important (see under Digital Literacy below)

2. Fact checking – Encourage establishment and development of Fact Checking bureaux. Any government-sponsored bureau must be and be seen to be independent. It cannot be a final arbiter of the truth. Publishers and social media should have fact-checking functions. A government centre should have a clearly defined role and should not be a monopoly.

3. Greater support and respect for quality mass media and professional journalism. Quality reports in the mass media including the publications from investigative journalism play an important role in informing, analysing and providing perspectives, and thus are positive for an attractive and open economy and well-informed society. Some political leaders have referred to mass media as 'Fake News providers' and even 'the enemy of the people'.

Journalist training, raising of quality standards represent on-going essential work. Some political leaders have referred to anything they do agree with or which is critical of their views as ‘Fake News’. The press in any well-ordered economy plays an important role in shining a light into areas which some would prefer to covered up or hidden, very often relying on a ‘national security’ mantra.

4. Role of larger tech firms / social media – A complex issue with several aspects. Fake accounts are often used as tools of influence. Ability to remove fake accounts, block access etc. Mandatory fact checking for specified content categories at least. Encourage independent fact checking and require removal of intentionally harmful and fake accounts. While previously social media platforms may have been regarded as mere conduits, they are now regarded as being similar to publishers and will have responsibility for fake news perpetration. Social media algorithms tend to amplify messages by picking up on phrases, sentiments etc which can help to sell ads, and by microtargeting. This can undermine the process of discourse which applies when all see the same content. One possibility is limited or conditional exoneration, similar to the concept in the intellectual property world (see IPR Chapter, part 3). At the time of publication, some social media (eg Twitter) have decided not to carry paid political advertising; the Facebook view was to allow readers to determine for themselves. This area is in flux..

5. Corrective statements can be issued under existing arrangements. These can be treated as valid perspectives not as hard truths. It is not recommended to adopt the Singapore model – Protection from Online Falsehoods and Manipulation Act (POFMA) which has the ability to

force corrective statements and allows any minister to be the decider of the truth, which stands unless and until a Court decides otherwise. The law is similar in several respects to a law in Najib-era Malaysia, since repealed by the government which was came into power in May 2018. Corrective statements if not fairly administered, may amount to just a different view, but with some state or official support. It is noted that one function of the Fake News Centre (see below) is to issue corrective statements. If balanced and well-researched, it should be a positive contribution as a better informed audience but one which should not be seen as a hard truth or an official view.

6. Civil society and citizen initiated responses should be supported and made available. Just as citizens and civil society can bring actions or complain, so to in this case should they be able to respond to Fake News.

7. Legislative changes Is any additional law needed and for what purpose? There are several laws which currently proscribe false statements: Computer Crimes Act (CCA), Special Investigation Act; Telecoms Business Act, Licence specific decrees and others. EABC recommends a review of these in particular the CCA for balance and usability, treating it as if a new law and applying the Regulatory Impact Assessment Act. The CCA is an old-style law where some provisions are near-impossible to comply with result in selective enforcement. Additional legislation could then support, *only if necessary*, the policy recommendations above. Penalties should only be available where serious harm has been intended to the Thai economy, or to Thai citizens and residents. A law such as POFMA which gives a kind of “legal truth” or “official truth” status to statements of government officials, is not necessary or recommended.

8. Clarity on remedies. It should not be assumed that the requirement in the CCA to maintain records should somehow be a basis for evidence about fake news.

The CCA distinguishes between ‘computer data’ (content) and ‘computer traffic data’ (metadata). Somehow a ‘service provider’ which could be almost anyone, is required to maintain metadata records and may be required to disclose it. Accurate content conclusions based on metadata are unlikely. EABC recommends a deep review of the CCA including these aspects.

The government (in particular Ministry of Digital Economy & Society) is to be commended for addressing the Fake News issue by establishing a **Fake News Centre** and making plans for education about fake news. However some cautions are recommended. As noted, corrective statements (in the way we describe, not as some kind of official truth) may be a useful tool and including a wide variety of experts is sound policy. EABC recommends avoiding the kinds of tools seen in POFMA (see above) and encourages the evolution away, in time, from the use of a state-owned fixed line telecoms operator (TOT) as a key resource and central part of the Fake News Centre. Our recommendations for evolution of the SOEs including TOT is earlier in this chapter. Extending the shelf life of a state-owned entity, just because state-owned is not, in our recommendation, consistent with the reform mandates.

In addition, organised counter attacks may be something which a state finds a necessity to engage in, but it is recommended only in the case of foreign state-sponsored attacks designed to destabilise the Thailand economy or Thai citizens or residents. These are tools of cyberwar defence.

Recommendations about date, on-line governance and fake news.

- Fake News needs a package of measures; the outstanding remedy being education; MSM principles are needed.
- The Fake News Centre should not become an arbiter of truth.
- Fact Checking bureaux and higher investigative journalism should be supported.

(f) Dispute resolution

EABC recommends joining forces with others in the business community in Thailand who wish to see the nation’s capabilities as a centre for Arbitration strengthened, including with specialist skills in digital areas including data privacy. This would be in addition to a dispute resolution centre specifically focused on personal data issues.

Amendments in 2019 to the Arbitration Act and the availability of smart visas for foreign arbitrators are positive steps.

As a separate but related issue, on-line models for dispute resolution (whether or not the subject matter is on-line services) can bring greater efficiency.

(g) IPR: Software, Responsibility of On-Line Intermediaries

Intellectual Property Rights (IPR) are an important aspect of building a knowledge and innovation economy and in supporting investor confidence overall. Please see the IPR

chapter. There are two key IPR issues relevant to Digital Economy:

Software Piracy: Software piracy practices in Thailand continue at an acute level. It is common practice for example to use counterfeit operating systems and other unauthorised versions of software.

Remedies include a range of measures:

- (i). A change in attitude to non-tolerance of the use of pirated software.
- (ii). More affordable versions – e.g. academic and student versions and SME versions, all with appropriately packaged functionality levels.
- (iii). Education about the negative consequences of the use of pirated software.
- (iv). Greater likelihood of being caught and enforced penalties for breaches.

Responsibility of on-line intermediaries for IPR infringements. On-line intermediaries are also referred to, in this context, as intermediary service providers (ISPs). The topic is covered in part 3 of the IPR chapter. Aspects of the Computer Crimes Act and Copyright Act are relevant.

Recommendations about IPR:

- Software Piracy needs education to change practices, and also very affordable versions to that incentives for misuse are reduced.
- Positive developments in the regulation of responsibility for on-line intermediaries should see a better balanced approach. See part 3, IPR chapter.

(h) Skills in the Digital Economy; Digital Literacy

Skills for the digital economy are in high demand but lesser supply. Broadly two actions are needed – education and re-skilling, and relaxation of out-dated and restrictive visa and work permit rules and regulations.

The nature of the industry is global. Confining source pools to national boundaries makes it harder to find the right skills and limits innovation. EABC’s recommendation is to strive for an innovative and entrepreneurial mind-set in graduates and other ICT and other digital industry participants. This implies a change to education and also to certification for relevant skills. We do not note it separately here; however, intellectual property protection is an essential ingredient in the attractiveness of various IT hub plans.

As computer-related courses are taught in English, enhancing English language education (and its particular contribution to the soft skills of problem solving and project management) is especially important.

We caution against a *licensing* approach for IT skills and we see this as an unnecessary and non-value-adding measure. The marketplace is already a good determinant of skill levels and fit. Similarly, the idea of a government *certifying* agency will not in our view contribute towards the better development of skills nor the better deployment of skills in Thailand and Thai skills abroad. In this respect the ASEAN ICT Master Plan we believe needs revising. Again, however, an IT Competency Framework would be a useful means of being able to identify skills.

Capitalising on the benefits of innovation and IT leadership will mean support for free movement of a range of skilled people, and investment in education and training in ICT areas and English language training. An IT Competency Framework will be useful but without a licensing or certification regime.

There is a policy aims for 500,000 IT jobs in Thailand within five years or so, on which EABC has recommended as follows:

- 1) Revised IT education with emphasis of soft skills such as problem solving and project management, critical thinking skills; changes from early primary (to develop enquiring minds); learning English
- 2) IT Competency Framework and a holistic and strategic approach to skill gaps; identification of which specialist areas might be areas of special comparative advantage and excellence; Revise STC process to include a competency framework
- 3) Avoiding Thai-specific certifications (unless it is about something which is uniquely Thai) but better adoption and recognition of global standards
- 4) Major revisions to work permit and visa regulation; Smart Visa a start
- 5) Personal tax incentives.
- 6) Twinning arrangements with foreign leading institutions. A non-Thailand example (just an example) might be LARC CMU- SMU - <https://larc.smu.edu.sg/> . Thailand is now about to recognize leading foreign institutions (eg CMU). CMKL University, a joint institute established by Pittsburgh’s Carnegie Mellon University (CMU) in the US and King Mongkut’s Institute of Technology University Ladkrabang (KMILT) started in 2018 <https://www.cmkl.ac.th/about-us>.
- 7) Specialist academic–industry collaboration (there are several good examples)
- 8) Support for private-sector in-house training but with a development path
- 9) Recognition of nation-wide programmes, not just having to be located in one place.

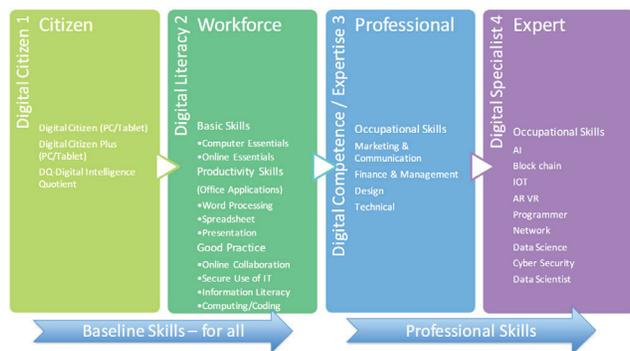
Work Permit and Visa; Smart Visa – The Cross Sectoral Issues (CSI) Chapter of this Position Paper makes recommendations on work permit and visa reform. These include a change to the law to change the definition of “work” and having an easy to obtain business visa (or being ‘visa free’), the idea being to limit ‘work’ to real local employment-type activity, whereas ‘business visitors’ would cover a wide-range of activities normally associated with doing business, including meetings of all kinds, seminars and conferences of all kinds, trade fairs and exhibitions of all kinds and covering all kinds of activity. In the Digital Economy / ICT sectors, skills need to be deployed at short notice and often for very short periods (eg configuring a customer set up in a data centre; working on an agile-based software development project); the current system does not support this well. The current visa and work permit system is broadly out of line with Thailand 4.0 goals. Exceptions such as Smart Visa do exist but currently they have some cumbersome aspects and only less than 200 have been issued.

Digital Literacy

The definition of digital literacy varies – it may be focused around computer skills or it may be more broad, embracing a range of digital skills.

At a broad level, digital skills may be seen as:

What? Digital Skills Development



Source: ICDL 2019; to this might be added on-line awareness and understanding (eg ability to deal with Fake News)

IMDA Singapore uses a broad definition of **Digital Literacy**:

Digital literacy is the ability to use, create and share digital content safely and responsibly. It is an overarching concept for a wide range of skills:

- i. *technology competency*, which is the use of digital technology;
- ii. *information literacy*, which is the ability to locate, identify, retrieve, process and use digital information optimally; and
- iii. *media literacy*, which enables us to comprehend, contextualise and critically evaluate information, as well as to create and communicate content effectively across digital media platforms.

- iv. *cyber wellness*, includes taking personal responsibility to use the internet for the good of the community, and understanding the risks of online dangers and negative online behaviours.

(source imda.gov.sg)

The digital workforce will be needed to help support all ten 'S' curve industries.

Cyberbullying (see Cyber wellness objective) has reached an alarming situation in Thailand. Education and training of young people continue to be needed.

Recommendations about skills, capacity building and digital literacy

- Recognise that skills will be local and foreign, unavoidably.
- Skills will come from local education and training, and the movement of foreign skilled people in Thailand.
- Avoid local certifications as much as possible, but use a system of recognition and an IT competency framework.
- Major reforms to work permit and visa (see Cross Sectoral Issues - CSI chapter)
- A package of measures in enhancing applied R&D, industry-academic collaboration, academic-academic collaboration and training.
- Digital Literacy, including cyberbullying, cyber wellness, Fake News training, education and programmes about them

(I) Procurement; Corruption

Procurement by government has improved with a new law (Public Procurement Act 2017, administered by the Public Procurement Division of the Comptroller-General's Department, Ministry of Finance), and a new platform. A new regulation requires using an on-line system. While reactions are mixed, it is generally positive. http://www.cgd.go.th/cs/internet/internet/Home.html?page_locale=en_US (EN version, although most is still in TH)

These aspects continue to need resolution:

- i) use of eAuction with multi-variate analysis continues with some operational challenges
- ii) Unlimited liability
- iii) Unbalanced payment milestones
- iv) Requirement to disclose source code
- v) Unreasonably high Liquidated Damages
- vi) Dispute Resolution means should allow ADR including arbitration.

The e-government procurement portal may not resolve all identified issues but it is clear that the intentions are good and that this is an important step in the right direction.

Each SE Asian economy has its own style of how **corruption** works. Research indicated that in Thailand in government procurement this can take the form of:

- Inflated supply price to allow enough 'fat' for reallocation. Depending on the industry and the agency involved, this could be for example as high as 30%
- Offshore-to-offshore transfers, usually to related party bank accounts bearing names not associated with the actors
- Undisclosed cash payments often via middlemen
- Benefits-in-kind

As the CSI Chapter in this Position Paper notes, the Royal Thai Government has embraced anti-corruption measures through strengthening laws, holding anti-corruption rallies and in making changes to procurement practices and a change to the law with the 2018 Organic act.

In the ICT sectors (as in some others) competing vendors are from jurisdictions which have no real Rule of Law genealogy. The world has basically three sources of anti-corruption laws with extra-territorial reach: the OECD model law (adopted by about 60 countries), the US FCPA (which is similar) and the UK Bribery Act, which is sui generis. The new Organic Act has a similar provision.

Thus companies and nationals with some EU citizenry or other must comply with these foreign laws, even if (as appears to be the case sometimes) they may regard the local Thai law as unlikely to be enforced.

Not so companies in some jurisdictions without any such extra-territorial anti-corruption law. European and other western companies may be at a commercial disadvantage in relevant competitions.

3. Applications and Digital Services

Applications and Digital Services:

Individual consumer end-user, business, government, group/organization
B2C, P2P, G2C, B2B, M2P, M2M etc.

The Digital Economy relies on infrastructure, and supportive regulation of enabling factors which are covered in the first two layers (reading from bottom to top). Most policy and regulatory issues pertain to those first two layers. For the purposes of this Position Paper we include eCommerce in this third category because it also relates to some other topics.

(a) FinTech & other new tech; IT Start-Ups

Technology development with effects which disrupt (positively) is an essential part of a successful Digital Economy. FinTech developments have been embraced by end users, corporates/ SMEs and banks and other intermediaries with many applications being used in banks' back end. In keeping with developments in many parties of the world, sandbox guidelines were issued by the Bank of Thailand and an MoU signed with the Singapore central bank (Monetary Authority of Singapore). There have been a number of sandbox participants, and since 2017 some 'graduates'.

In addition to Fintech, new tech innovations with applications in eGov, eCommerce, eHealth, EduTech, AgriTech and Smart Nation offer exiting capabilities.

IT Start-Ups have seen growth in recent years due to real focus from the private and public sectors. Co-working spaces and better availability of funds is a big boost. Availability of finance has improved although it is still

limited (see for example the SME chapter for crowd funding and peer-to-peer lending developments). The biggest single issue for Start-Ups is clearing the regulatory burden, more of which see generally in the 'doing business' aspects of the Cross Functional Issues (CSI) chapter. The tendency towards gravitating to Singapore or Hong Kong once some development is reached, is still strong.

Developments in support of start-ups including co-working spaces, various incentives, a planned expanded smart visa to include Digital Freelancers are noted and welcome. There are also fundamentals about work permit and visa and other daily aspects.

The EU Business Avenues to S E Asia (ICT) annual programme (at time of publication, done 2017, 2018, 2019) which sees some 50 European ICT SMEs visiting Bangkok and Singapore is supported by EABC by sourcing a number of successful European-related ICT SMEs in Thailand for business matching, and for outputs for policy advocacy aspects, and providing information on starting a business in Thailand.

Recommendations about IPR:

- Developments in support of innovation are noted and welcome. There are also fundamentals about work permit and visa and other daily aspects.
- In addition to availability of finance (and review of the Business Collateral Act), the biggest single issue for Start-Ups is clearing the regulatory burden. The regulatory Guillotine approach (see CSI Chapter) needs good support, as does development of non-bank means of finance (see SME chapter)

(b) e-Commerce, ePayments

eCommerce has boomed in Thailand. This area is regulated by the Electronic Transactions Act, the Consumer Protection Act and the Direct Sales and Direct Marketing Act. The Office of Consumer Protection Board (OCPB) notes that only a fraction of eCommerce businesses in Thailand are registered.

Here we focus on ePayments which is one area in Thailand which has developed rapidly, underpinning great consumer convenience and reducing costs for merchants. All businesses in Thailand, no matter their size, like to get paid quickly and efficiently for the goods and services they provide, domestically or cross-border. Same day credits to bank accounts ease capital concerns for SMEs and reduce the cost of trading overseas (by lowering bank and transfer charges), thus supporting the AEC goal of lowering the cost of trade transactions for intra-ASEAN trade. Domestic payment systems are gradually evolving together with improvements in cross-border payment outcomes. In order for this to work, standards are necessary, such as ISO 20022.

Wide scale adoption by financial institutions of community-based initiatives like SWIFT gpi (global payments innovation) that are not commercially driven, remain market & segment-neutral, remain inclusive and provide a ready platform for regional payments integration within ASEAN and global markets. It is worth examining how this works.

It is noted that while SWIFT addressed the B2B layers, ANT Financial Services (AliPay is brand name) effectively outsources RMB payments for settlement in China. That

is a boon for Chinese tourism and Chinese tourist in Thailand (plus other users). The AliPay name is seen at retail Points of Sale in many outlets in Thailand. It is a B2C and P2P (Peer to Peer) applications.

SWIFT is a good example of global standardization to ensure interoperability. The same kind of approach is needed for an eCommerce tax.

(c) eCommerce Tax

Most economies in the world seek to tax profits made from off shore eCommerce. The motivation is often seen to do with profit shifting, as described in the OECD Base Erosion & Profit Shifting (BEPS) programme.

OECD has been engaged about global practices with eCommerce tax, that is a tax levied on foreign suppliers by the economies into which goods or services are sold. Such taxes may be direct (eg on corporate income tax, perhaps levied by a withholding tax) or indirect, such as by applying GST or VAT. OECD noted that the world is progressing towards a standard or compatible platform and in 2018 estimated that that may come to fruition in 2020.

In 2017, TRD proposed a direct tax but in early 2018 issued a specific proposals for a VAT based plan and sought comment. EABC has made a detailed submission in February 2018 about the proposals. Rather than use corporate income tax, the plan is to require foreign service providers to register for VAT. This would need to be done on-line. But under the simplified registration system proposed, no tax invoice would be available and VAT input credits would not be used, against the neutrality principle.

The proposal would also bring great complexity. A way was not proposed to enable registration such as to support normal VAT operation and benefits.

In May 2019, TRD mooted a direct tax plan.

At the time of publication it is not clear what is proposed to be implemented in Thailand. EABC's recommendations about an indirect system are below.

Recommendations about eCommerce and eCommerce Tax:

- eCommerce registration needs to be made more attractive.
- For an eCommerce tax, EABC has urged the TRD to consider the proposal in light of:
 - a). Thailand's policy towards Thailand 4.0
 - b). Thailand's national policy is about digital government.

EABC has suggested that standard VAT registration should be an option to these foreign operators and foreign operators should be able to obtain standard VAT registration online (i.e. through the TRD's website, or even an outsourced website acting on behalf of TRD). The TRD is asked to ensure that an on-line platform with these capabilities is available before launching the tax and that any scheme has international standards and harmonisation. SWIFT gpi (see above) is a good example of global standardization to ensure interoperability. The same kind of approach is needed for an eCommerce tax. This being a new area, caution to get it right is needed before implementation.

(d) Digital Assets

Digital Assets, which comprise of Cryptocurrencies and Digital Tokens (e.g. those raised through so-called ICOs or token crowd sales), are regulated where offering Digital Tokens to the public and operation of Digital Asset Businesses. Digital Assets, which comprise of Cryptocurrencies and Digital Tokens (e.g. those raised through so-called ICOs or token crowd sales), are regulated both related to the offering of Digital Tokens to the public and the operation of Digital Asset Businesses.

Cryptocurrencies and ICOs in Thailand are governed by the Emergency Decree on the Digital Asset Businesses B.E. 2561 (C.E. 2018) ("Digital Asset Businesses Decree") and the Emergency Decree on the Amendment of the Revenue Code (No. 19) B.E. 2561 (C.E. 2018) ("Amendment of the Revenue Code Decree"), which came into effective on 14 May 2018. The main regulator for the Digital Asset Business Decree is the Office of the Securities and Exchange Commission (SEC) and for the Amendment of the Revenue Code Decree is the Revenue Department (TRD).

The key difference between these two types of assets is that Cryptocurrencies are created in order to serve a particular purpose as a medium for exchange, which might be exchange for goods, services or other rights, or to be used as consideration for trading with other Digital Assets. On the other hand, Digital Tokens are generated to be used as a determinant of rights, which could be rights as an investor or the right to receive specific goods or services.⁷

⁷ Baker McKenzie September 2018

Energy

SUMMARY OF RECOMMENDATIONS

1. Energy Policy – Mix; Renewables and Alternative sources

- 1.1 Energy Mix—While the 2018 PDP (released 2019) sets renewable targets, EABC recommends an ongoing review so that percentages of overall energy supply represented by renewables is higher. EABC supports diversification of energy sources and focus put on more renewable energy (with natural gas as a back-up and transition energy).
- 1.2 Specific roadblocks and impediments to alternative and renewable energy sources need to be addressed and removed.
- 1.3 Reliance on LNG will continue and efficient and effective infrastructure and operational rules need to be enhanced.
- 1.4 Policy upgrades are needed to support more Waste to Energy development

2 Energy Security & overseas supply; Competitiveness

- 2.1 The best possible arrangement for overseas supply need to include factors such as security (reliability) and pricing
- 2.2 Competitiveness factors need to include security and effective cost
- 2.3 Reliance on more and more private sources are to be encouraged, more sophisticated management systems will be needed over time.

1. Preamble

Thailand’s total energy consumption has grown continually in the past decade due to domestic economic growth (increasing economic output), new and expanding industries and other factors all of which need to be considered with security of supply, environmental concerns (low pollution and with higher reliance on renewables so that fossil fuels utilisation lessens), and impact on the competitiveness of Thai economy.

This chapter does not cover all aspects of Energy but focuses on certain key aspects.

2. Energy policy

Everywhere in the world energy policies have to reach the optimum balance among three pillars: availability, affordability, and sustainability. There is no “universal rule” on how to reach the optimal point, and this has to be adapted to the specificities of Thailand in terms of foreseen long-term needs, availability of resources, and commitments towards sustainability.

Thailand's Intended Nationally Determined Contribution (INDC) mentions, among others, the Climate Change Master Plan (CCMP) 2015-2050, which details general efficiency measures, plus emission mitigations, such as the REDD+ Readiness forestry program. Other key instruments, such Power Development Plan (PDP) 2018 (released 2019), Alternative Energy Development Plan (AEDP) – reflected in the 2018 PDP, and Thailand Smart Grid Master Plan 2015-2036, which are paving the way to large changes in the energy landscape for Thailand.

United Nations (through the United Nations Thailand Environment Programme – UNEP) notes that district cooling systems are an efficient way to reduce energy consumption in many economies, Thailand included.

(a) Power Development Plan

A fundamental instrument in energy policy is the Power Development Plan (PDP) published on a rolling basis by the Ministry of Energy¹. The PDP is part of the government's long-term strategic blueprint for energy development and is generally updated every 3-4 years.

On April 30, 2019, the Cabinet approved the much-anticipated, current Power Development Plan (PDP) 2018-2037, which took effect immediately, and covers a period from 2018 to 2037. The 2018 PDP had been approved by the National Energy Policy Council (NEPC)

The PDP outlines government policy priorities, and allows the Energy Regulatory Commission (ERC) and government-owned utilities to implement concrete regulations and development plans and sets national targets which involve

¹ Description is based on information provided by Chandler MHM Ltd and other sources.

the private sector also.

Four other plans are being released over time: oil management, natural gas supply, alternative energy development (AEDP), and energy savings and efficiency.

The text of the PDP has been published on the Energy Policy and Planning Office's website (EPPO) in Thai. Key points about the 2018 PDP follow.

(i) Increase of Power Supply Capacity

The PDP sets a total power supply capacity target in Thailand at 77,211 megawatts (MW) by the end of 2037. Of that anticipated 77,211 MW, 56,431 MW are expected to be generated from new sources. The PDP also sets out a plan to purchase electricity from small power producers (SPPs) for a

total capacity of 3,665.46 MW from 2018 to 2025, and from very small power producers (VSPPs) for a total capacity of 944.26 MW from 2018 to 2022. Additional electricity purchases for a total capacity of 100 MW will be made every year for 10 years from individual solar producers.

The plan reduces the proportion of power generated by the state-run Electricity Generating Authority of Thailand (EGAT) from 35% in the 2015 plan to 24% in the 2018 plan.

The 2018 PDP sees policymakers plan for new power capacity of 56,431 megawatts, up from 46,090 MW in 2017.

(ii) Increased Investment in Renewables

Of the planned new capacity, 20,766M (about 20 gigawatts) is to be renewables.

The PDP calls for significant increases in investment in renewable energy sources. To put the increase in context, the previous PDP, announced in 2015, envisioned an increase in a generating capacity of approximately 15 gigawatts between 2014 and 2036; in the 2018-2037 PDP, an additional 20 gigawatts of renewable generating capacity is to be added from 2018 and 2037. Revisions to the PDP may also provide greater flexibility for the sale of electricity generated from rooftop photovoltaic panels.

Power plants with a total capacity of 25,310MW are to be retired during 2018-37, so total power capacity by 2037 will stand at 77,211MW.

Non-fossil power will represent 35% of total power capacity by 2037, while coal-fired power plants are to be reduced to 12%.

The PDP also allows solar panels to be installed on private property and surplus power to be sold to EGAT. EGAT is to purchase at least 100MW of solar power a year in the next 10 years.

The NEPC also approved the revision of purchasing power contracts with 25 small power producers (SPP) which are co-generation plants. The SPP contracts expire over 2016-25 and will be extended.

(iii) Rates

Electricity costs during in the 2018 PDP 2018-37 are estimated at 3.50-3.68 baht per kilowatt-hour or an average of 3.58 baht.

EGAT and the Provincial Electricity Authority (PEA) are required to develop a smart grid in the Eastern Economic Corridor (EEC) in a bid to lower power fees to draw new investment flows.

The SPP purchase rate is 2.80 baht per unit for gas-fired power plants and 2.54 baht for coal-fired plants.

(iv) Electricity Purchases from Neighboring Countries

The 2018-2037 PDP calls for Thai government agencies to negotiate power purchase agreements with their counterparts in Laos, Cambodia and Myanmar for capacity and power prices. Further integration of electricity markets with neighboring countries may enable the eventual realization of a regional power grid.

The NEPC also authorised the Ministry of Energy and EGAT to study grid development in a bid to maintain the power fee, purchase more renewable power in the future and increase the country's efficiency to become a centre of purchasing power in the region or a grid connection.

(v) Development of Transmission Grid

The 2018 PDP sets out projects and plans for the development of the transmission grid of Thailand. The plans include transmission grid development projects, which would support an increase in demand for electricity,

grid connections for the purchase of newly generated electricity from power producers, and transmission in the ASEAN Power Grid. Seventeen projects have been approved at time of publication and are under development, and 11 projects are under study by the Electricity Generating Authority of Thailand (EGAT). EGAT will also work with the Provincial Electricity Authority in developing “smart cities”.

The 2018 PDP was released prior to change of Energy Minister following the new government coming into office in June 2019 and with the early July 2019 establishment of new cabinet. As is usual with any rolling plan of this kind, changes are expected in time.

3. Diversification

(a) Gas (LNG)

Natural gas continues to support competitiveness of Thai industry at least for the coming decade, and to the state commitments to COP21.

Relevant infrastructure is a necessary part of this effectiveness and a good resolution to the gas infrastructure value chain will be most important.

(b) Renewables & Alternative Energy sources

A lack of alternative energy sources would push Thailand close to facing energy shortages in the near future. It is important to balance the energy mix, between the energy sources available domestically (both today, in short and in longer term) and those Thailand has to import. Diversification of energy types as well as energy sources is a crucial root for energy security.

EABC considers it important to accelerate the adoption of clean energy sources and energy carriers. Electricity can be produced a variety of renewables options, and it important that these generation sources be continually expanded, but at a faster rate. In addition, waste to energy (see below) needs developing more.

Electricity only accounts for a small portion of the total energy demands of the country, and the majority of energy consumed is not electrified. These energy sectors include transportation, cooking, and various energy-intensive industrial applications, that are all relying on a growing supply of fossil fuels.

Renewables potentially include solar, wind, hydro, tidal, hydrogen and others. Here we mention solar and hydrogen.

(i) Solar

Solar PV is well-known renewables source. Solar is supported in the 2018 PDP.

Solar technology has seen significant innovations leading to important improvements of efficiency and significant reductions in costs. Solar generation has also significantly evolved when it comes to energy storage, whether with classic batteries, hydrogen cells, or other technologies. Solar which used to be considered as an intermittent power generation solution is thus evolving towards more stability and 24 hour availability. Solar generation is done through large solar farms or as small, decentralised rooftop solutions, and individual household solutions. The ability to transfer back to a grid is a positive development.

To promote clean energy sources EABC recommends using a wide range of support schemes:

- Specific financial incentives such as ad-hoc low rate loans Support Project Financing at favourable commercial terms, as it is available in other maturing RE/PV markets. Those loans should be also accessible to earmarked funds, e.g. fund for climate change mitigation, carbon reduction, etc.
- Eliminating import duties and customs issues for high quality solar panels and associated power management systems or power generating equipment.
- An attractive framework for large scale / large scope RE/PV utilization, including Net-Metering policies

Floating solar PV systems are quite a recent innovation which tackles the issue of land availability.

The European PV Solar industry has extensive expertise, know-how and experience in such systems. EABC and its member companies are able to share the latest technologies, developments and research & development initiative in the PV Solar sector. This knowledge can be shared with Thai companies and investors to contribute to enhancing PV Solar energy in Thailand.

EABC recommends fostering and encourage off grid, micro-grid and supply to grid plans.

(ii) Hydrogen

Hydrogen is less well-known. One promising pathway to solving the dependency referred to earlier is the energy

carrier renewable hydrogen. Renewables can be harnessed to provide clean electricity to hydrogen-generating electrolyzers. In this way, hydrogen production using renewable energy sources can contribute directly to reducing greenhouse gases and reduction of reliance on fossil fuels. The abundance of domestic renewable potential also shows a pathway for increased self-reliance and energy security, as fossil fuel imports can be replaced with locally produced hydrogen. It can be used as an energy carrier to store, carry, and in effect use renewable energy, due to its storability, portability and flexibility.

Different to other types of energy storage such as acid-lead, lithium-ion and other batteries, hydrogen can be generated, stored and transported in very large quantities (for example in pipelines), allowing for very long term storage and shifting of renewable electricity to other energy sectors.

Advances with hydrogen are thus part of the technological development

EGAT has entered into agreements to purchase hydrogen.

(c) Waste to Energy

Thailand's Intended Nationally Determined Contribution (INDC) mentions a Waste Management Roadmap (incl. promotion of waste-to-energy technology). This is very positive.

European business are able to provide support, through benchmarking of European experiences and through activity of European companies.

Food and Beverages

CONTENTS

1. **The Thailand Alcoholic Beverage Market**
2. **Regulatory Environment and Non-tariff Barriers to Trade**
 - 2.1 Graphic health warning on alcoholic beverage packaging
 - 2.2 Labelling notification
3. **Tariff Barriers to Trade: Excise tax**
4. **Illicit Alcohol**
5. **Social Responsibility**

Food and beverage sector is among the fast-growing industries in Thailand which has contributed significantly to the country's economy. The fact that the country has abundant natural resources, skilled-workforce and strong commitment to food safety, international standards, innovations and technology, the Thai food and beverages industry has plenty of room to improve and reinforce its position as the "Kitchen of the World".

Food and Beverages Working Group firmly supports the Royal Thai Government to enhance country's competitiveness and readiness to become the global hub of food and beverage trade as well as the world's investment destination of choice. This ambition requires the government not only to be up to speed with global megatrends and the international best practices, but also to continuously innovate and modernize its investment incentives, regulatory environment and taxation system to maintain its attractive investment climate. We are proud that our participation brings valuable contribution to the country's regulatory and laws reforms and commend the Royal Thai Government to continue working with businesses and investors to address the

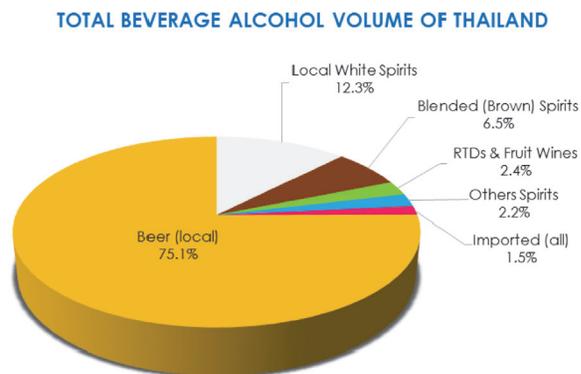
remained restrictions, both tariff and non-tariff measures to bring more transparency, efficiency, fairness and ease of doing business.

1. The Thailand Alcoholic Beverage Market

European beverage alcohol businesses believe that alcoholic beverage is part of a balanced life style and we stay commit to support the World Health Organization (WHO) and its member states to achieve the target of reducing harmful use of alcohol by 10% within 2025 which is one of a keystone in the United Nations (UN) Sustainable Development Goals (SDGs). Partnership with stakeholders that are government, civil society, individuals, NGOs and other local or imported alcohol companies is key to our approach in delivering impactful programs that tackle harmful drinking.

At present, total size of the Thailand alcoholic beverage market is approximately 3.1 billion liters (please refer to Figure 1) ranked world's number 65 for alcohol per capita consumption (15 years and older) according to the World Health Organization (please refer to Table 1).

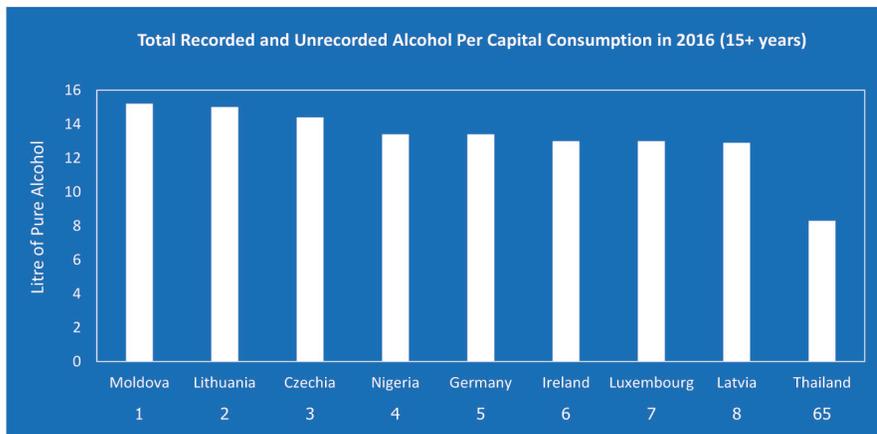
Figure 1: Thailand Total Beverage Alcohol Volume Classified By Product Category



According to the Royal Thai Excise’s statistic in 2016, Thailand beverage alcohol volume was dominated by beer (75.1%) followed by local white liquors or Lao Khao (12.3%) and blended (brown) spirits (6.5%) respectively while imported liquors (spirits, beer and wines) were about 1.5% to total beverage alcohol volume.

Table 1: Countries with Highest Total, Recorded and Unrecorded, Alcohol Per Capita Consumption in 2016 (15+ years population)

WHO Records in 2016	
No. 1	Moldova
No. 2	Lithuania
No. 3	Czechia
No. 4	Nigeria
No. 5	Germany
No. 6	Ireland
No. 7	Luxembourg
No. 8	Latvia
No. 65	Thailand



Source: Source: Global Status Report on Alcohol and Health 2018, World Health Organization (WHO).

Safety and quality of alcoholic beverage is subjected to the Codex Alimentarius (Codex), the joint food standards program of Food and Agriculture Organization of the United Nations (FAO) and World Health Organization (WHO) whose objective is to enhance consumer health

and safety, product quality and fair practices in food trade globally. In Thailand, further to Codex, alcoholic beverage quality and safety have been regulated by 2 major laws including Food Act 1979 and Excise Tax Act 2017.

Recommendation:

Food and Beverages Working Group is committed to support the Thai government's public health objective in reducing harmful use of alcohol and its subsequence through our evidence-based campaigns implemented around the world. We respect the right of the Government to take measures being necessary to protect public health, however, we would urge that ***any measures introduced shall be transparent, not create any trade barrier nor discrimination between imported and locally produced liquors. We believe that effective alcohol policies and control measures should target at harmful drinkers and be implemented within a reasonable regulatory framework*** that balance prosperity of society and public health with consumer freedoms to access safe and high-quality products and rights to access information of goods and services.

2. Regulatory Environment and Non-tariff Barriers to Trade

An external environment relating to beverage alcohol is complex and aggressively anti-alcohol. Since 2008 when the Alcoholic Beverage Control Act, the major law governing consumption, sales, marketing and promotional activities of the products distributed and consumed in the country, enacted, a number of laws and regulations have been introduced with no clear rationale or evidence proving that they can tackle alcohol-related nor prevent underage from drinking. Instead, those laws and regulations, such as Labelling Regulation, Graphic Health Warning and selling bans, bring serious concerns to private sector and members of the World Trade Organization

that they may establish barriers to trade and create significant risks and obstacles to legitimate businesses.

2.1 The Labelling Regulation

Notification of the Alcoholic Beverage Control Committee Re: Rules, Procedure and Condition for Labels of Alcoholic Beverages 2015 (The Labelling Regulation) came into full enforcement in October 2015 with an objective to prevent children from drinking alcoholic beverage. From that point of time, concerns have been raised over The Labelling Regulation, not only among private sector but also among members of the World Trade Organizations (WTO), that strict but unclear and impractical requirements of the law may cause burdens to business, barriers to trades and restricting the rights of consumers to access information of goods.

The Labelling Regulation contains vague restrictions with the lack of clear guideline relating to the messages permitted or prohibited on the alcoholic beverage label and packaging leading to inconsistent interpretations. The fact that the regulation prohibits the use of cartoon images, quality or properties claim statements such as "premium", "reserve", "deluxe" and "X.O. (extra old) regardless of whether they are true and factual supported by evidence, trademarks, geographical indications or international practices, it may infringes intellectual property rights and impose unduly trade restrictive terms for goods imported into the Kingdom, which is arguably inconsistent with international trade obligations.

According to the consultation meeting between Ministry of Public Health and EABC in February 2016, both parties unanimously agreed that the Labelling Regulation and its

technical guidelines were unclear, difficult to implement and being constitute a trade barrier. The revision of technical guidelines that was released in April 2017 did not bring any clarity but *leading to discretion conferred on individual officers, on a case-by-case basis*. We welcomed the 2 stakeholders' consultation sessions on the Labelling Regulation organized by National Health Commission Office even though only limited number of stakeholders were invited and no tangible action taken afterward.

Recommendation:

The fact that alcoholic beverage is food commodity consumed and traded globally, ***we would humbly request the government to revisit and amend the Labelling Regulation*** by taking in to account the comments given at The World Trade Organization (WTO) Technical Barriers to Trade (TBT) Committee meetings as well as recommendations from the 2 stakeholders consultation meetings held in October 2017 and June 2018 to ensure the provisions of the law will be clear and practical conforming to the World Trade Organization obligations and international practices.

2.2 Graphic Health Warning Label

The first draft Notification of the Alcoholic Beverage Control Committee Re: Rules, Procedure and Condition Relating to Container, Label and Warning Message for Manufactured or Imported Alcoholic Beverage was introduced in 2009 claiming that it would reduce alcohol consumption among children and address alcohol-related

societal problems in the absence of any credible scientific evidence. The requirements of the draft law seek to impose tobacco-style pictorial health warning graphics that cover substantial area of the label or packaging material of alcoholic beverage product.

Followings are our concerns and risks involving the graphic health warning label initiative:

- Alcoholic beverage is “food” whose label has been regulated under Food Act 1979. It is inappropriate to introduce tobacco-style pictorial warnings to the alcoholic beverage by ignoring the fundamental differences between these two product categories which demand separated control measures.
- Requirements of the draft law are excessive and disproportionate which affect individuals who consume alcoholic beverage moderately and responsibly as part of a balanced-lifestyle and with no harm to themselves, families and community. Such requirements may create unnecessary burden to businesses, impose unjustifiable restriction on international trade and fail to comply with international practice.
- Other undesirable effects may cause by an introduction of graphic health warning on alcoholic beverage packaging include:
 - Undermine tourism
 - Negatively impact related industries such as food and beverage, restaurant, hotel and entertainment.
 - Damage brand equity and trademark value.
 - Encourage illicit alcohol activities that are smuggling, counterfeit, and trademark infringement

Though the concerns have been repeatedly raised to the Thai Government by both private sector and members of The World Trade Organization (WTO) Technical Barrier to Trade (TBT) Committee, the Office of the Alcoholic Beverage Control Committee has still insisted to adopt tobacco-style pictorial health warning graphics on alcoholic beverage label or packaging.

At present, the European beverage alcohol businesses and the entire alcohol industry voluntarily apply the responsible drinking graphic symbols which have been used worldwide, including “Do Not Drink and Drive” symbol and “Do Not Drink While Pregnancy” symbol, on their containers of alcoholic beverages with genuine intention to raise consumer awareness on impacts of alcohol and prevent consumer from harmful drinking behaviors.

Recommendation:

Food and Beverages Working Group recognizes the legitimate objectives of the Royal Thai Government to protect health of consumers and prevent underage and women from drinking. However, there is lack of a precise explanation or scientific evidence which leads to the conclusion that the tobacco-style pictorial health warning label would help reducing consumption of alcohol among those target group. ***Therefore, we would request the government to reconsider the need to introduce the graphic health warning label measure and encourage the responsible agency to suitably conduct Regulatory Impact Assessment (RIA) as well as grant stakeholders an opportunity to be consulted prior full implementation of the law*** in order to ensure that the good regulatory practice

is met and such measure is prudent which will not create trade restrictive or disruption while ease of doing business atmosphere is enhanced.

3. Tariff Barrier to Trade: Excise Tax

Excise tax is an indirect tax on the sale or use of specific products and services such as automobile, non-alcoholic beverages, alcoholic beverages and entertainment activities, paid indirectly by end consumers. In Thailand, alcohol excise tax is a tool for delivery two major objectives that are raising government revenue and address public health issues.

At present, alcoholic beverage has been subjected to heavy excises and is taxed in a hybrid system whereby both specific taxation, levied on alcohol quantity, and ad valorem taxation, levied on retail price of the product, are imposed while earmarked taxes are also collected on top for allocating to the communities, social activities and public health funds.

The previous alcohol excise tax reform in 2013 adopted a complicated and discriminatory tax structure which adopted significantly high ad valorem excise rates to specific excise rates leading to the deterioration of the alcohol market. The imported liquors segment suffered severely from such reform which resulted in substantial prices increase, volume collapse and soaring illicit alcohol as consumers switched to cheaper liquors or duty unpaid liquors evidenced by the steady volume growth of beer, local distilled and illicit alcohol.

Food and Beverages Working Group believes that reasonable tax rates and specific taxation are effective tools to rectify those problems by reducing incentives from illicit activities, thus, preventing government from loss of tax revenue. We supported and welcomed the Excise Tax Act 2017 that came into effect in September 2017 hoping that it would bring improvements in various areas, especially, transparency, fairness, ease of doing business and promote Thailand 4.0 policy. However, we remain concern about the legal implementation and future excise tax changes as described below:

- 1) *The alcohol excise rates and structure under Excise Tax Act 2017 did not bring a fair competition between locally-produced liquors and imported liquors nor address the excessive alcohol consumption issue since the proportion of specific to ad valorem taxation was inconsiderable changed. Please refer to the tax rates set in Table 2.*

Table 2: Excise tax rates and structure comparison between Liquor Act 1950 and Excise Tax Act 2017

Liquor Category	Ad Valorem (SRP Excl VAT) %	Specific Baht Per LPA
1. FERMENTED LIQUOR		
1.1 Beer	22%	430
1.2 Wine & sparkling wine, made from grape		
(1) SRP Excl VAT ≤1,000 baht	0%	1,500
(2) SRP Excl VAT >1,000 baht	10%	1,500
1.3 Fruite wine with ingredient of grape or grape wine		
(1) Alcohol ≤ 7% / size ≤ 0.33L	10%	150
(2) Others: SRP Excl VAT ≤ 1,000 baht	0%	900
(3) Others: SRP Excl VAT > 1,000 baht	10%	900
1.4 Others: apart from 1.1, 1.2 and 1.3	10%	150
2. DISTILLED LIQUOR		
2.1 Local white liquor "Lao Khao"	2%	155
2.2 Others: apart from 2.1	20%	255
2.3 Sura Sam Thub		
(1) For industrial, medical, pharmaceutical and	0%	0
(2) For making denatured ethanol	0%	0
(3) Others: apart from (1) and (2)	0%	6

Elements of earmarked taxes imposed on alcohol excise tax:

10%	Municipal tax
2.0%	Thai Health Promotion Foundation Fund (Sor Sor Sor)
1.5%	Thai Public Broadcasting Service Fund (TPBS)
2.0%	National Sport Development Fund
2.0%	Elderly Person Fund

Remark: SRP: Suggested Retail Price.

- 2) *Introduction of a new requirement for importation of liquor into the Kingdom which stated, in order to apply for a liquor import license, a Certificate of Analysis (COA) or liquor sample shall be submitted to the Excise Department for verification and testing of its conformance to the specified standards of the Thai Industrial Standards Institute (TISI) regardless such product has no production in Thailand, for example, Cognac, Champagne and Scotch Whisky. This requirement ignored international standards and Geographical Identification (GI) rights while caused barrier to import liquors into the country.*

Food and Beverages Working Group appreciates an opportunity to be consulted by the Excise Department on this matter and look forward to welcoming the new liquors standards by taken into account international practices and stakeholders' comments soon.

Recommendation:

Specific taxation, at optimal tax rates, is recognized internationally as the best practice for taxing beverage alcohol. The approach brings advantages not only to the government but also to the businesses and consumers that include predictable excise revenue, lessening leakage, improving fairness and addressing harmful drinking issue since producers are indirectly encouraged to produce products with lower alcohol content or offer better-quality products. ***Food and Beverages Working Group, therefore, urges the Royal Thai Government to consider an alcohol excise taxation structure that focuses on specific tax, at the optimal rates for all categories, which enhances the integrity of the excise system, transparency, fairness, be predictable and easy to administer.***

4. Illicit Alcohol

Illicit alcohol violates intellectual property rights, undermines country reputation, damages tourism and related industries, results in loss of the government revenue, restrict freedom to trade of legitimate businesses and, importantly, may cause harm to consumer health. The fact that the more premium and fast-moving the products are, the more severe illicit issues encounter,

European beverage alcohol which are among the most-loved products in Thailand, hence, has been targeted by smugglers and counterfeiters.

Excessive tax imposed on alcohol and inconsistent suppression are among the major factors that encourages illicit activities. According to the global crime research, illicit alcohol is ranked within the top ten high value crimes in Thailand involving transnational criminal networks. The International Wine and Spirit Research (IWSR) estimated that the top three whisky products alone could have been smuggled into the Kingdom as much as 3.5 million litres a year causing approximately 1.6 billion baht of government revenue loss per annum. Currently, counterfeit alcohol is made by using a simple refilling method since the finished counterfeit goods is looked much alike the genuine product while it is commonly traded as "duty free goods" through online and social media platform, as well as at the traditional outlets residing along the border areas.

Recommendation:

There are 3 asks that Food and Beverages Working Group would request the government to please consider. ***First, a reasonable and simplified tax rates*** that reduce incentives from illicit activities. ***Second, a consistent "search and seize"*** shall be conducted, especially, along the border areas, on social media platform and websites. ***Lastly, driving a criminal case to successful prosecution*** applying all relevant laws including but not limited to trademark law, landlord liability law and money laundry law to deter offenders from the crime.

5. Social Responsibility

Alcoholic beverage is part of a balanced lifestyle when consumed moderately and responsibly by adult, aged 20 years and above, who chooses to drink. However, the misuse of alcohol such as excessive drinking, drunk driving and underage drinking can cause health and other issues to individuals and society.

EABC Food and Beverage Working Group wishes to see alcoholic beverages consumed and enjoyed in the right way and firmly support the target of World Health Organization (WHO) to reduce harmful use of alcohol by 10% within 2025 and the government's objective to reduce alcohol-related harm, especially, road traffic accident.

Partnership with stakeholders that are government, civil society, individuals, NGOs and the entire alcohol industry is a key to success factor in delivering impactful programs which we have initiated and implemented globally. It is our commitment to continue investing in our breakthrough programs on alcohol education, road safety and anti-underage drinking whilst constitute the industry' self-regulations of responsible marketing practice. Followings are some successful campaigns that we proud of:

- **Self-regulations of responsible marketing practice** that are formulated to make contribution towards WHO and its member states' target to reduce harmful drinking and ensuring alcoholic beverages are advertised and marketed responsibly.
- **Responsible Drinking Education** that aims to educate consumers of impacts from beverage alcohol, inform their choices about consuming alcoholic beverage and promote drink moderately and responsibly culture.
- **Smashed Project** is a global live-theatre educational program that targets emotions and attitude toward alcohol of young people. Smashed has been conducted by partnering with the government agencies and the alcohol industry with objective to break the culture of underage drinking and reduce alcohol related harm amongst young.
- **Road Safety** is a campaign by co-operation with various government and non-government organizations aiming to reduce road traffic accidents caused by drunk drivers, especially, during the New Year and Songkran festive seasons.

Recommendation:

There is no evidence confirming that an excessive alcohol tax proposal nor intrusive alcohol policies are able to tackle the harmful use of alcohol, instead, they impose disproportionate burden to legitimate businesses and freedom restrictive to responsible drinkers. ***Education that promotes responsible and moderated drinking and raise awareness on harms caused by alcohol should be focused more as sustainable solution.*** Food and Beverages Working Group would appreciate an opportunity to cooperate with the Royal Thai Government further in delivering success to the country's public health objective.

Healthcare and Pharmaceuticals

SUMMARY OF RECOMMENDATIONS

1. Fostering investment attractiveness for innovation and research collaboration

- 1.1 Tax and non - tax innovation incentive schemes for foreign and local companies.
- 1.2 Enabling viable and accessible local market with available skilled workers to advance R&D and ensure access, viability and sustainability of the investment.
- 1.3 Amending the inclusion criteria to the innovation list to include international innovators to reap full benefits and position Thailand as an innovation hub.

2. Enhancing regulatory ecosystem and removal of technical barriers to support ease of doing business

- 2.1 Continued dialogue between the Royal Thai Government and stakeholders in the sub-regulation development under regulatory reform for medicinal products and medical devices to enhance transparency, involvement and practical resolutions.
- 2.2 Enabling fast track registration and new regulatory frameworks to improve and facilitate access of new technology.
- 2.3 Improve regulatory efficiency through encouragement of regulatory framework and requirements according to risk-based approach including simplified registration.

3. Appropriate Intellectual Property ecosystem; key enabling factors for healthcare and biopharmaceutical innovation

- 3.1 Recommendation to increase number of competent patent examiners in particular the fields of chemical, device and pharmaceutical researches to speed up review process.
- 3.2 Aligning the amended Patent Law with international standards and practices enabling efficient registration and protection for increased technology transfer and investment.
- 3.3 Adopting patent term restoration and data exclusivity to create a holistic framework enticing innovation.

4. Enabling health policies, market environment and sustainable healthcare financing approaches to support innovation

- 4.1 Transparent procedures for healthcare and pharmaceutical products pricing and reimbursement, with due consideration for the value of innovation to therapeutic outcomes and clinical needs rather than purely cost saving.

- 4.2 Level playing field in government procurement, removing local and government preferential treatment.
- 4.3 Exploring solutions to enhance patient access including alternative access models, innovative and value-based financing models, as well as promoting self-care policy as contributing solution to promote sustainable healthcare financing, access and budget management.
- 4.4 Further liberalization of the Trade Competition Law to enable trade and investment.
- 4.5 Development of appropriate policies and regulatory framework in coordination with ASEAN countries for Digital Health in order to maximize the benefits to Thai populations.

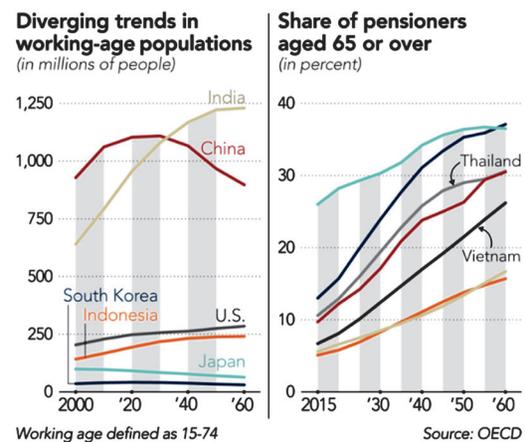
EABC's Healthcare and Pharmaceuticals Working Group applauds the continued efforts of the Government to improve the healthcare sector in Thailand and sees an opportunity to further strengthen dialogue and partnership with the Government, developing an attractive investment environment and a top-tier healthcare system for Thai patients which this would additionally enhance trade, investment and prosperity between Thailand and the European Union as trading partners.

The European healthcare industry is encouraged by Thailand's acknowledgement of our critical role in bringing high-quality products for prevention, diagnosis, treatment and monitoring – but moreover being provided the opportunity to play a pivotal role in the creation of a high-value, self-sustaining life sciences sector. The EABC's Healthcare and Pharmaceuticals Working Group stands ready to solution-oriented dialogues to identify holistic policies that address short-term issues, whilst ensuring long-term benefits for patients, Government and industry alike, including through international trade agreements.

There have been continual global trends in extending of life expectancy and increasing of aging population

contributing to the rising of non-communicable diseases, on another hand, the progress in treatments providing the patients better options to cure with the enhancement of quality of life. Thailand is entering to the aging society by 2021, it would be strongly needs for Thailand to establish the innovative mechanisms and solutions to ensure the sustainable system including sustainable healthcare financing to maintain people in the country in good health with good quality of life contributing to the healthy economy.

Figure 1: Aging population trend



Thailand stands to benefit from the changing business model of innovation in the 21st Century which has moved away from Vertically Integrated pharmaceutical models where one entity undertakes all operations in-house to a Horizontal Cluster of independent universities, research-institute combinations and SMEs which jointly collaborate in the invention and patenting of novel medicines. The choices of portfolio to be researched are now aligned with the target country's clinical needs and health/disease trend; in-license of intellectual properties developed locally is becoming the business norm as global business partnerships form to serve the global market. In parallel, many companies from developed economies are outsourcing R&D to more efficient partners in developing economies where the innovation eco-system is sufficiently mature for technology transfer. This is where Thailand starts to emerge as a semi-developed competency for R&D in medical research.

Thailand has been promoting the collaboration in research and development to drive Thai economy forwards which pharmaceutical sector are in the key focused sectors. This would benefit the country development not only in the aspect of economic development but Thailand, with its pool of researchers and existing unindustrialized research, stands ready to benefit from this trend given pro-innovation reform in key strategies, policies and laws.

To become a regional leader in healthcare services and the medical research and development sector, Thailand needs to develop a long-term innovation embracement policy that is strong and consistently implemented; there are needs to be coordinated between the private sector, academic and research institutes, multi-government agencies and policy makers. Regulatory and intellectual

property ecosystems as well as fair market competitive environment are necessary as both international and domestic companies will only invest in the risky research process if it is possible to protect the intellectual property of these investments and to ensure business certainty in market access. Finally, a sustainable system for innovation requires coordination among the public and private sectors.

This document aims to underscore some of the opportunities that need to be unlocked in order to enable Thailand from becoming an innovation-led economy and a true leader in healthcare provision – a true healthcare hub.

EABC would like to support Thai government through collaboration and partnership to enhance solutions for better access of innovative medicines, medical devices and self-medications.

1. Fostering investment attractiveness for innovation and research collaboration

To attract research collaborations and sustainable direct investments in R&D and innovative activities, framework conditions and tax & non-tax incentives conducive to innovation are vital. Whilst the most important condition is a large stock of well-educated labour and human capital, which accelerates technological catch-up, a viable regulated market is needed for technological collaboration and transfer where private and public or public-interest actors (such as foundations and NGOs) can play equally important roles in providing incentives for sharing. There is a positive relationship between FDI and the development of innovation, market size and market growth rate are the predominant factors for FDI.

As the government has strong agenda to attract FDI and collaboration towards research partnership and research investment in Thailand, the Innovation List, which has been established to incentivize innovation development through public utility, should also be enabled the enlisting for the multinational companies in order to encourage international collaborative investment towards innovation

in Thailand. The inclusive criteria should additionally value the research investment and embrace the direction to move the country towards innovation development. Figure 2 shows that Thailand needs further enhancement to attract a fair share of FDI, compared to its ASEAN neighbours.

Figure 2: FDI flows in ASEAN, by host country, 2010–2017 (Billions of dollars)

	2010	2011	2012	2013	2014	2015	2016	2017
Brunei Darussalam	0.6	1.2	0.9	0.7	0.6	0.2	-0.2	0.5
Cambodia	0.8	0.9	1.6	1.3	1.7	1.7	2.3	2.7
Indonesia	13.8	19.2	19.1	18.4	21.8	16.6	3.9	23.1
Lao PDR	0.3	0.5	0.3	0.4	0.9	1.1	1.1	1.7
Malaysia	9.2	12.0	9.4	12.1	10.9	10.2	11.3	9.4
Myanmar	2.2	2.1	1.4	2.6	0.9	2.8	3.0	4.3
Philippines	1.3	1.8	2.8	3.9	5.8	5.6	8.3	10.0
Singapore	57.2	40.0	59.8	57.5	73.5	62.7	77.5	62.0
Thailand	14.7	2.5	12.9	15.9	5.0	8.9	3.1	9.1
Viet Nam	8.0	7.5	8.4	8.9	9.2	11.8	12.6	14.1
ASEAN	108.2	87.7	116.5	121.7	130.3	121.7	122.8	137.0

Source: ASEAN Secretariat, ASEAN FDI database.

Recommendations:

1. Tax and non - tax innovation incentive schemes for foreign and local companies.
2. Enabling viable and accessible local market with available skilled workers to advance R&D and ensure access, viability and sustainability of the investment.
3. Amending the inclusion criteria to the innovation list to include international innovators to reap full benefits and position Thailand as an innovation hub.

2. Enhancing the regulatory ecosystem and removal of technical barriers to support ease of doing business, trade and investment

Enforcement of Licensing Facilitation Act, B.E. 2558 (2015) and the National Council for Peace and Order's announcement (Section 44) related to efficiency in licensing contributed to significant improvement in registration and approval timeline in order to facilitate business operations and competitiveness especially in the pharmaceutical licensing. Whilst this development

supports the policy agenda of Medical Hub Super Cluster by enhancing the regulatory environment to promote ease of doing business and investment climate, the legislative amendment of Acts, recently approved by the National Legislative Assembly, could potentially impacted to the business operations, notably:

Drug Act amendment: The European industry supports the revision of Drug Act to enable the facilitation of regulatory efficiency enhancement involving process reform and appropriate regulatory fee, which promotes ease of doing business, as well as, the renewal of marketing authorization license. However, the amendment involves the mandatory disclosure of patent information of innovative medicines during marketing authorization submissions which this should be ensured that it will not subsequently create technical barriers and the concerns on data duplication and deviation with the patent database at the Department of Intellectual Property.

Medical Device Act: The EABC supports reasonably increased registration fee to improve the efficiency of registration system. We additionally support the new registration process based on risk-based classification (ASEAN Harmonization) which is aligned with international regulatory standards. However, the practical and effective implementations will rely on sub-regulations being properly developed.

It would be strongly required to ensure that the developments of sub-regulations according to both recent new Acts aligned with international standards and practice and also facilitate implementation including the transition period.

Recommendations:

1. Continued dialogue between the Royal Thai Government and stakeholders in the sub-regulation development under regulatory reform for medicinal products and medical devices to enhance transparency, involvement and practical resolutions.
2. Enabling fast track registration and new regulatory frameworks to improve and facilitate access of new technology.
3. Improve regulatory efficiency through encouragement of regulatory framework and requirements according to risk-based approach including simplified registration.

3. An appropriate Intellectual Property ecosystem; a key enabling factor of pharmaceutical innovation

In alignment with government direction to promote R&D and drive the economy through innovation based industries, it is necessary to have an appropriate intellectual property ecosystem, especially through effective patent registration and systematic enforcement, to encourage innovation development and attract investors. In this context;

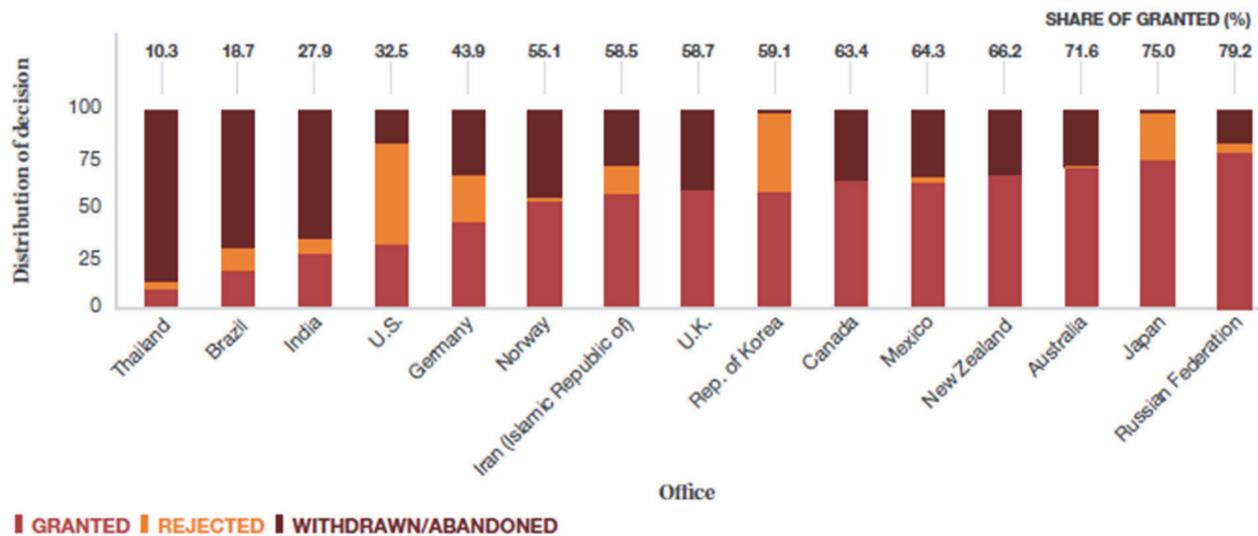
- Patents encourage the disclosure of information to the public, increasing the public's access to technical and scientific knowledge, otherwise, an individual or corporate inventor may choose to keep the research details of an invention secret.

- In addition, they provide an incentive and reward for innovation and investment in R&D and future inventions. Patent pendency results in uncertainty of investment security and business risk for innovators and increases the possibility of infringement during the pending approval periods.
- Delays in patent approvals may impact local researcher's ability to develop incremental innovation from existing patents. Incremental innovation (improvements over existing technology) is the most likely area in which Thai innovators will be able to make an impact. A

delayed patent system provides a vague and uncertain patent landscape on what subject matter is considered patentable and what can therefore be improved to the benefit of the Thai economy.

In compliance with WTO TRIPS agreement, the term of a patent is limited for 20 years starting from the filing date of the patent application, which is in line with international standards as well as clearly defined in Article 33. The present average period of time for Thai patent approval (from application to grant) is 12.6 years. Data collected by the WIPO affirms high figures of patent backlog compared to other countries, as demonstrated below:

Figure 3: Distribution of patent examination decisions for selected offices, 2016



Note: WIPO collects data from IP offices using a common questionnaire and methodology. However, due to differences in patent procedures between offices, data cannot be fully harmonized. Therefore, one should exercise caution when making comparisons across offices.

Sources: WIPO Statistics Database, September 2017.

The Department of Intellectual Property (DIP) has been making significant strides to address the patent backlog by significantly increasing appropriate resources of competent patent examiners. However, this effort should be additionally prioritized to focus the increase of appropriate resources in the areas that require high skill of technological advancement and high backlogs like pharmaceuticals and biotechnology in order to support the national R&D agenda since pharmaceutical is one among the key cluster under Thailand 4.0.

Since the Department of Intellectual Property recently introduced the new draft of Patent Act amendment in 2018, EABC would like to strongly support the streamline of patent registration process that focuses on the examination bottleneck at both the formality checking stage (i.e., the process causing patent applications to not be published within the timeframe) and the substantive examination phase, as soon as the scopes remain to align with international standards and international patentability in respect of novelty, inventive steps, and industrial application. However, the European industry may have concerns in relevant to the sections that may unintentionally create delay in the patent registration and not be aligned to international contexts notably;

- The change of opposition system from pre-grant opposition to post-grant opposition: EABC supports this direction, however, the legislative amendment should be aligned with the post-grant opposition under the international context in which the opposition process would occur only after the officially granting of patent approval in order not to create unnecessary delay in application review and enhance efficiency to promote innovation.

Practically, the result of post-grant opposition should be optional either to remain the granting status of patent or to amend the opposed patent under the approved claims or to revoke the granting status.

- The condition to announce Compulsory licensing (CL)/ and Government Use: It was mentioned in the draft Act in the CL section in relation to the trade competition that if the trade competition committee have an order that the patent owner may subject to violate the trade competition law which cause the difficulty to the access to health services. This section is not aligned with the international context since the trade competition context should not be related only health but broader scope.

EABC support an establishment of patent term restoration or adjustment in the national law to address unreasonable patent examination delays which would support efficiency of patent prosecution. Patent term restoration or adjustment has been established in the international legal framework regarding unreasonable delay in patent registration and in marketing authorization procedures, which would redress the impingement on the patent rights of affected patent applicants for lost time and investment. Observing international standards such as those of the EU, patent term restoration (also known as a supplementary protection certificate) will also be given to a patentee wishing to encourage innovation by compensating the patentee for the long period of time taken to obtain regulatory approval of their human and veterinary medicinal products on the occasions of unreasonable delay. Such restoration applies only after the corresponding general patent expires and has a maximum lifetime of five years. The term 'extension' has

been seen and distorted as somewhat of a scheme, biased towards monopolization, in which *de facto* is prejudiced to those investing and working in research and development. The term 'restoration' better illustrates the concept.

Additionally, data exclusivity, in compliance with the WTO TRIPS agreement, Article 39, is necessary to provide a measure of certainty to the innovator that they will be provided with a period of protection for their efforts of testing a drug and ensuring its safety and effectiveness for patients no matter when, where or how long it takes to bring a drug to market. Patents are an important form of intellectual property, but are not themselves necessarily sufficient to create the favourable environment needed to support the development of medical advances. Data exclusivity is not an extension of patent rights, and it does not prevent the introduction of generic versions of the innovative drug during the data exclusivity period, as long as the marketing approval of the generic version does not use or rely upon the innovator's test data.

Recommendations:

1. Recommendation to increase number of competent patent examiners in particular the fields of chemical, device and pharmaceutical researches to speed up review process.
2. Aligning the amended Patent Law with international standards and practices enabling efficient registration and protection for increased technology transfer and investment.
3. Adopting patent term restoration and data exclusivity to create a holistic framework enticing innovation.

4. Enabling health policies, market environment and sustainable healthcare financing approaches to support innovation

Having adequate and sustainable healthcare financing is one among key enabling factors to ensure a greater chance of success in innovation development, due to the market environment. It is important that the government manage to have appropriate and adequate sources of funding since increasing chronic diseases and life expectancies associated with an aging population tends to drive overall healthcare expenditures up. This will also ensure sustainable access to healthcare, treatment outcomes and quality for patients, which require public and private efforts to provide alternative and collaborative solutions in long term.

This should be developed through a multi-stakeholder approach, aiming for sustainable long-term solutions rather than short-term measures, which may result in reduced access for patients. The European industry also experienced similar challenges in the other government agencies including in the European countries, which we also experienced some solutions to bring that for benefit of Thailand development like alternative access models, innovative and value-based financing models, as well as promoting self-care policy as the contributing solution to promote sustainable healthcare financing. This could support the sustainable system development to enhance patient access for pharmaceuticals and medical devices and government budget management.

Moreover, the market environment would be another key enabling factor for innovation and attracting the investment especially in the current circumstances of the

procedures for reimbursement and national government procurement which if improved for clarity, consistent enforcement and transparency, it will support the investment promotion.

Referring to the reimbursement landscape, Thailand is a semi-reimbursement country, but only for a partial population the 'Civil Servant Medical Benefit Scheme (CSMBS)' the reimbursement of any innovative medicines is applicable immediately after marketing authorization. The policy related to Oncology Prior Authorization (OCPA) under the Comptroller General's Department could impact the patient treatment outcome and limitation of access as there is the list of targeted therapy which will be under non-direct reimbursement condition that patients will need to have advance payment for the medication treatment affecting significant financial burden and challenges to the eligible patients to obtain the access and reimbursement and any innovative medicines registered after the 1st January 2018 will not be eligible for any reimbursement. This creates major concerns on process and selection criteria for OCPA listing and exclusion to non-direct reimbursement which are unofficial and inconsistent across individual company and products.

In addition, under the current circumstances of the national government procurement, the preferential treatment has been granted to its state-owned pharmaceutical enterprises. It is observed that state-owned pharmaceutical enterprises can benefit particular privileges that other privately-owned domestic and foreign companies could not receive since the government procurement regulation allows the state-owned enterprise, specifically the Government Pharmaceutical

Organization (GPO), strong preferences and price advantages that the hospitals need to purchase medicines exclusively from the GPO. This practice distorts the market mechanisms of the public healthcare and pharmaceutical market. Therefore, EABC would like to propose that a level playing field should be exercised with open competition in order to best serve consumers and patients. Any preferential treatment for state-owned pharmaceutical companies or national companies should be eliminated. It is essential that legislation, in procurement, regulatory frameworks, and Trade Competition Law, must be reviewed for further liberalization to allow competition on an equal basis.

We would also like to encourage Thai government in consideration on accession to the Agreement on Government Procurement (GPA) under the WTO framework which Thailand has been an observer to the GPA since 2015. This will bring the advantage to the country as the benefit of GPA members and good governance in Thai procurement system.

Lastly, the digitalization plays more roles in the healthcare sector to improve healthcare access, quality and efficiency in the healthcare system. Digital Health is also one of the key enabling factors to help improving individuals' health and wellness sustainably and efficiently in the upcoming aging society. The digitalization also means that there would be more, and more services delivered, and information stored electronically. This could create new opportunities as well as challenges, which are not only related to the policy in the healthcare sector, but also additionally related to the digital industry sector. The issues of cybersecurity, privacy, data governance and protection related to the digital health should be

addressed. Further issues comprise system architectures of health information and national and international interoperability and standardization should be additionally considered. The international interoperability would become more important especially on people mobility or movement of medical tourisms in ASEAN or across the regions. Besides purely technical solutions, the laws and regulations regarding digital health should be established in coordination with the ASEAN member states to ensure the adoption of technology. The EABC and its members are ready to share their knowledge and experiences towards system and regulatory development.

Recommendations:

1. Transparent procedures for healthcare and pharmaceutical products pricing and reimbursement, with due consideration for the value of innovation to therapeutic outcomes and clinical needs rather than purely cost saving.
2. Level playing field in government procurement, removing local and government preferential treatment.
3. Exploring solutions to enhance patient access including alternative access models, innovative and value-based financing models, as well as promoting self-care policy as contributing solution to promote sustainable healthcare financing, access and budget management.
4. Further liberalization of the Trade Competition Law to enable trade and investment.
5. Development of appropriate policies and regulatory framework in coordination with ASEAN countries for Digital Health in order to maximize the benefits to Thai populations.

Insurance

SUMMARY OF RECOMMENDATIONS

1. Liberalisation of insurance industry

- 1.1 Key areas of liberalisation
- 1.2 Major principles of a liberalised insurance market

2. Enhancing the development and competitiveness of insurance industry

- 2.1 Increase capital requirements
- 2.2 Improve regulations and product approval process to encourage innovation
- 2.3 Remove investment restrictions and encourage foreign investment in the sector to promote skills and bring expertise
- 2.4 Remove the restrictions on pricing by removing the use of tariffs
- 2.5 Promote insurance knowledge to create well-informed and empowered consumers as well as qualified insurance professionals
- 2.6 Promote higher standard of ethics with the insurance industry

Insurance Sector Overview

The insurance sector contributes significantly to the wellbeing of a nation. This is achieved through the economic activity the sector generates as well as the benefits it brings to society as a whole. The general insurance industry brings value in many different ways but principally by providing methods of transferring risk and providing the peace of mind that individuals and businesses of all sizes seek. The life insurance sector also provides risk transfer and protection in respect of mortality, disability and longevity risks through health, life and pension insurance products.

Nations that have well developed insurance industries are able to focus on the economic and social welfare

aspects of their population that are not readily insurable knowing that insurable risks are catered for by the insurance industry.

According to The Geneva Association (The International Association for the Study of Insurance Economics) in their 2012 publication *The Social and Economic Value of Insurance* the ways in which insurance contributes to society and economic growth can be summed up as follows:

- It allows different risks to be managed more efficiently;
- It encourages loss mitigation;
- It enhances peace of mind and promotes financial stability;

- It helps relieve the burden on governments for providing all services of social protection to citizens via social security systems;
- It facilitates trade and commerce, supporting businesses and economic growth;
- It mobilises domestic savings; and,
- It fosters a more efficient allocation of capital, advancing the development of financial services.

1. Liberalisation of the Insurance Industry

Representing a cross-section of insurance businesses operating in Thailand, which have in one form or another European influence over them, the EABC Insurance Working Group wishes to engage with the Government to create favorable conditions for investment and sustainable growth in the insurance market in Thailand.

Liberalisation of industries often have unknown and sometimes undesirable effects on stakeholders be they business owners, consumers or members of the public in general. The important issues when seeking liberalisation of the insurance sector is as follows:

- A need to ensure the financial stability of all the players in the market be they insurers, intermediaries or other service providers, thus capital requirements and adequate solvency measures remain vitally important.
- A need to ensure that products and services provided represent fair value for consumers and that customer service meets standards that the industry governing bodies set for its members.
- A need to ensure that all legitimate insurance claims are paid speedily and each and every customer is treated fairly.
- A need to ensure that all employees in the insurance sector are properly qualified to perform the duties and roles they are engaged to do through professional qualification for example through examination and achievement of the Chartered Insurance Institute (CII London) qualifications.
- A need to ensure a consistently applied standard of ethics throughout the insurance industry.

2. Enhancing the Development and Competitiveness of Insurance Industry

The following key issues and recommendations – representing the collective views of the working group members – aim to enhance the development and competitiveness of the insurance industry in Thailand amidst the growing insurance markets of ASEAN and beyond. Issues and recommendations described here aim not only to promote a favorable and competitive environment for insurance businesses and the industry, but also to make social and economic functions of insurance in line with the public interest, especially in relation to consumer protection and benefits.

Capital

A significant increase in the amount of capital invested in the Thai non-life insurance industry should be encouraged. The benefits of this would be that insurance risks in Thailand could be underwritten and retained within the country and the reliance on foreign reinsurers reduced.

This position could not be achieved in the short term but a long term plan to encourage foreign capital investment in the insurance sector should be considered as a priority. The Risk-Based Capital (RBC) regulations, which came into force on 1 September 2011, are a welcome introduction to the Thai non-life insurance market and will create a financially stronger sector; however, it does not in itself generate new capital, rather it improves the quality of the asset base. The next step is therefore to create a climate where foreign, and in particular European, investors see good investment opportunities for operating insurance businesses in Thailand.

Recommendation:

Thailand is encouraged to implement measures which effectively require insurance companies to increase capital to significantly higher levels than now required by law.

Regulations / Product Approval Process

The regulatory framework, which governs the Thai insurance industry, is commendable, in that it recognizes the importance of capital, expertise, customer protection and the resolution of disputes. The regulations governing the introduction of new products however cause some insurance businesses to be reluctant to innovate; thus, the consumer does not necessarily obtain the product that would most suit them. This applies particularly in the personal lines, life and healthcare areas. The ‘file and use’ regulations allow a degree of freedom for simple products but, where the products are more complex, the approval process appears to be long and difficult mainly due to lack of transparency, inconsistency, and lack of standard procedures.

In certain cases of innovative insurance products, such long and difficult approval processes (which can happen in a very subtle way) result in the said product being copied easily over time and before any market momentum has been established. Consequently, an insurer who creates a new product will lose their competitive edge and later be discouraged to innovate again. A key example is the way that a ‘Unit Linked product’ has been introduced into the Thai market. Many of Thailand’s ASEAN peers have a flourishing Unit Linked product, with markets like Indonesia and the Philippines enjoying more than 60 percent sales of Unit Linked policies. Unit Linked products expand customer choice; greatly improve the health of the life insurance industry by reducing guarantees, and help customers to plan insurance needs to their individual circumstances. Whilst Unit Linked products are now available in Thailand, design constraints are highly restrictive and sales licensing requirements are prohibitive. As local companies begin to understand these products and start introducing them into their respective portfolios, lobby groups gain more traction and so laws will inevitably be changed to support them, but this process takes time and ensures that any competitive edge is all but removed by the time the process unravels.

Furthermore, where new products are introduced, there is often a long time lag before tax rules change to bring these new products on to an equal footing with existing products. This adversely impacts consumer choice and stifles the success of these new innovations. The Unit Linked product, again, is a good example of this, whereby personal tax deduction is out of line with both traditional insurance products and with Long Term Equity Fund (LTF) and Retirement Mutual Fund (RMF).

Recommendation:

In the spirit of freer trade and enrichment of customer choice, regulatory bodies need to embrace innovation with a more coordinated and open approach so that all market players can leverage their respective competitive advantage. A review of these regulations followed by an open and transparent approval process with time limits would be a most desirable objective. Given the importance of regulations in the insurance sector, a dialogue with the relevant government departments to improve these and other regulatory issues would be welcomed.

Update:

Happily, the product approval process has indeed been identified by the OIC has an area which may require improvement; this paper notes that a review process has been commenced.

Expertise Shortage/Difficulties to Attract and Maintain Foreign Investors and Experts

entry to domestic markets by forcing domestic players to operate more efficiently. Foreign entry also facilitates the use of modern skills and technology, improved risk management, the provision of specialized value-added services, and financial deepening through the provision of services in under-served segments of the market such as SMEs.

The issue of insurance expertise shortage can be separated into two parts as follows;

1) Difficulty in attracting foreign investors

Restrictions on foreign participation in the life and non-life insurance sector have relaxed in the past year, as a result of the Life and Non-Life Insurance Acts (No.3) issued in March 2015. Previously, permission for majority foreign ownership could only be granted by the Ministry of Finance if the insurer was in a condition that “may cause damage to the insured or to the public”. This permission, for foreign ownership above 49%, can now be granted “to promote the strength of [an insurer] or for the soundness of the [insurance business]”. This presents a considerably broader scope for such permission to be requested and granted, and suggests that the considerations and justifications of the authorities have moved towards solidifying the insurance sector as a whole. These changes have been effected in preparation for intense competition under the full implementation of AEC.

Additionally, there is a technical change to the standard minimum Thai shareholding level. Previously, more than 75% of shares had to be held by either: (i) Thai individuals or Thai non-registered partnerships (in which all partners are Thai nationals); or (ii) entities registered in Thailand that have more than 50% of their voting shares held by persons falling within item (i) or by a parent company fulfilling the same conditions. This level, previously set at more than 75%, has now been amended to 75% exactly. Additionally, as was the case before, the OIC can give permission to relax this level to 51%, allowing for 49% foreign ownership, and it is thought they will do so fairly routinely upon application.

Further, the new Acts require that when any relaxation or permission as regards foreign ownership levels is granted, it must be published in the Government Gazette, together with the rationale and conditions or timeframes.

To progressively liberalise trade in financial services within ASEAN, Thailand is also working toward recognition of professional qualifications (such as insurance intermediation, brokerage) with a view to facilitate their movement within the region. Unfortunately, this has not led to any concrete, measurable result of improved market access.

It is worth noting that, despite recent changes, the foreign equity caps in the insurance sector are more restrictive than in other parts of the services sector and this is regarded as a key market access obstacle which needs to be addressed.

2) Difficulty in attracting foreign experts

Difficulty in obtaining work permits and visas still remains due to lengthy procedures, recognition of employees' qualifications, and lack of transparency in regulations at various administrative levels. Certain existing laws and regulations in Thailand are impediments to the development of more robust critical sectors. It is very important that the potential EU-Thailand Free Trade Agreement (FTA) negotiations lead to positive outcomes toward materializing the combination of administrative and legislative remedies to ease restrictions, with the aim to facilitate the free movement and recruitment of expatriate skilled and unskilled workers who duly correspond to Thailand's economic development and business needs.

For example, high registered capital and a specific ratio of Thai to foreign employees are required for each work permit issued to a company. These metrics are not appropriate for SMEs, especially in the service sector and when critical skills are needed. SMEs, many of which provide important services to much larger organizations, often begin as sole proprietorships, or with just two or three partners and no additional employees.

Even long-established service companies often need only a small staff to generate significant revenue. Their primary assets are the skills and intellectual capital of their employees, not plant and equipment, and they therefore have no need for high initial capital investment. There is regional competition for skills and Thailand should encourage the intake of skills and entrepreneurs from around the world to invest and start-up in Thailand, regardless of ratio or initial capital commitment. SMEs (Thai- or foreign-owned) should not be restricted from hiring foreigners to provide needed know-how. Such skilled workers will not take away local jobs but, rather, will enhance competencies and competitiveness overall, and help in overall business recovery.

Thirty-nine occupations and professions are closed to foreigners in accordance with the Royal Decree Prescribing Works Relating to Occupation and Professions in which an Alien is Prohibited to Engage B.E. 2522 (1979). In applying for a work permit for an occupation that is not prohibited, conditions related to the paid-up capital of the sponsoring company and the ratio of Thai staff to foreign employees must be observed.

In the current context of business interconnectedness, it is arguable that business operations have become global. Particularly in many strategic parts of the services sector which are regarded as international, supply of jobs is outstripping the supply of local workers to fill these vacancies to ensure smooth business operation. This inevitably means foreign talent and business people are required to overcome the skills shortage. To strengthen Thailand's position as a competitive regional business hub, restrictions on visa and work permits should be eased and immigration rules should not hamper – but on the contrary facilitate – sustainable growth of the Thai economy.

The European insurance industry is recognized for its great strength, both in terms of financial security and professional expertise. By encouraging European investors to participate to a much greater extent in the insurance sector, there would be a number of significant benefits for Thailand. One of these benefits would be increasing the skill-base within the insurance sector.

Recommendation:

It is desirable to see liberalisation within the insurance sector, not just for the benefit of a small group of European investors but for the country as a whole and for all Thai consumers.

To successfully bring expertise into the insurance industry of Thailand, it is important to build the necessary pre-conditions for Thailand to become an attractive investment destination for foreign insurance investors and experts. It is of great interest to the European insurance industry to seek further liberalisation of Thailand's services sector and

implementation of the existing review mechanism on List 3 in the FBA, and further review of the Life and Non-Life Insurance Acts, to duly remove restrictions and encourage foreign investment in the sector. Both existing and potential European investors in the insurance sector would welcome the removal of all shareholding limits leaving them the freedom of choice over partners in a Thai insurance firm.

Also, the EABC recommends a combination of administrative and legislative remedies to ease restrictions with the aim to facilitate the free movement and recruitment of expatriate skilled and unskilled workers who duly correspond to Thailand's economic development and business needs. The EABC and its Insurance Working Group express their readiness to work closely with the Royal Thai Government toward this objective.

Tariff System

This key issue is in response to the Business-Friendly principle. With reference to Section 30 of both the Life Insurance B.E. 2535 and Non-Life Insurance Act B.E. 2535, insurance premium rates shall be under the supervision of the OIC. This means that pricing for all types of insurance products requires prior approval from the OIC. Accordingly, insurance companies will not have the freedom to set the price they deem appropriate. Since pricing is regulated, insurance companies have to compete on other merits; such as providing better services and various forms of sales promotion.

Although the reason behind those Sections is greatly for consumer protection and to help small and medium firms to compete with larger players, it also has an adverse effect, in that the tariff system indirectly hinders the motivation to innovate by creating new insurance products. Since the R&D of innovative insurance products may require a considerable amount of investment and time, the company that innovates such a product will have to set premium rates that are worth the innovation cost, i.e. the actual market value. However, if the OIC views that such a rate is too high or unreasonable, it has the authority to adjust the rate, which may not be fair to that insurance company. The most critical issue is that the Thai insurance industry can lose its dynamism, new insurance products will be rarely introduced to the market, insurance companies will mainly focus on competing on current simple products, and price-cutting momentum will be reinforced. Eventually consumers, instead of being protected, will be left with products that do not meet their risk management requirements due to the very low premium rate they pay.

Recommendation:

For free market competition and in the best interests of Thai consumers, de-tariffing insurance premiums (deregulation of pricing) is the desired goal. The EABC would like to urge a revision to alleviate the said restrictions from any laws and regulations in connection with the insurance premium tariff system being currently enforced.

Other Recommendations:

1. In response to the Disclosure-Based principle, which aims to create educated consumers who can effectively make well-informed consumption decisions, the EABC encourages the OIC to take a leading role in dispersing knowledge to create well-informed and empowered consumers and actively encourage the public to have sound risk management systems. Consumers need to make a purchase with confidence; therefore, they need to know which insurance products are available in the market and which are likely to meet their requirements. They also need to gain access to all critical information and clearly understand insurance products they are contemplating purchasing. An effective way to achieve this goal is to develop a simple targeted communication plan, which is to divide the target audiences into small groups (either by age, education, area, income, etc.) and then customize the content and messages that each group can relate to.
2. Repatriation of funds by investors is subject to criteria which are unclear, inconsistent, and lack transparency and standard procedures. Such activity has to be conducted through time-consuming negotiations with the OIC and results are not guaranteed. The EABC wishes to work closely with the OIC and other related government agencies to relieve the said difficulty obstructing the free transfer of capital and payments in connection with investments by foreign investors. The removal of such restrictions will make Thailand's market much more attractive.

Attached is a notification issued by the Office of the Insurance Commission (“OIC”) with effect from 28 February 2018. Please note that the notification is applicable to life and non-life insurance companies, with an aim to enhance internal risk management practices.

The notification sets out new legal requirements, as well as guidance for better risk management. In summary, life and non-life insurance companies must:

- 1) Establish a Risk Management Committee (“committee”). The purpose of the committee is to oversee the company’s overall risk management framework and to advise the board on the company’s risk-related matters. At least one members of the committee must be appointed by the board from amongst the directors of the Company. The committee must consist of not less than 5 members and must hold a meeting every quarter to review risk management performance and submit a report to the board of directors. Foreign insurers may satisfy the requirements of this section by utilising a committee established by its headquarter;*
- 2) Submit a risk management framework and policy, and three-year business plan to the OIC annually. In addition, the foregoing documents must set out potential risks arising from the business plan, incident reports and recommendations on the improvement of the company’s risk management systems and internal controls;*
- 3) Establish an internal audit department to support the board of directors in fulfilling its corporate governance and oversight responsibilities by assisting*

with the monitoring and review of the company’s risk management process. A risk officer must also be appointed. The company must report the appointment or withdrawal of the risk officer to the OIC within 30 days from the date of the appointment.

- 4) Implement an efficient and safe information technology system which provides secure and compliant management of data;*
- 5) Inform employees of the objective and benefit of risk management, and their roles and responsibilities in the process. In particular, training sessions must be provided to employees to ensure that employees are given appropriate information and instruction in order to manage associated risks.*

Lastly, the OIC may require any specific or every insurance company to conduct “stress test” as deemed appropriate.

Intellectual Property Rights

SUMMARY OF RECOMMENDATIONS

1. Amendments to IP-related legislation

- 1.1 Amendment of the Trademark Act on accession to the Madrid Protocol and illegal refilling practices
- 1.2 Amendment of the Geographical Indications Act B.E. 2546 (2003)
- 1.3 Amendment of the Patent Act to enhance research-based ecosystem for innovation development
- 1.4 Trademark elimination via plain packaging policy and excessive measures restricting normal use of trademarks
- 1.5 Labelling regulation and excessive health warning

2. IP Law Enforcement

3. Responsibilities of on-line intermediaries

- 3.1 Monitor effectiveness of changes
- 3.2 Consider including financial intermediaries as regulated ISPs

According to the national agenda in driving Thailand towards innovation-driven economy, the EABC would like to encourage the Royal Thai government to further develop the Intellectual Property Ecosystem in line with international practices in order to promote innovation and attract foreign investment to the country. Accordingly, the EABC would like to recommend some essential revisions to IP-related law and policies in this chapter.

1. Amendments to IP-related legislation

1.1 Amendment of the Trademark Act on accession to the Madrid Protocol and illegal refilling practices

Trademark Act amendment, which supports Thailand's accession to the Madrid Protocol, allows a registration of

unconventional mark and multi-class application. It has been enacted and effective since late July 2016. Trademark registration under the Madrid Protocol is available in Thailand now and the country is growing as the popular designated country for foreign brand owners in their trademark registration through the Madrid system.

Challenges of Thailand accessing the Madrid Protocol (International Trademark Registration System)

Since 7 November 2017, the Madrid System is accessible to both local and foreign brand owners, Thailand acts either as the **Office of Origin** (i.e. the country in which the basic national application is filed which will serve as the basis of the international application) or **one of the designated countries** in the international application.

Overall, this system is **time-efficient** due to a simplified and centralized procedure before the Worldwide Intellectual Property Office (WIPO) since brand owners can seek registration of their marks through a single application covering up to 100+ countries filed before the WIPO in one language and payment of one set of fees in one currency. This system can also be **cost-effective** depending on the number of territories designated in the international application.

However, “**Central Attack**” threat is the concern of the Madrid Protocol. The first five years after registration of an international application is dependent on the fate of the basic national mark; the worst consequence is the international application can be cancelled in all of the designated countries (with the option to convert it into a national registration depends on each country) if that national application is rejected, withdrawn, revoked, cancelled, or invalidated within these five years.

Recommendations:

1. EABC encourages full utilization of existing enforcement measures on trademark protection, while the provisions for protection of unconventional marks and against illegal refilling practices come into force. Moreover, the illegal refilling practices should be recognized as a trademark infringement and definitions referring to private refilling acts and/or broadly accepted practices should be reconsidered. Within the framework of the provisions on illegal refilling practices, the interpretation of provisions for enforcement agencies and/or implementation plans should allow the possibility to broaden the definition of illegal refilling practices to encompass fundamental

issues which often relate to illegal refilling, such as 3D trademark packaging protection and protection of trade dress.

2. Regarding trademark registration, EABC supports the consistency between a national application and an international application in terms of approval time and requirements.

1.2 Amendment of the Geographical Indications Act B.E.2546 (2003)

The EABC welcomes Thailand’s recognition on importance of Geographical Indications (GIs). However, Article 22(2) of the WTO TRIPS Agreement, which sets out protection for GIs, has not been implemented by the Geographical Indications Act (the Act) or in the associated Ministerial Regulation B.E. 2547 (2004).

The provisions of Article 22(2) of the TRIPS Agreement have not been implemented fully by Section 3 of the Act (includes a definition of GIs) and Section 27 – 28 of the Act (includes protection to GIs); these sections only protect the registered geographical indications themselves and do not prohibit the use of any means that indicates or suggests the GI.

Section 28 of the Act partially follows Article 23 of the TRIPS Agreement; it does not exercise the prohibition on the use of GIs in translation, while it includes the prohibition on the use of certain expressions in association with wine and spirit GIs.

Recommendations:

1. EABC suggests considering implementation of Article 22(2) and Article 23 of the TRIPS Agreement fully in the Geographical Indications Act.

1.3 Amendment of Patent Act to enhance research-based ecosystem for innovation development

With respect to the increase in the number of patent granted in recent years, the EABC would like to appreciate DIP's outstanding effort in the development of patent approval process including streamlining patent registration procedures and increasing the numbers of patent examiners. This impressive improvement is one of the key indicators showing that Thailand is gearing towards research-based and innovation-driven economy.

We perceive the necessity to revise the Patent Act in order to promote sustainable ecosystem towards innovation advancement in Thailand. The amendment of Patent Act should be aligned with international principle and there are two key areas that EABC would like to address in this revision as below:

1. Opposition System

EABC fully support a change of opposition system from pre-grant opposition to post-grant opposition, which is in line with international standards. However, we observe in the latest draft of the Act that the opposition, though has been changed from prior substantive examination, remains at the last step prior to the decision on patent approval. This could

potentially create unnecessary delay in the patent registration. Respectively, we would like to propose that the opposition should occur after patent granted in alignment with international practices together with well-defined timeframe. This would truly support streamlining the patent registration procedures and facilitating the effective patent registration as the spirit of this law development. In addition, we would like to propose that the decision for opposition should be based on three aspects according to international practices; which are 1) Remaining of the patent granted 2) Revision of the claims (inside currently approved claims) and 3) Revocation of the patent.

2. Compulsory Licensing (CL)

We would like to propose reconsidering the clause in section 51 that connects health services to anti-competition in order to promote fair competition in healthcare industry.

In addition, EABC supports an establishment of patent term restoration/adjustment in the national law in order to address unreasonable delay in the patent examination process according to the international principles. This would redress the impingement on patent right of concerned patent applicants for their loss in patent protection time and investment. Per EU practices regarding patent term restoration, a supplementary protection certificate will be given to a patentee on an occasion of unreasonable delay to compensate the patentee for the long patent review time on their human and veterinary medicinal products. Such restoration applies only after the corresponding general patent expired and has a maximum lifetime of five years.

Recommendations:

1. Patent Act should be amended to streamline patent registration procedure, promote IP ecosystem to attract investment towards innovation and ensure international alignment especially on the sections related to opposition system and compulsory licensing.
2. We would propose a regular dialogue and consultation between public and private sectors for information sharing and best practices.

1.4 Trademark elimination via plain packaging policy and excessive measures restricting normal use of trademarks

The EABC recognizes and respects the rights of the Royal Thai Government to protect its citizens and to implement proportionate regulations to ensure the health of the population, including the control of alcoholic beverage and tobacco product; however, we do not believe that excessive, unnecessary and unproven restrictions on trademarks are appropriate means of achieving Thailand's health objectives.

One such restriction is contained in *The Notification Re: Rules, Procedures and Conditions Relating to Packages of Tobacco Products and Tobacco Products in the Category of Cigarettes B.E. 2561 (2018)* - set to come into effect in September 2019 - that among other things mandates that all tobacco packaging be highly standardized - referred to as 'plain packaging'. Plain packaging in effect forces legitimate companies to relinquish the use of their lawfully registered trademarks, and valuable elements of these trademarks, with no reliable evidence that such a

restriction would achieve any of the public health objectives it aims to address. The official data available from Australia, the first country to adopt plain packaging, and the data emerging from the early stages of the implementation of plain packaging in the UK and France, confirm that this debatable measure has failed to change smoking behavior and to decrease tobacco consumption in those countries.

Rather, plain packaging risks leading to several unintended consequences. It will for one pave the way for similar extreme regulations to be applied across a wide range of other FMCG sectors, thereby putting at risk the future use of all trademarks and the protection of intellectual property rights for an increasing amount of goods and industries. Another negative consequence of plain packaging is that it forces businesses to compete solely on price, which is in fact likely to increase the consumption of tobacco products as they become cheaper and results in the commoditization of these products. Plain packaging also renders tobacco products much easier to counterfeit and to smuggle, making them an easy target for organized criminals. Experience from Australia and the UK show that plain packaging has provided many opportunities to criminals to take advantage of this requirement to the detriment of legitimate manufacturers and to both these countries' efforts to fight against the illegal trade of tobacco.

The EABC supports a legal and regulatory framework that embraces robust IPR protection and enforcement and stands ready to help Thailand establish a clear plan to efficiently tackle any threats to IPR to improve Thailand's competitiveness and strengthen the country's position

as a favorable trading partner. Moving forward with plain packaging would conversely lead to the erosion and the weakening of such a position and lead to the many unintended consequences listed above.

Recommendations:

The Thai government should protect trademarks for businesses. There remains no direct evidence that plain packaging or similar policies improve public health. They rather represent a significant threat for IPR. In addition, and as a member of the WTO, Thailand should uphold its international IPR-related obligations under the WTO's TRIPS and TBT agreements and improve the protection of IPR as a means to promote a suitable environment for foreign investment and innovation. The EABC therefore strongly urges the Thai government to review the necessity of implementing its plain packaging Notification in the spirit of protecting IPR and avoiding its related unintended consequences.

This situation which remain unsolved is worrying for the related industry since penalties may be enforceable at the MOPH's discretion.

Recommendations:

As an alternative to the graphic health warnings or labeling restrictions, EABC would like to propose using pragmatic social policies to address the consumption of tobacco products. These may include harm reduction policy, a policy approach that seeks to reduce the harm caused by a dangerous activity rather than banning the activity itself. Such an approach would make less harmful alternative products available to consumers who choose to continue consumption instead of cessation. This concept of harm reduction has been used and well known in various areas such as in curtailing HIV/AIDs and other STDs, reducing fatality from road accidents, promoting food safety and nutrition, etc.

1.5 Labelling regulation and excessive health warnings

Labelling and the plain packaging law imposed on tobacco undermine intellectual property rights, ill the trademark protection and would increase and ease the production and transaction of counterfeit goods.

In light of the concerns shared by some WTO Member Countries and several stakeholders in the industry, the MOPH **informally** recognized the lack of clarity of the Notification. Whether additional guidelines and revisions shall be provided, remains a question to be answered.

2. IP Law Enforcement

Genuine products sometimes are imported from other countries and sold in Thai market by third parties without the valid import license. Thailand usually follows the "First sale doctrine" for IPRs, which also called the International exhaustion doctrine. It means that once the brand owner or authorized distributor first sells the legitimate goods in the domestic market, it is not possible to oppose the commercial exploitation of the same genuine branded products by third parties outside of the authorized

distribution channels anywhere in the world. Rights are considered to have been exhausted upon the first sale of the genuine branded goods. Therefore, the resale of these genuine products is permitted.

There are cases of medicines imported from other ASEAN countries to Thailand without valid import license. These medicines usually look alike legitimate medicines but their quality can often be unacceptable due to improper import procedure and they can harm patients' health and ruin reputation of pharmaceutical companies.

Limiting parallel imports by recognizing a **regional exhaustion** instead of an international exhaustion (similarly to the EU) may be a good alternative since branded products entering the specific region without prior authorization from the brand owner would be deemed as trademark-infringing goods.

Prohibiting parallel imports through the recognition of the **national exhaustion** would even be a better alternative since the brand owner may legitimately object to the import and sale of products which have originally been sold or marketed abroad. In such case, unauthorized use of a trademark through parallel imports would be deemed as an infringement of a registered trademark owner's IPR.

Example of neighboring country prohibiting parallel import for trademarks is Cambodia through Article 11 (c) of Cambodia's Trademark Law (*"The rights conferred by registration of a mark shall not extend to acts in respect of articles which have been put on the market in the Kingdom of Cambodia by the registered owner or with his or her consent."*).

3. Responsibilities of On-line intermediaries for IPR infringements

3.1 Online Infringement:

eCommerce has become, for many, the main means of purchasing goods and many services (whether those services are delivered on-line or not). The on-line world is full of practices which violate intellectual property rights, and finding the violators is often difficult. Problems include issues with parallel imports, fake items, improper FDA registration, no receipt and no label and disappearing providers.

Remedies for this situation are multiple.

3.2 Intermediaries

A particular area of focus is the role which on-line intermediaries can play, and the responsibilities which they should have for IPR infringement. Remedies include blocking of access and take downs. But the system needs to be balanced and fair so that liability of the intermediary is based on an act, or failure to act about something which is somehow within the intermediary's power to carry out. An access provider is capable of blocking access but could not implement a take down, for example. An on-line merchant can do a take down, as can, in most cases, an on-line marketplace.

Technology which tags specific items of merchandise with metadata (such as used in the music industry) has not yet been standardised to apply to goods. Thus micro-targeted blocking for goods is a new concept. Blocking access may also block access to non-infringing items. An unbalanced

and overly aggressing blocking order could be so wide as to harm legitimate eCommerce.

Major on-line market places and social media sites have implemented systems and platforms which can accept and act on requests for take down.

Principle: limited or conditional exemption for intermediary service providers (ISP). Developments in the EU (E-commerce Directive, 2000/31/EC) and US (Digital Millennium Copyright Act - DCMA), have now included duties and liabilities of ISPs in protection of intellectual property rights. So as not to be liable for the IPR infringement, the ISP has certain responsibilities and cannot be complicit in or aware of the infringement (more below). Thai law is variously now either harmonized with

this approach or in the process of being so. The term ISP has a specific meaning in this context and does not just mean an internet access service provider. Intermediary Service Providers (ISPs) includes data hosts, on line marketplaces, on line merchants, communications firms (such as mobile network operators) and others in the value chain. Thai law covers those described below.

This issue is also referred to in the Digital Economy/ICT Chapter of this 2019-2020 European Business Position Paper

The two relevant laws are the Computer Crimes Act (2007 with relevant 2017 amendments and a 2017 Notification) and the Copyright Act (to 2018) which is in the process of being amended (at time for publication) to bring it into line.

Table 1: ISP's - Remedies for IPR breaches

LAWS	Copyright Act B.E. 2537 (as amended to 2018 without proposed 2019 amendments)	Computer Crimes Act as amended BE 2560 (2017)
Article	Section 32/3: "In the case where there is reliable evidence showing that there is a <u>copyright infringement</u> in the computer system of a service provider, a copyright owner may <u>submit a petition requesting the court to order the service provider to cease such copyright infringement</u> ".	Section 20/3: "When there is an action to disseminate computer data, the competent official [from Ministry of Digital Economy and Society- MDES], with approval from the Minister, may file a <u>petition with supporting evidence, to the court of jurisdiction, for a court order to suppress the dissemination or to remove such computer data from a computer system</u> ". Completed by Ministerial regulation
Type of infringement	Copyright only	All intellectual property rights
Type of order	Temporary injunction	Permanent injunction

LAWS	Copyright Act B.E. 2537 (as amended to 2018 without proposed 2019 amendments)	Computer Crimes Act as amended BE 2560 (2017)
Available actions	Request to the Court for removal of infringing content from the Internet. <u>Must be followed by a lawsuit against the infringer</u>	Request to the Court for removal of infringing content from the Internet or website blocking. <u>No further legal action needed</u>

Table 2: ISP's- Conditional Exoneration

Instrument	Copyright Act amended to 2018; and including current draft amendments (as at September 2019)	Computer Crimes Act amended to 2017, with 2017 Notification
Subject matter	Copyright	All IP rights, various proscribed actions
Categories of ISP	Draft Amendment to Copyright Act s.4 (definitions) – ‘service provider’ – four categories. New s. 43/1; (1) Mere conduit (2) Temporary storage – caching (3) Hosting (4) Search engine	Notification 2017 clause 4 : (1) mere conduit (2) System caching – temporary storage (3) Hosting (4) Search engine (5) (Other – general access/ communication means)
Actions	Direct take-down request or effect blocking without delay, process for challenge	Request Court to order removing infringing content from the Internet, or website blocking.

3.3 Limited or conditional exoneration for ISPs

To reiterate, the purpose of the scheme is to require ISPs to play a role (which depends on the type or category of ISP), potentially without liability, in protecting IPRs. To enjoy the exoneration from liability, both the Computer Crimes Act and the (assuming the proposed amendments are included), Copyright Act provide conditions.

Although the wording in the Computer Crimes Act is slightly different to that in the Copyright Act, to illustrate the conditions for exoneration, extracts from the 2017 Notification under the Computer Crimes Act are used. There must be certain pre-conditions (as illustrated) and the ISP must act once there is knowledge of the situation or a notice is received.

- (1) Mere conduit
- (a) “...where the transmission is conducted or controlled by the user or any third party who is not the service provider...”
- (c) “...who does not select the information or content of information for the transmission...”
- (d) “...merely an intermediary for temporary transmission of information...”
- (2) System caching
- (a) “...transmission of information content is totally monitored and controlled on the computer system by the user or another person without any involvement of the service provider...”
- (3) Hosting
- (a) “the service provider has no intent and involvement, and does not know of any wrongful act of the user or another person”;
- (c) “upon obtaining the notification about [unlawful content]... the service provider shall act expeditiously to block the dissemination or to delete such unlawful computer data...”
- (4) Search Engine
- (a) “the service provider by itself, must not provide another person with a link(linking) to access to unlawful information”
- (c) “.....the service provider shall act expeditiously to block the dissemination or to delete such unlawful computer data...”
- (5) Others not falling into categories (1) – (4)
- “Any service provider ...who can prove that he/she has prepared the following measures in order to notify and to block the dissemination or to delete

computer data...” – there is an information collection requirement and action to be taken.

The above extracts are only illustrative, the full text of the law should be referred to for the complete picture.

Recommendations:

1. Steps should be strengthened for co-operative schemes between ISPs (especially on line market place providers) and rights holders, continually to improve effectiveness.
2. EABC welcomes the changes to the Computer Crimes Act and (at publication date) the proposed changes to the Copyright Act. These should be monitored for effectiveness.
3. Further strengthening in terms of domain name action (eg migrating the blocking), take down and stay down are needed
4. EABC recommends reviewing the roles which various ISPs can play in combating IPR infringements, not just the four or five categories of ISP in the legislation. For example, the financial services industry could play a role, especially payment service providers. Balance, practicality and fairness continue to be principles which should apply to rule development.
5. Court actions continue to be cumbersome. Developments to allow for direct request are welcome. Further Court specialization and streamlining is welcome.

Rail and Road Infrastructure

SUMMARY OF RECOMMENDATIONS

- The Royal Thai Government shall consider modern technologies in design and procurement, including Life-Cycle-Management. Focusing only on initial investment costs and ignoring operating costs and life spans could lead to unmanageable future burdens.
- Let take Central Railway Authority / Railway Department the lead.
- Reduce investment costs significantly by evaluation of Infrastructural Projects by international experienced experts.
- Quickly implement the Know-How submitted by European Institutions and Countries, including European Standards.
- Liberalization and international co-operation for education will bring huge benefits.
- Reduce road congestions by Intelligent Traffic Solutions.

Railway Main Focus

For 2019-20, the quick implementation of the already transmitted European Know-How seems most urgent. This includes to approve and use European Standards and European Technical Approvals on the field of Railway and Road Infrastructure. They represent proven and undisputed the state of the art, with reasonable investment costs, highest quality and optimal life cycle cost.

The EABC convinced the Commission of the European Union to invest in a project for the introduction of the European Standards for Railway (and Automotive) in Thailand.

In the spirit of friendly relations between Thailand and the European Union, which are reflected in the restart of

negotiations on a Free Trade Agreement, the co-operation of the Ministry of Transport in this project will be beneficial.

Central Railway Authority

It is very gratifying that the Ministry of Transport has established the central railway authority, which was also proposed by the EABC, as a separate department (Rail Department) of the Ministry.

As far as we know, however, the concrete implementation of the necessary steps is still largely open.

There is an urgent need for Unification and Interoperability rules. The EABC offers to establish contact with similar institutions of the European Union in order to gain knowledge of their experiences and management methods.

To prevent tendering abuse, the authority shall ban the placing of more than one standard per requirement and selection of the standards by the bidder. Rules shall clarify the order in which the standards are to be applied: Preferably, Thai standards are to be used. If such do not exist, international standards e.g. ISO, IEC, UIC, EN are to be used. Only if such do not exist, national standards from other countries may be used.

If such rules are not set up and compliance is not centrally monitored, the tender results are not comparable, and the result is always the drastic loss of quality.

It is also strongly advised that the Rail Department ensures that approvals required in tenders are described with traceable requirements and clearly set deadlines. That would be a great help in removing unqualified bidders and curbing corruption.

Life cycle Management-RAMS Standard.

For a long time now, the Governmental Project managers have been well informed about the benefits and the necessity of Sustainability by Life Cycle Management, not least through EABC consultations and seminars. Nevertheless, this is largely ignored in governmental projects. In contrast, Thai private railway operators have successfully integrated the Life Cycle Management.

It is very urgent to introduce the International Standard IEC 62278 *Railway Applications Specification and Demonstration of Reliability, Availability, Maintainability and Safety* (RAMS) and to take it into consideration in the TOR's. This is an ISO standard from the International Standards Organisation, where Thailand is a member. The

EABC published the contact details of European specialists who can accompany the introduction of this standard in Thailand.

What happens if these regulations, which have proven themselves internationally, are ignored in the major rail projects of long-distance transport? There will be a risk of purchasing low-quality products that have high operating and maintenance costs and a short life.

Then, due to high costs of operation, e.g. for energy, only a small proportion of costs will be covered by the sale of tickets. This causes an unbelievably great financial burden on future generations, as the future budgets of the state will have to compensate for the resulting deficits.

The government is well advised to quickly establish the legal basis for a timely assessment of the tender results. As in all industrialized countries, also in Thailand the costs of operation and maintenance as well as the life span of the products must be considered when determining the best bidder. If the evaluation of life cycle costs continues to be ignored this can become a political matter, ammunition for opposition parties

This procedure is also indispensable for the financing model of PPP, preferred by the government.

In Europe there were very bad experiences with PPP projects, where the government did not care about and did not check the technical quality of the investment. After contract duration ended, a further use was possible only with extreme refurbishment costs. Thailand urgently needs to organise an accompanying inspection by skilled experts.

Introduction of Contemporary Technologies

We were pleased to note that Thai private rail operators are using state-of-the-art European technology, especially in the area of urban transport in Bangkok.

On the other hand, we see with great concern that, regarding the huge public investment projects in the transport sector, the technical developments of recent decades have been completely ignored.

Sometimes, incredibly outdated technology is specified in tenders, very often obsolete or incorrect standards are used. It is high time the Thai government sets up a neutral consortium where external experts review and evaluate the proposed TORs.

If, due to a lack of liberalization, the knowledge of independent worldwide experienced consultants is ignored, there is a risk that investments will turn into a financial fiasco.

Despite Thailand experienced an average inflation rate of 2.5% the last twenty years, maximum rates of international and local experts have not been adjusted, but rather reduced! It is strongly recommended to adjust the rates in order to allow qualified consultants to participate in the bidding processes. Consulting services are in the range of 3-5 % of the investment sum but can save a multiple if experienced experts are contracted. The EABC also recommends ending the policy to pay consultants according to the contractor's progress, which results in weakening liquidity of consultants thus creating a conflict of interest (implement the quickest solution instead of the best) for the disadvantage of Thailand.

Today, with state-of-the-art information technology, the operating conditions can be monitored, reducing costs and increasing safety. Adaptive maintenance systems lead to huge savings. Punctuality and comfort for passengers can be improved.

Civil structures can be checked using modern sensor technology. Possible defects can be detected in good time, so remediation is cost-effective.

The EABC supports to contact European suppliers, system providers, consultants and universities to get more information about these technologies.

For Know-How Transfer and advanced adult training, the EABC supports the activities of the German-Thai Railway Association GTRA. This association, founded because of an agreement between the Governments of Germany and Thailand signed on 23rd November 2016, already organized some very well-attended and helpful seminars.

Liberalization

The EABC is sure, liberalization would have very high positive impact on the Thai economy in short and long term. Many problems that are currently visible in the implementation of infrastructural investments could be tackled by the know-how of experienced international experts. This is limited by the visa and work permit requirements and by legal restrictions that forbid certain professions for foreigners.

Looking to any other nation, liberalization always was a success for growth and prosperity!

EABC suggests starting with a statutory exemption for European infrastructural experts with special types of visas and work permits under the upcoming “Smart Visa” project. To get the urgently needed state-of-the-art know-how for the huge infrastructural projects, NLA or NCPO shall give exemptions / waivers of the application of laws and regulations that prohibits foreign engineers from working in Thailand for the purposes of rail and road infrastructure projects.

Civil Engineering

In civil engineering, there is also considerable room for improvement. Design recommendations from experienced experts are required, as sometimes totally obsolete standards are stipulated. The long-term quality of structures is low. The lack of systematic inspection, evaluation and maintenance, results in a cost trap for future generations. This could be avoided by co-operating with experienced international experts, free from any conflict of interests.

Railway viaducts, for example, designed in accordance with the Eurocodes, have a longer life span and considerably lower construction costs than the viaducts built in Thailand based on American standards.

Authorities must prevent inappropriate poor-quality construction design and / or execution from being used in PPP projects that can result in huge long-term costs and operational restrictions in the long term.

If, for example, foreign engineers are planning for Thailand, assuming climatic conditions from north of Asia, the government must pay for completely unnecessary antifreeze costs.

Education

From European point of view in terms of rail and road experts the Thai universities have a potential to develop the level of science and, moreover, the number of students in this field seems to be much too low for the explosion in demand. Today salaries for good professionals rise so high that they can no longer be brought into conformity with the rigid tariffs of state business organizations.

EABC has already initiated specialized courses for railway technicians at Thai institutions with the help of support programs of the European Union.

EABC supports the academic exchange of knowledge, students and professors.

Road Main Focus

Intelligent Traffic Solutions

Urban traffic in most cities in Thailand, including Bangkok and Chiang Mai, is managed by simple countdown timer traffic controller, not considering traffic volume or special circumstances, like after-school or after-office hours. Modern traffic equipment like vehicle presence detectors, programmed traffic controllers and traffic management can significantly reduce traffic congestions.

With non-intelligent traffic lights, cars need to stop even when the other side of road has zero traffic. European Intelligent Traffic Solutions, recognizing many cars on the other side of the road, switch traffic lights, so the congested lane can flow.

The EABC refers to the positive experiences in Europa with holistic combinations of vehicle detectors, programmed-traffic controllers and an advanced traffic management system, a benefit for busy cities worldwide. Installing vehicle detectors before a junction gives the real-time input to the controller, whether to switch from red to green. The flow of the traffic does not depend only at one junction's situation but on many junctions before and around. Intelligent Traffic Solutions collect traffic data from a wide variety of sources, including accidents, weather forecast or events and process them to create a solid basis for implementing strategic measures which can be initiated manually or automatically. The system allows the integrated monitoring and control of different traffic zones such as city, urban freeway or even entire country networks.

Motorways and expressways in Thailand are used daily by commuters, as it would help them get to their destination in a shorter time. However, we often see the expressways filled by standing cars. With a European Intelligent Traffic System, Thailand can optimize the traffic flow of roads, reduce the economic costs arising from traffic congestion and increase the safety of the drivers.

Small to Medium Enterprises (SMEs)

SUMMARY OF RECOMMENDATIONS

EABCs recommendations are based on recognition of the SME as an innovation and efficiency driver, essential to realise a Thailand 4.0 vision.

1. Access to finance –

- (a) monitor new crowd funding and peer to peer lending regulations for policy effectiveness and develop further
- (b) Develop a Credit Guarantee Scheme

2. Enhance tax incentives for R&D, Innovation, Productivity

3. Facilitate collaborate on innovation

4. Utilize non personal information on SMEs.

5. Enhance Ease of Doing Business

- (a) Work permit and visa reform
- (b) Liberalise services sector
- (c) IPR protection enhancement – especially on patents

6. Trade and Customs

- (a) Complete National Single Window (NSW)
- (b) Simplify customs procedures
- (c) eCommerce – support cross border movement of goods better
- (d) Simplify issuing CoO; self certification, streamline audits

7. Treat ‘foreign’ SMEs as just as eligible as Thai SMEs for various programmes.

1. The Nature of SMEs; ‘foreign’ SMEs; what is an SME?

Many of the challenges facing SMEs also face larger companies. The difference is that SMEs are generally not well equipped to handle major transformations or deal with administrative overhead in the ways that larger companies might be. Thus in recognizing the economic value of SMEs, special consideration needs to be given to supporting SMEs.

Several benefits in Thailand are not available to ‘foreign SMEs’. It may be normal, somehow, to think of foreign business engagement through MNCs. A large company opens a local division or branch in Thailand which itself (on some definition) may be termed an SME. Less obvious is the way SMEs with foreign engagement come to be. They may be subsidiaries or associated businesses of SMEs

in other places in the world, or they may be the creations of foreign nationals attracted to bringing their skills and capital here to Thailand.

Such SMEs with some foreign element are however just like Thai SMEs. They are incorporated in Thailand and their centre of business activity is here in Thailand, of course all have the potential to expand overseas or embrace overseas markets but they have the same challenges as ‘local’ or ‘Thai’ SMEs.

Thus if the overall objectives are to be met, SMEs with some degree of foreign ownership should not be excluded from various benefits.

There are varying definitions of what an SME is. The following can be taken as indicative at least:

Figure 1: Indicative definition of an SME.

Type	Small		Medium	
	Employees	Capital (THB million)	Employees	Capital (THB million)
Production	Not more than 50	Not more than 50	51-200	51-200
Service	Not more than 50	Not more than 50	51-200	51-200
Wholesale	Not more than 25	Not more than 50	26-50	51-100

Note. Adopted from “*Financing SMEs and Entrepreneur 2016: An OECD Scoreboard*,” by OECD, 2016. OECD Publishing, Paris. Copyright 2016 by OECD.

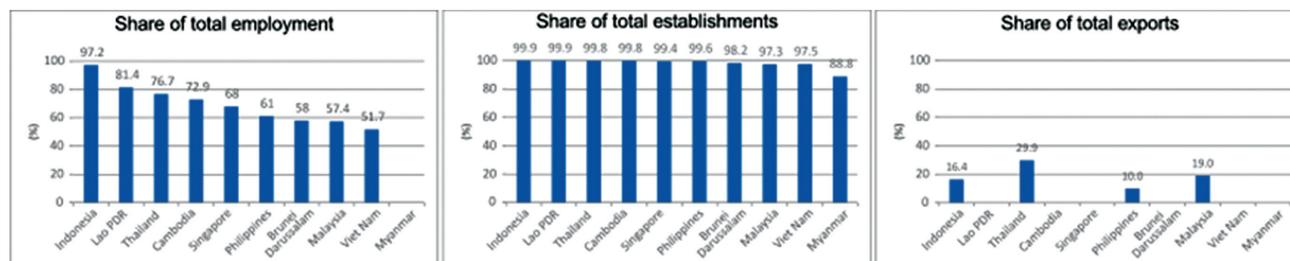
Definition of SMEs in Thailand

2. SME – Options, Objectives

In ASEAN, Micro, Small and Medium Enterprises (MSMEs) are of key importance due to the sector's economic dominance in terms of its share of total establishments (between 88.8% and 99.9%) and its share of total employment (between 51.7% and 97.2%). In contrast to this, its share of total exports remains small (between 10.0% and 29.9%) – see Figure 2.

The European Commission and the Royal Thai Government have realized this discrepancy and therefore have promoted entrepreneurship and plans to improve the business environment for MSMEs, to allow them to realize their full potential in today's global economy.

Figure 2: Statistics of MSMEs



Source: ASEAN SME Policy Index, 2014

EABC is involved in various programs the EU Commission has launched, in close cooperation with the regional partners (such as the ICI+ program), intended to further deepen bilateral ties between EU and important trade partners, and connecting all European Chambers in ASEAN. Also, the membership in the EU ASEAN Business Council and EBO, the global connection to all European Chambers of Commerce provides easy access to many resources in the EU that will help European SMEs to obtain vital information and business connections.

EABC also maintains strong relationships with the EU Delegation in Bangkok as well as the European Commission

in Brussels, in particular DG Grow, being responsible for European SME programs. EABC can provide information and establish the dialogue with respective authorities and organizations in Europe. **Available EU programs** can be summarized below:

(a) Access to finance

Through the *Loan Guarantee Facility*, the program will provide guarantees and counter-guarantees to financial institutions (e.g. guarantee societies, banks, leasing companies) so they can provide more loan and lease finance to SMEs.

Through the Equity Facility for Growth, the program will provide risk capital to equity funds investing in SMEs mainly in the expansion and growth-stage phases.

(b) Access to markets

The EU supports various European Chambers of Commerce in particular in the ASEAN region plus the Enterprise Europe Network (EEN) consisting of over 600 offices in more than 50 countries helping SMEs find business and technology partners, understand local legislation and access EU financing.

EU funds web tools designed for enterprises development such as the SME Internationalization Portal. The portal puts the emphasis on support measures for companies which want to develop their business outside Europe.

EU finances the ASEAN Intellectual Property Rights (IPR) SME Helpdesks that offer advice and support to European SMEs facing difficulties in IPR issues, standards or public procurement rules in ASEAN.

(c) Creating better framework conditions for competitiveness

EU supports action to improve the framework conditions in which enterprises operate, in particular SMEs, by reducing unnecessary administrative and regulatory burdens.

EU supports the emergence of competitive industries with market potential, by helping SMEs to take-up new business models and integrate them into new value chains.

EU promotes the development of world class clusters in the EU, fostering cluster excellence and internationalization with an emphasis on cross-sectoral cooperation, notably in support of emerging industries.

(d) Encouraging entrepreneurship

EU backs the implementation of the Entrepreneurship 2020 Action Plan through a wide range of activities. These include mobility exchanges, research, best practices diffusion and pilot projects in areas such as entrepreneurship education, mentoring or the development of guidance and support services for new and potential entrepreneurs, including young, female and senior entrepreneurs.

EU especially focuses on digital entrepreneurship to help European businesses drive their digital transformation and fully benefit from the unprecedented new opportunities created in the digital era, which are crucial for their competitiveness and growth.

3. Access to finance for SMEs in Thailand.

One of the main objectives is to provide enhanced access to finance for SMEs in different phases of their lifecycle. A recognized issue for SMEs is the difficulty in obtaining finance.

Apart from EU programmes, some measures have been taken in Thailand to overcome this issue:

- i) Legislation to support the use of various assets as *collateral*
- ii) Debt and Equity *Crowd Funding* – see table below
- iii) *Peer to Peer lending* – see table below

Figure 3: Crowdfunding process. Source: Securities and Exchange Commission (Thailand) 2019

Crowdfunding Process

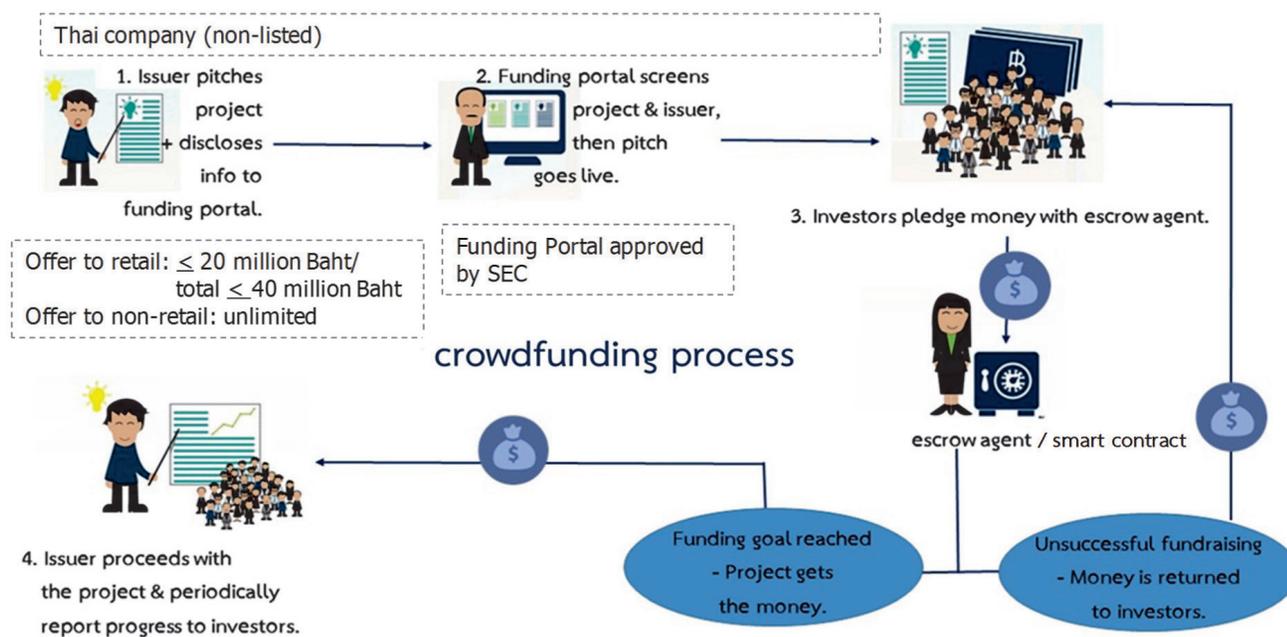


Figure 4: Summary of key points of regulations of Crowdfunding and Peer to Peer lending. Source: EABC from the regulations and analyses

	Crowd Funding (CF)	Peer-to-Peer lending (P2P)
Regulator	Securities and Exchange Commission (SEC) Capital Markets Supervisory Board (CMSB is part of SEC),	Bank of Thailand (BoT)
Regulatory References	SEC Notification Tor Jor. 21/2562 'Re: The Offering of Securities for Sale through Crowdfunding Portals' – in force May 16, 2019. Covers 'plain vanilla' debentures as well as shares – ie covers equity and debt CF.	Notification 4/2562 issued by BoT 'Re: The Determination of Rules, Procedures, and Conditions for Peer-to-Peer Lending Businesses and Platforms' – effective 30 April 2019.

	Crowd Funding (CF)	Peer-to-Peer lending (P2P)
Base requirements	<p>Various obligations apply to Portals, Investors, Issuers.</p> <p>Crowd funding portals can be manifest in websites, mobile phones. Inc in TH; min paid up 5m. KYC compliance.</p> <p>Issuers: cannot be SET listed, inc under TH law, use of proceeds: company's operations, or refinancing. Issuer offers the securities on the portal.</p> <p>Issuers restricted to one portal except with SEC approval.</p>	<p>P2P Platform provider: company inc in TH; not an FI (bank or NBF), private. Paid up 5m; 75% shares held by Thais.</p> <p>Platform provider cannot be Custodian. Must be authorized custodians under SEC regulations, or BoT- authorized banks for escrow accounts.</p>
Limits	<p>Investors:</p> <p>Non-retail: net assets 50m, or income 4m p.a., experience. Limited to 50 angel investors/crowdfunding portals in 12 month period</p> <p>Retail: CF securities offered to a retail investor limited to 10,000 to each retail investor. Each issuer limited to 20m within 12 mos of first offering; capped at 40m at any time.</p>	<p>Lenders (can be natural or juristic persons): 500,000 p.a. (some type of institutions exempt from limits)</p> <p>Borrower (must be natural person): For business purposes max 50m where collateralized</p> <p>For personal purposes: 1.5x monthly income if under 30,000 / month, or if over 30,000, 5x.</p>

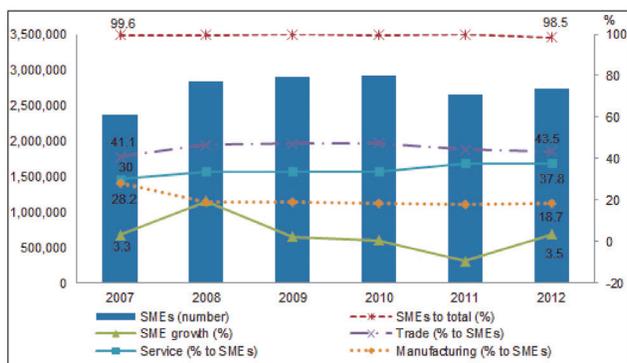
The table illustrates most but not all of the rules and features. The rules are crafted to encourage and attract specific kinds of interests and to target gaps. The regulations are new and should be monitored for effectiveness. Some additional flexibility would be warranted for reaching targets which could allow different targets based on different business plans, rather than making the effort 'unsuccessful' just because it did not reach the one original target.

4. Problems facing SMEs

As for Thailand, we can clearly observe that Thai MSME's are facing similar if not the same problems (For an analysis of the SME's in Thailand see Figure 5). Therefore, EABC has established close connections to Thai authorities who are responsible to support Thai SME companies. As the majority of European SME's operating in Thailand are considered Thai companies through their shareholding,

it might help them to receive support, information and advice from the various Thai agencies involved in supporting MSMEs.

Figure 5: SMEs in Thailand



SMEs are facing various **major challenges and obstacles**:

- Lack of resources (financial, technology, HR/skilled labor, market access and market information)
- Lack of economies of scale and scope
- Higher transaction costs relative to large enterprises
- Lack of networks that can contribute to lack of information, know-how, and experience with domestic and international markets
- Increased market competition and concentration from large multinational enterprises caused by globalization and economic integration
- Difficulties to compete against larger firms in terms of R&D expenditure and innovation (product, process, and organization)

- Instability caused by unforeseen problems with high impact
- Lack of entrepreneurial experience, capacity, and know-how

There are Thai Government agencies such as the SME Bank and especially the Thailand Board of Investment (BOI) that are supporting the SME development and growth with special programs and incentives. Still, information about those programs can be unclear and contradicting, and it is hard for SMEs to obtain accurate knowledge without spending huge fees on consultants and lawyers.

The Ministry of Industry also has programmes in support of SMEs, including digitalization.

EABC can assist to access the necessary information and introduce a company to the right contact at these Government Agencies.



The graphic above indicates the direction Thailand wants to take to advance its economy and obtain future growth. As many European SMEs are operating in such growth industries and in advanced technology sectors, they greatly can support Thailand 4.0 policies and implementation. Important for their decision to invest are also factors like **Ease of doing business** including obtaining **visas and work permits** (more of which in the Cross Functional Issues Chapter), **living conditions, education and security**. EABC strongly recommends repeatedly for Thailand to improve on these factors as well.



The Royal Thai Government's plans to develop **Smart SMEs** is commendable. EABC sees great opportunities for European SMEs to excel in these industries as Europe is a center of **research and development, innovations and high-tech industries**, and we also strongly suggest to include European SMEs operating in Thailand in any of such programs, so they can contribute and fully support the plan with their expertise and knowledge-sharing activities.

EABC and its member companies aim to link European and Thai companies to the best benefit of all parties, provide expertise and jointly invest in research and development projects with Thai corporations, to

- Improve competitiveness of SMEs and the whole Thai industry
- Improve product quality by knowledge sharing and education
- Assist to meet European standards, therefore develop more opportunities within the supply chain of European companies, and consequently
- Increase export of Thai industrial goods in new technologies



Furthermore, EABC encourages Thai SMEs to become more international.

This is a key step forward to grow the capacities of SMEs. We have already arranged some matchmaking events between Thai and European SMEs. We also provide advice to Thai SMEs on how to export to Europe. This requires detailed information and knowledge about the market. There are European enterprises that can provide this necessary knowledge. Information is available on EU websites.

However, it is essential to follow European Standards. Sometimes it's difficult for Thai SMEs to get information on the necessary standards but OSMEP is a good place to enquire about such details.

Another way to upgrade products to EU quality level is the cooperation with EU companies operating in Thailand. They will train their SME suppliers how to improve the quality and provide information on which certificates and standards are applicable. With the assistance from EABC, such cooperation can be initiated, to the best benefit of both Thai and European businesses.

Despite the progress that has been made by the Thai government with many SME support schemes, programs and incentives, the implementation and monitoring still needs to be improved, in order to lift SMEs to the next level of development. A key factor are the financial limitations.

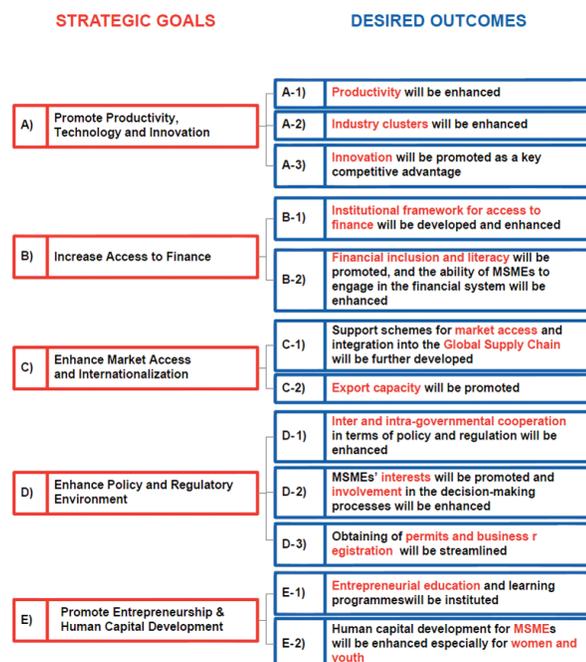
To improve the growth potential of SMEs, financial support and better access to financial programs for SMEs will be essential.

Additionally, the fast-changing pace of innovation, technology and R&D makes it difficult for SMEs to follow since they do not have the necessary (financial) resources and know how to stay on top of these developments.

5. ASEAN context

The Strategic Action Plan for SME Development (SAP SMED) was launched by ASEAN in late 2015. With significant contribution from OSMEP (Thailand), these desired outcomes continue to reflect policy objectives.

Figure 6 – SAP SMED Goals and Outcomes



6. Recommendations

Therefore, **our suggestions** to the Royal Thai Government to improve the current situation in Thailand for SMEs are mentioned below. We also like to emphasize that European SMEs operating in this country are facing the same problems as Thai SMEs. They are innovative and employ a large number of Thai employees, while they have to deal with the challenging Labor Protection Act that does not seem to support the circumstances for employers in the Thailand 4.0 environment.

Considering the vision of the Royal Thai Government for Thailand 4.0, these European companies can be of great help and support.

1. Development of credit guarantee schemes (CGS)

Owing to the significance of SMEs for Thailand economy, it is important to find ways to provide SME's with stable finance. However, the under-supply of credit programs for SMEs is mainly because of the high perceived default risk, and lack of collateral. In order to solve this problem, various governments have created Credit Guarantee Scheme (CGS). The public credit guarantee scheme is a tool to reduce the supply–demand gap in SME finance. The CGS makes lending more attractive by absorbing or sharing the risks associated with lending to SME's. Credit guarantee schemes make banks' lending to SMEs easy, because in case of SME default, the credit guarantee cooperation, which is a government organization, will cover a certain percentage of the lender's losses.

EABC therefore strongly recommends establishing a CGS with a public guarantee by the Bank of Thailand while the lenders are private banks who have a close relationship to their clients in the community and can detect any signs of bankruptcy relatively early. Banks can recover the major part of the loan because the Government covers the main part of the loan. This should enable SME's to receive funds more easily since the banks are only liable for a small amount of the credit.

2. Tax Incentives for R&D, Innovation & Productivity

Tax Incentives for R&D are sometimes not useful because such projects normally have a long investment horizon. SME companies will not benefit from tax incentives when they are not profitable enough to use them in the current period. Therefore, we suggest by providing grants, contracts, and loans, SME will have the necessary fund to support R&D developments. Refunds and carry-forward provisions should be used to promote R&D in firms that could not otherwise use their credits or allowances. Such provisions should be more generous for SMEs and younger firms than for large enterprises.

3. Collaboration on innovation

Collaboration is a key factor of innovation-related knowledge flows both for SME's that use R&D and for those that are not R&D active. The collaboration with higher education or public research institutions is an important source of knowledge transfer for large firms. These firms are usually two to three times more likely than SMEs to engage in this type of collaboration.

Collaboration is more frequent in suppliers and client's relationship. Among large firms, SME suppliers play a key role as the value chains and are increasingly integrated. Therefore, the Thai Government should encourage exchange of innovative ideas with universities and research institutes in Thailand. This could be done through student partnerships which would help the companies as well as the universities to research for the real economy sector.

4. Utilizing Information for SMEs

In order to inform about new methods of e-business, provide market information and economic updates, Chambers of Commerce are able to provide close mentoring support to SMEs and small enterprises.

EABC could provide the following functions:

- Coordinate comprehensive and advanced business advice and business relationships
- Offer support in organizing seminars and other events on important topics for particular problems of SMEs
- Introduce supporting organizations to SME companies that can help them with certain operational functions

5. Ease of doing business

One of the largest obstacles for European SMEs in Thailand are the cumbersome Customs procedures, Trade facilitations practices and other legal requirements to do business in Thailand. Reducing and simplifying such procedures and practices usually boosts trade and

provides exponential assistance to MSMEs who are often less well placed to understand and navigate customs rules when exporting.

See more in the Cross Functional Issues chapter.

Furthermore, on-going restrictions for foreign companies to operate in the services sector (subject to limited exemptions and carve outs) requires review because it's especially SMEs that are the driving force of innovation and development in the key industries the Thai Government promotes as growth industries to achieve the Thailand 4.0 goals. Most innovative European SMEs are operating in the Service Sector. As mentioned before these firms are small, flexible and innovative. They do not have the capacity nor the mentality to fight bureaucratic burdens. However, these are the innovative companies needed to create, develop and invent new products and service offers. Hence, we recommend following changes to the economic and political framework in Thailand:

- The Thai Government should complete the announced implementation of ease for the **visa and work permits** for SMEs and scrap the 90 days reporting requirement, as well as the limitation to work only in a certain area. The same applies for the cumbersome approval process of **permits, licenses and other entry barriers**. SMEs do not have the resources nor the capabilities to engage lawyers, specialist and administrative staff to fight lengthy battles with authorities just to be granted certificates that are expensive and difficult to obtain. EABC recommends special treatments for SMEs to be exempted to obtain such certificates with low or none business value.

- Since most **service businesses** still fall under the limitation of the **Foreign Business Act List 3** this clearly hinders expansion in a sector linked to innovation and R&D activities for European SMEs. These entrepreneurs want full control over their company that is their brainchild and requires their full engagement. There is no need for a Thai partner without value added which may create future problems. EABC reiterate our proposals made in all our last position papers to open all service businesses where SMEs are operating to 100% foreign ownership. More details in the Cross Functional Issues chapter.
- Protection of **intellectual property rights (IPR)** related to an effective patents and copyright laws regime. IPR plays a key role in development of new technologies and innovations. SMEs are in the forefront in these developments. Only if their IPR rights are protected and enforceable, SMEs are willing to invest in this country. With the aim of the Thai Government to become an innovation driven economy, EABC suggest improvements in its IPR regime including the execution and reduction of the backlog of pending patents. Only with these improvements SME companies feel secure that their IPR rights are taken care of.
- SMEs are small entities with few staff and limited turnover. As such, they do not need much capital or employees. However, to obtain a business license and work permit the law prescribes conditions that are not necessarily required by SMEs to operate their business, in particular in the service sector. EABC suggest abolishing the requirements of employee ratio 4:1 and reduction of minimum capital. This will allow SME's to

establish innovative and highly flexible operating units. Their strength lies in their intellectual capacity of their owners and their willingness to think out of the box. The Thai Government is supporting Start-up companies who follow this concept and the program is highly successful. So EABC recommend establishing similar guidelines also for SMEs.

6. Trade and Customs

SMEs are also facing major difficulties when it comes to operational aspects of doing business in trade and investment.

So EABC would **recommend certain improvements for more efficiency and productivity:**

- Full establishment of **National Single Windows (NSWs)** and, ultimately, the **ASEAN Single Window (ASW)** to reduce the administrative burden for SMEs.
- Simplifying and harmonizing **Customs procedures** in line with international agreements and best practices to facilitate trade and reduce costs for SME importers and exporters.
- **E-Commerce** creates opportunities for SMEs to participate in the international trading system, reduces trade transaction costs and helps overcome logistic and geographic challenges to access new export markets. Therefore, EABC recommends establishing a business environment that is conducive to the growth of the digital economy and cross-border movement of goods and services.

- Experiences show that SMEs do not utilize the numerous **Free Trade Agreements (FTA)** due to the burdensome and costly procedures to obtain Certificates of Origin (CoO's). EABC suggests introducing a simplified mechanism of issuing CoO's, in particular for SME's, as an ASEAN-wide Self-Certification Scheme as proposed in the AEC Blueprint 2025.
- SMEs need a clear guidance of rules and regulations they can follow. Lack of confidence may prevent them from doing business. EABC recommends introduction of advanced rulings in classification and valuation matters, including "in principle" issues and a clear dispute resolution mechanism for national and region-wide valuation and classification matters.
- This would also refer to pre-arrival clearance and post-clearance audits across all ASEAN Member States. This could be done first for reliable traders, logistics companies and customs brokers, as a way of building capacity and mutual trust.
- Intensify dialogue and close collaboration with relevant government institutions and other stakeholders (such as BOI, OSMEP, Ministry of Industry, DEPA, NSTDA, all chambers of commerce), engage in dialogue with recommendations to improve the business environment for SMEs as a whole
- Facilitate access to Finance, support from banking sector, investigate available options
- Promote training, collaboration, organize seminars and other activities with other Working Groups and chambers of commerce
- Monitor and evaluate implementation of supportive programs
- Encourage entrepreneurship, assist with transition to digitalization to increase SME competitiveness
- Promote development of business relations between European and Thai SME companies
- Promote diversity, female entrepreneurship, gender equality
- Further push/advocate for "Ease of Business" with regard to Permits, Licenses, Labor laws & Labor Market efficiency

7. What the EABC SME Working Group can do

To support the above mentioned points, the **EABC SME Working Group** will actively assist SMEs in several ways, as follows:

- Actively communicate our SME WG activities, encourage participation
- Constantly listen to SME members' experience, gather & report on obstacles, barriers

Tourism

SUMMARY OF RECOMMENDATIONS

EABC's Tourism Working Group has overwhelmingly participants of the hotel industry although we also include others – such as airlines, on and off line touring, on and off line agencies and other related industries. This time we have identified 3 areas that are crucial to improve in order to allow the industry and Thailand flourish more and faster.

We recommend:

1. Arrival experience be done on-line.

- (a) Dispense with a paper form TM.6
- (b) Taxi solution using an on-line tool

2. Fair price competition in the hotel industry

- (a) to strengthen the implementation of existing hotel operations rules and regulations.
- (b) a further emphasis on registrations, licenses, and insurances that will help ensure minimum quality standards and provide visible ratings.

3. Training and Skills

A framework for a structured cooperation with the government to train new and local talent through apprenticeships. This is with the focus to train the workforce of the future while companies participating, getting certain specific benefits like tax cuts and more relaxed visa regulations.

1. Guests' arrival experience in Thailand

The hotel industry considers it very important to have an easy immigration process for their guests when arriving in the country of destination. The frequent comments of our guests is that their immigration waiting time was too long and that their taxi ride experience was less than satisfactory for various reasons. These people are tourists of all destinations of the world or business man and woman that come for shorter or longer term. The

immigration line up can be more than one hour and the little slip of paper (Immigration form TM.6) that needs to be filled in (and to be kept in the passport throughout the stay) is perceived as useless and a major hassle. When taking a taxi, there is either a language barrier, a discussion about meter usage or a perceived longer trip than should be, costing sometimes more than it should.

At departure, the same TM.6 experience occurs - it is a hassle to get this document filled in if not already lost by that time. For those in Thailand longer (eg on working visa extensions) there are the, perceived as useless, 90 days' reports. When losing the departure card, you even have to go to the police station to get a statement which is yet another half a day lost if you are not familiar with the people and processes

Therefore, , we would like to suggest a few long term potential solutions in order to improve the guests' arrival experiences in Thailand. We believe that the moto should be: "quick, easy and safe" as we want to seek to increase the attractiveness for Thailand as tourist and working destination which is beneficial for the industry as well as the country's GDP.

Regarding the visa and immigration process we would like to refer to a system that Australia is already largely implementing. People who want to travel to that destination can get an online visa. When arriving there, they just need to scan their passport and they are allowed to enter the country as all information is already in the system. The Tourism Working Group was engaged with the Ministry of Tourism and Sports in Bangkok in October 2017; and it was made clear that time, that the government needs to get certain specific information of the people entering the country. Such visa online system would be great to exactly do that at a much higher effectiveness of getting the accurate information. During the online registration, all needed questions could be asked as mandatory information needed to obtain the visa. When any person arrives without a visa, there would be a dedicated area where they can go online with a computer (touch screens) and register their visa application with

their passport details while also entering all info required in order to get the visa. The immigration process would be for most of the people just a matter of scanning their passport and entering. During the scanning process any person with a visa problem, over stay or any other matters that needs immigration officers' attention, would be filtered out and processed at another line.

This adjustment would be a logical process in the increasingly digital information sharing and gathering world we are living in. Information entered will be readable vs the hand written notes, and the system can filter any discrepancies through the passport scanning process. Visa and passport information (and working permits) are linked up and thus there will be no mixing up of information while it is all digitalized and analyzed simultaneously.

Once exiting the airport there should be a better system for people to get to their transportation. Currently there is no free Wi-Fi at the airport. Having this would be the right step in the direction of digitalizing all information and services needed when landed in Bangkok. Everybody carries a mobile phone nowadays, so it is only a matter of getting them connected and it can even be an additional security check when logging on. Therefor we suggest a taxi app at airport available to all. A digital driven taxi service would also diminish the sometimes doubt, cheating, uncertainty and perception of unsafety to all who want to use the service as all information they need will be at the screen they are so familiar with. For those with smartphones, they would be requested to download the app and could receive all information of the next taxi in line that they will take. They can see where they are and where they need to go with link to google map

showing estimated prices based on traffic conditions. What to do and not to do would be only a click away with push messages when and where needed. Some countries already work with a taxi ticket with the details of car, driver and company of the next taxi in line. This ticket comes from a small machine and could also be considered if some people are not that tech savvy yet.

2. Fair Price Competition

The hotels are currently engaging in price wars due to the ever increasing competition. One of the causes is the general lack of rating the standards among the hotels in Thailand. This is amplified by the lack of licensing & insurance coverage and the increasing amount of Airbnb listings. These are undercutting the prices of international standard hotels competing with a different operational cost. Our concern is also that any tourist incidents in these non-licensed hotels is bad for the overall image of the hotels and for Thailand in general. It is therefore crucial that emphasis is put on proper registration, licensing and insurance coverage. There needs to be a minimum standard of quality standards with ratings too.

EABC's Tourism working group is of the opinion that the solution would be the stricter implementation of already existing laws plus the creation for better and clearer rules and regulations. Licenses, insurances and certain ratings displays should be mandatory and clearly seen at the lobbies, so tourists can recognize the legally approved hotels with their ratings.

Measures against price fixing with online agencies is another area which needs to be examined.

3. Training the local talent of the future

“Dual Education System – LEARNING BY DOING”

This is the close partnership between Government and Industry that focuses on undergraduate Students and provides up to date job specific education.

With continuous growth, the hospitality field faces challenges in finding passionate entry grade workers. Unfortunately, the popularity of these jobs in particular in Housekeeping, Food and Beverage and tour guides are on the decline as most hospitality university graduates look for more senior positions i.e. supervisors or managerial level. Hotels, Restaurants, Tour Agents and others are challenged to attract workers and have started to reach out to other Asian countries to fill these positions.

The implementation of a “dual” education system (study + work) would be the solution. It would start after the completion of the legal minimum mandatory education was achieved. This would provide an entry ticket to the industry and create a career opportunity while continuing providing further education. The apprentices, on the dual education course, are paid a certain percentage of the minimum wage for the job they are learning and get also compensated for the time spend at Government education centers or schools. The focus is hands on practical training provided by the Industry and supported by periodical educational classroom training provided by Government. This dual system reflects the partnership between the Industry and the Government that share the education responsibility of the young and upcoming workforce.

How would this work? As one part of the dual education course, students are trained in a company for five days a week with two days off. The company is responsible for ensuring that students get the

standard quantity and quality of training set down in the training descriptions for each trade. A designated person assigned by the company would be responsible to monitor and record the achievement of key milestones that are set by the Industry and the Government.

The practical training is complemented by more theoretical lessons at workshops run by the government provided school or training centers. These extra courses usually take three or four weeks a year. The time spent at vocational school is approximately 60 days a year, in blocks of two weeks at a time spread out over the year. After each block, exams take place in order to evaluate and measure the effectiveness and the progress of the learned topics. At the end of the entire training period the apprentice undergoes an official final exam established yearly by Government and Industry leaders in order to stay up to date with latest industrial requirements and trends.

Benefits of the dual education system are; attracting workforces into jobs that are in the decline of popularity, providing immediate job opportunities for less educated talent, reduction in turnover and providing career opportunities, supporting the independency of the

younger workforce due to monthly salary and release mandatory pressure from those families with limited income. The direct involvement of industry will create a stronger workforce. After the successful completion of the apprentice program, each person should have the opportunity to go for advanced studies either a master degree in his or her discipline or any university course if required at a later stage.

In order to maximize the on the job learning opportunity, the industry should be encouraged to work with exchange students or foreign discipline experts in order to provide the apprentices with greater exposure. Therefore, companies participating and investing in this educational program shall receive privileges that ease the visa process for foreign students and foreign discipline experts as this would be a crucial educational benefit.

The Dual Education which is the responsibility of the state as well as the industry will result in providing a career opportunity and an educational platform for those who are not able to go for advanced studies. It is the perfect blend between on the job training and short term theoretical education that can be implemented and tried instantly. It will result in a higher qualified workforce, it will be current, and it is hands on as well as relevant to latest hotel and tourism industry trends. It provides educational opportunities to those less fortunate, secures workforces in areas of needs and increases the service standards plus builds loyalty.

Transport and Logistics

SUMMARY OF RECOMMENDATIONS

1. Strategic goals for customs facilitation

- 1.1 Improve Transparency and Predictability in the drafting and implementation of policy, rules and regulations through the involvement of all stakeholders and affected parties in a fair and open consultation process starting well **before** Laws and Regulations are drafted.
- 1.2 Clearly state the service commitments of Thai Customs vis-à-vis the trading community and likewise the expected commitments from the trading community to Thai Customs.
- 1.3 Clearly indicate ways in which companies can comply with regulations and Customs can accept the concept of “reasonable care”. Thai Customs to accept voluntary disclosures from importers / exporters / agents / any other concerned parties of errors and breaches of all and any regulations with reduced / waived penalties. Customs to publish guidelines for Compliance to aid much-needed transparency.
- 1.4 Set up an external, impartial legal channel with equal participation from both Governmental and Private sector to settle disputes between Thai Customs and importers / exporters / agents, bonded warehouse holders or any other concerned parties.
- 1.5 Limit the application of Customs Penalties for “Smuggling” (up to 4 times cargo value) to cases where Intent to avoid, evade, or defraud duties can be proven (Burden of Proof on Customs). Administrative faults or simple errors with no intended gain to be subject to much smaller administrative fines. This ruling to apply not only to cargo imported or exported but also to stocks held in Bonded warehouses.
- 1.6 Establish that Transit of goods under Customs Bond by an ASEAN Authorized Economic Operator (AEO) between Customs-free zones of any type, on the borders or inland, be free of restrictions as to routing, trans-shipment, tracking and tracing, sealing of vehicles, or loading together of goods having differing Customs status. The only obligation of the Cargo Owner or his Agent to be the delivery, intact and correct, at the specified destination Customs-Free zone within a reasonable period, of the goods listed on the manifest. Penalties from non-observance of this obligation to be charged against the guarantee lodged by the AEO with Customs.
- 1.7 Uncouple the regulations on movement of goods by road in Bond from /to/between Thai border crossing points from the existence or not of Bi-lateral road transport agreements. Subject them to liberal domestic in-bond transport regulations as listed in 1.6

1.8 In line with ASEAN rules, change the requirement that all documents required for Customs clearance of cargo into Thailand, especially Import Licenses, be presented immediately when goods enter Thai sovereign territory. The requirement to become that the documents must be presented if and when the cargo moves from a Customs-free area in to duty-paid free circulation in Thailand.

2. Individual measures in Customs and Trade Facilitation Reform

2.1 Customs declarations in Thailand to be either in Thai or in English language but not in both languages.

2.2 The Thai Customs Department to allow in principle that consolidated shipments be break-bulked within Customs-free areas as a matter of policy. Operational details to be worked out with the logistics service providers.

2.3 Thailand to separate tariff codes for controlled (needing an import license) and non-controlled items to facilitate the import of non-controlled items. This is particularly important for products within the Life-Sciences Sector.

2.4 Goods in Customs custody or Bond for any reason to be allowed to stay in the Bonded warehouse up to one year to allow for the economical operation of Hub-distribution warehouses.

3. Rules on foreign direct investment

3.1 We recommend that Thailand study opening the postal market to Private Sector and International competition.

3.2 We encourage Thailand to review its regime for foreign investment, in particular in the services sector and the Logistics industry in line with ASEAN policy. World-class Service industries play a critical role in supporting the growth of strategic manufacturing sectors. The desired major investments from Foreign Logistics Services Providers are unlikely to materialize as long as Foreign investors are restricted to minority holdings.

4. Other areas of Interest

4.1 EABC recommend that Thailand study European best-practice in Taxi and Ride-hailing technology with an eye to drawing up development-friendly regulations for the industry combining High Service standards with economic sustainability for the operators and drivers.

4.2 We recommend that Thailand commission a thorough Feasibility study to evaluate the Costs, Benefits and Commercial feasibility of the Thai (Kra) Canal linking the Gulf of Thailand to the Andaman sea.

4.3 We believe that Thailand would benefit from accessing European expertise on the formulation and implementation of regulations on TAPA, the AEO and Counter-Party evaluation.

1. Long term goals for customs facilitation

Thanks to its strategic geographical location, Thailand has a unique opportunity to position itself as the leading logistics hub in ASEAN. The Government has stated an objective of lowering logistics costs significantly in order to improve Thailand's competitiveness in preparation for the ASEAN Economic Community (AEC) (OTP, 2016).

The EABC heartily endorses these aims.

The present national laws and regulations governing the Importation, storage in bond, transit and re-export of cargo are, however, still unsuited to those ambitions. The new Customs Act 2560 has made some minor changes, and most of them are beneficial. It is still the case, however, that a Regional Logistics Hub operating in a fashion attractive to International Distributors of Goods or their Logistics Service Providers cannot be operated under the existing Law and Regulations.

The EABC welcomes the establishment of the Eastern Economic Corridor (EEC) to attract new business and to enhance infrastructure. To make the EEC interesting especially for ASEAN or Asian wide distribution centers the customs handling would need to be adapted to the needs of such a logistics concept. We understand that the EEC or companies in the EEC can be exempt from general customs law under Section 57 of the EEC act. We suggest to have regulations drafted for companies to especially enable region wide distribution centers including distribution of goods in transit to neighboring countries, free zones or bonded areas.

Trade facilitation seeks to reduce the transaction costs faced by exporters and importers to stimulate trade, investment and improves productivity. Customs plays a critical role in facilitating trade as customs and other border procedures have a direct impact on trade costs. Streamlined procedures, simplified documentation requirements and automation are the most critical aspects for efficient customs clearance procedures.

The Thai Customs Department has in the past decade introduced a number of laudable initiatives, such as an automated clearance system, and simplified procedures for recognized and trusted traders. The New Customs Act 2560 has also made beneficial changes in the areas of Penalties for Customs Avoidance and Import Restrictions, established a 30-day period for goods to stay in Bonded area and made improvements to the Customs Appeal Committees and Post Audit systems.

There remain, however, significant negative features:

Legal framework

The legal framework lacks sufficient clarity and therefore becomes subject to interpretation from individual customs officials. Detailed, technical guidelines are not always made publicly available, which makes enforcement and customs clearance procedures a source of uncertainty for the business community. In order to ensure foreign businesses' confidence in the Thai economy it is important that rules and regulations are aligned between departments and ministries as well as that timely public consultation takes place before Laws and Regulations are drafted, not afterwards. Equally important, the policy framework and legal environment must be improved to

serve fair, market-based competition and wider social interests prior to the enactment of rules, regulations and laws. When changes to the law are being considered it is important that stakeholders and other concerned parties should be involved in a fair, open and early consultation process on such changes. There must be clarity over what may / shall be expected from all stakeholders.

Reasonable care concept

Customs should recognize reasonable care by the trading community to encourage compliance with laws and regulations. This tangents the issue of intent or lack of, in a non-compliance or violation: distinguishing between unintentional non-compliance and intentional/fraudulent violations.

Countries such as the US and EU have clear programs which encourage companies to voluntarily comply with regulations, which recognize proven reasonable care and allow the trading community to voluntarily disclose errors/violations without attracting significant penalties. It should not be the case that all cases be deemed fraudulent and therefore attract significant penalties. Customs should take into account “reasonable care” by recognizing internal compliance programs of traders, publishing clear guidelines on how to comply and allow for inadvertent/unintentional errors by the trading community. The present rules, by not recognizing and rewarding self-declaration of violations by trading companies encourage deception and re-inforce the adversarial relationship between Customs and Im/Exporters.

In the case of disputes arising despite all efforts, an impartial, separate legal channel should be available for resolution of such disputes. Such a channel may be either be the standard external legal system or, if Customs-internal, should have equal participation from the Private and Governmental sectors and practice transparency and openness in all dealings. The structure of the Appeals Committees in the 2017 Act, whilst incorporating several improvements over the old Act, cannot be perceived by the Private sector as impartial given that all members are from Governmental organizations with no Private sector representation.

Reward and penalty system

The Current reward and penalty system within the Customs Department encourages individual customs officials to take an aggressive and rigid stance in customs clearance, including customs valuation, document inspection, controls and audits, in order to get rewarded even for minor, administrative errors.

In charges of “Smuggling” under section 242 Customs do not bear the burden of proof and so they are allowed by law to qualify certain non-compliances as smuggling, regardless of the circumstances and the intention of the alleged offenders.

The EABC completely agree that, where there are clear instances of intentional non-compliance, traders should be penalized.

However, technical mistakes are currently disproportionately penalized by Customs with fines of up to 4 times the value of the goods concerned.

This is a significant disincentive for foreign companies working in Thailand, especially where it is applied to routine stock discrepancies in the warehouses of companies manufacturing in Customs- free areas.

Whilst it is important to have in place effective customs investigation to prevent any offence or attempted breach of customs' provisions, a clear distinction must be made between intentional, serious offences and unintentional or technical mistakes. This is well recognized under the Revised Kyoto Convention (RKC) which states that *“Customs shall not impose substantial penalties for errors where they are satisfied such errors are inadvertent and that there has been no fraudulent intent or gross negligence. Where they consider it necessary to discourage a repetition of such errors a penalty may be imposed but this shall be no greater than is necessary for this purpose”*.

EABC support the position taken by the Thai private sector represented by the Joint Standing Committee on Commerce, Industry and Banking (JSCCIB), that, in order to prevent abuse of the reward and penalty system, heavy penalties should only be imposed and rewards only allowed in cases which have clear fraudulent intent as reflected in international best practice under the RKC. The burden of proof of guilt should here, as elsewhere, be on the prosecution i.e. the Customs and, as mentioned above, in case of dispute, clear and independent legal judgement should be provided.

EABC appreciates that in the new Customs Bill the percentage of rewards paid to Customs officials may reduce from 25% to 15% but the company being fined

will still pay 100% so there is no reduction of the disincentive, and it is arguable that customs officials may have an incentive to use all means to investigate more traders for possible errors to replace lost income.

Equally the EABC note, and welcome, that in the Customs Act of 2560 Intent, or absence of Intent, is recognized as a factor in the evaluation of Penalties for section 243 (“Avoidance of Customs Duty”) and section 244 (“Avoidance of Import Restrictions”) but we miss that recognition for section 242 (“Smuggling”). We would welcome a discussion on how Intent could also be factored into Penalties for this section too.

Goods in transit

Thailand's current regime for goods in transit particularly affects cross-border road freight services and works diametrically against the Government's objective of establishing Thailand as a logistics and transit hub. Currently, regulations do not allow loading into the same vehicle goods in transit and goods for import, unless all goods are formally imported into Thailand (i.e. even goods in transit). They do not allow goods destined for different types of Customs-free zone to move in the same vehicle nor for goods to be transshipped en-route. Effectively consolidation of many shipments into one economical load is almost impossible to arrange legally. Regulations require presentation of documents at border posts even though the shipments in question will not be cleared into free circulation there and, in many cases, never will enter Thailand for Customs purposes as they are for regional distribution.

Discussions on this subject have been complicated by misunderstandings over the use of the word “Transit”. Europeans would also use that word to refer to a domestic movement under Customs bond to another Customs area. In Thailand the word is generally only used for International cargo transiting Thailand from Border to Border.

To avoid such misunderstandings, we suggest that it would be a good start to distinguish clearly between

- Goods in International Transit on the one hand and
- Goods being transported within Thailand between Thai Customs offices under Customs Bond on the other hand.

If “Thailand Regional Logistics Hub” is to become a reality both types of transit will have to be liberalized to the level of international best practice, but the steps to be taken will differ.

Goods in International Transit cannot, under present legislation, cross through Thailand unless bilateral agreements exist between Thailand and each of the countries concerned. This is very limiting as only two such agreements exist, with Cambodia and with Lao PDR, and neither of these is working in practice. Even more limiting is the fact that neither of the alternative International Transit systems, CBTA and AFAFGIT/ACTS is yet, 20 years after their inception, fully ratified and operational. It would be prudent to assume that they never will be. In the medium term the TIR (International Road Transport) system of the International Road Union of Geneva may well become a viable option since the PR China and India have now signed the Convention and Myanmar and Vietnam are actively considering it. There too however

pressure groups within Thailand will resist. Unfortunately, the Thai Government’s freedom of unilateral action is limited.

Goods being transported under Customs Bond within Thailand between Thai Customs Offices under Customs Bond are, however, completely under the control of the Thai Government and here progress can be made. The first step would be to recognize that there is no need for the regulations concerning the transport of goods in bond to be tied to international agreements focused on the free passage of foreign trucks. Those agreements cover both free access for Trucks, in which Thai Customs have a minimal interest and also Cargo moving under Bond which is fully within the remit of Customs.

It is quite possible to create regulations governing the Transport under Bond of cargo from Border Station (say). Sadao to Border station (say). Nong Khai, or from any Border station to an Inland Customs Area (say). Bangkok, without any reference to the type or nationality of trucks to be used.

As things stand the trucks would be Thai. Should bilateral agreements come into force other trucks could be used. Thai Customs rules would however focus only on the cargo. The “Transit” sector would, in effect, become a sub-set of the general sector “Cargo moving under Bond within Thailand”.

In this sector three issues need to be addressed.

Firstly, regulations exist hindering the movement of cargo in bond between different types of Customs areas set up at different dates under differing legislation. These should

be amended to acknowledge the commonality of all Customs areas, at least as far as transport is concerned. Thus the same rules would cover all cargo moving between different Customs areas, regardless of what type of Customs area may be concerned.

Secondly, transport between Customs areas is at present encumbered by many regulations specifying that each bonded shipment must be alone in a sealed truck, that this truck may only follow a specified route, that it should be inspected at certain places. These regulations do not conform to international best practice. They render the cost of distribution from a Bonded Hub in Thailand hopelessly expensive and make such a Hub non-competitive in international comparison. We suggest that Customs use the AEO system and free up the transport specifications to say only that the AEO may take out cargo under bond and move, transship and load it as he likes, on condition that the goods arrive at the specified destination Customs area complete and in good order before a specified deadline. Otherwise the Guarantee of the AEO will be debited and, in the case of multiple violations, the AEO accreditation will be withdrawn.

We accept that there may be reluctance to change based on worries about the “identity” of the cargo delivered. How can one be sure that these are identical to the items which were sent? We would be glad to participate with Customs in discussions to find a mutually satisfactory solution based on international practice.

Thirdly, as a consequence of the above the new rules should allow transport of bonded shipments economically in consolidated loads together with other cargo, and the consolidation and de-consolidation (“Break-bulk”) of

consolidated trucks within Bonded/Customs areas should be allowed. At the moment Customs officials do not allow this even though there is no regulation forbidding it.

2. Individual measures in customs and trade facilitation reforms

There are a number of measures that can be undertaken in the short term which can support improved regional and global connectivity and competitiveness. Certain reforms, some of which are outlined below, can be undertaken with relatively little effort, but with a large positive impact on customs clearance lead times.

Helpful policies are the key to efficient and competitively priced logistics services. They need not require a lot of government resources, but can have a large positive impact and important spill-over effects in the local industry.

Formal Customs entry in English

Thailand’s National Single Window application, known as the Paperless Clearance System, was launched in 2008. While the new system has enhanced the clearance process, it requires the import and export customs entry to be performed in both English and Thai languages.

This requirement is not conducive to trade and is not aligned with international best practices. In particular, this is also in contravention with the current Thailand Customs Act, Section 113, which only requires the submission to be performed in either English or Thai language. The use of English alone will greatly facilitate the preparation of customs entries, speed up the delivery process and improve staff productivity

Presentation of Import Licenses

Until recently Import Licenses, if required, had to be presented as soon as the goods in question crossed the Thai national frontier. Some flexibility has been introduced with the new Customs Act, the cargo will no longer be automatically be confiscated, but it would be in the best interests of all concerned if the principle were changed to require presentation of the Import License only at the point where the Cargo moves from Bonded areas into free circulation in Thailand. This would also take account of the fact that, in a Regional Hub operation, the eventual Importer of the goods is not even known at the time the cargo into the country and, in some cases, the final consignee will not even be in Thailand, so no Import could even be created. We have heard that innovative solutions are being considered for the Eastern Economic Corridor Area and we would gladly participate in discussions to draft a user-friendly which could, perhaps, later be rolled out nationwide.

Same codes for controlled and non-controlled items

Some life science products, such as blood laboratory testing, which are so called “non-controlled items” have to use the same tariff code as controlled items (requiring import licenses). However, blood for lab tests is not considered a controlled item by the Thai Food and Drug Agency (FDA). Since express customs procedures are not allowed for controlled items, every time blood samples are imported to Thailand, they need to be processed through formal customs clearance.

This adds considerably to the customs clearance lead-time for laboratories and works against the

Government’s aspiration of creating Thailand 4.0, which requires facilitation for R&D.

Time allowed for goods to remain in Bonded Warehouses

The Distribution Warehouses at the heart of the “Hub” concept will need permission to hold Bonded cargo for longer than the present one month. We would suggest one year to allow them to transport slow-moving items economically.

Suspended goods in customs custody

Under the Licensing Facilitation Act B.E. 2558 (2015), which aims to improve government agencies’ efficiency, suspended goods in the customs custody have to be removed within 30 days instead of 60 days. Whist businesses also want to collect goods as quickly as possible, obtaining required documents may take longer than 30 days. The EABC recommend that Customs extend this period to one year to match the period to be allowed for Bonded facilities in general. We accept that this extended facility may have to be refused to certain particularly sensitive commodity-groups.

3. Rules on foreign direct investment

Gradual liberalization of the postal sector

According to the Postal Act of 1934, the Royal Thai Government has the exclusive right to handle postal services. Collection, delivery or handling of letters and postcards fall under a monopoly held by Thailand Post. The breach of the postal monopoly by private postal, courier or express delivery operators is currently subject

to a fine of THB 20 for each letter and postcard that is delivered from abroad to an addressee in Thailand. This creates an uneven level playing field, since the monopoly also covers segments which are outside the scope of basic postal services (such as express mail).

We recommend that Thailand follow other countries in gradually opening the Postal market to competition.

Liberalizing logistics services

We recognize and support the Thai Government's policy of increasing foreign investment, both in Manufacturing and Logistics in Thailand.

Virtually all World-wide operating Logistic Service Providers are also operating in Thailand: they need to, given Thailand's important position in international trade. For the most part, however, they operate on an "Asset-light" basis, working from rented offices and leased warehouses, owning few, if any own trucks. Their "investment" or fixed assets are not much more than office furniture. Although this is an accepted modus operandi for Freight Forwarders worldwide it is taken to extremes in Thailand due to the fact that foreign owners are limited to 49% ownership of the companies in Thailand. Furthermore Foreign-owned Logistics companies are not allowed to operate their own truck fleets, "For reasons of national security".

Nobody is going to invest large amounts into a company which they cannot control and a market in which they cannot compete on an even playing field.

This position is at odds with Thailand's commitments to ASEAN, among others.

The ASEAN Logistics Roadmap contains a list of sectors where ASEAN member countries "shall endeavor to achieve substantial liberalization" by 2013. The objectives of the Logistics Roadmap are to "create an ASEAN single market by 2015 by strengthening ASEAN economic integration through liberalization and facilitation measures in the area of logistics services".

The AEC further commits to allow for foreign (ASEAN) equity participation of 70 per cent by 2013. The EABC feel that Thailand, as a country wishing to develop a world-level Logistics capability and seeking investment from foreign Logistics companies in order to achieve that, should allow 100% foreign ownership of Logistics companies or, at the very least, meet our obligations under the ASEAN Logistics Roadmap and at the same time extend the 70% ownership level to Logistics companies from all countries, not just those of ASEAN origin.

4. Other areas of Interest

Reform of the market for Taxi -and related services

Given the current unsatisfactory situation of the Taxi industry in Thailand and the uncertain regulatory situation of currently available alternative services, the EABC suggest that it may be of interest to the Ministry of Transport / DLT to consider Best Practice in Europe and particularly in the Baltic states where new formats are already in operation.

Feasibility study for the Thai (Kra) Canal

The much-discussed project to build a canal across the Thai section of the Kra Peninsula and eliminate the need for vessels sailing between Europe, the Middle East and the Subcontinent on the one hand, and North Asia on the other hand, to use the Straits of Malacca, is now once again being proposed. Sources close to the PR China are suggesting that this could be developed as part of the “One Belt One Road” Megaproject.

Absent an official study, however, the costs of construction, costs of operation, potentially achievable savings to vessel operators, synergies with related projects and the level of subsidies (if any) needed are all unclear. The EABC has no initial position on the economic feasibility of the project but strongly favours the award of a professional feasibility study and would be prepared to participate in that study.

Compliance to International standards and Auditing of Counter-parties

- SME transport operators in Thailand see their access to multinational supply-chains for High-Value cargo blocked because they are not-certified for TAPA (the Transported Assets Protection Association) which is a global coalition of manufacturers, shippers, carriers, insurers, service providers, law enforcement and government agencies that aims to protect companies against cargo crime.

- The concept of the Authorized Economic Operator is used in ASEAN, within Thailand and throughout the European Union. There are, however, major differences between each of the countries of ASEAN and between any of those and the European Union as to the operating practices and definitions of the AEO.
- The EABC has the ability to put interested parties from both the Private and Public Sectors in Thailand into contact with authorized Implementers and Auditors for both TAPA and AEO at the level of worldwide best practice.
- Furthermore, EABC members are in a position to audit potential counter-parties of Thai Freight-forwarding companies anywhere in the world, taking a major risk out of out of expansion into new markets.

The EABC would gladly put Private or Public Sector organizations in Thailand into contact with experts on any of the above-mentioned Areas of Interest.

THE X7



BAYERISCHE MOTOREN WERKE

For further information visit www.bmw.co.th

This image is for advertisement. The appearance and equipment may differ from the actual vehicle.



Thailand

**Add value.
Inspire trust.**

Inspiring trust in a changing world

Solutions that ensure quality, safety,
and sustainability for future generations

TÜV SÜD is a trusted partner of choice for safety, security and sustainability solutions. It specialises in testing, certification, auditing and advisory services. Since 1866, the company has remained committed to its purpose of enabling progress by protecting people, the environment and assets from technology-related risks. Today, TÜV SÜD is present in over 1,000 locations worldwide with its headquarters in Munich, Germany. Through expert teams represented by more than 24,000 employees, it adds value to customers and partners by enabling market access and managing risks.

By anticipating technological developments and facilitating change, TÜV SÜD inspires trust in a physical and digital world to create a safer and more sustainable future.

www.tuv-sud.co.th