

2018

European Business Position Paper



“Strengthening Thai-European Economic Relations
towards a More Competitive Thai Economy”





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Message from the President

Bangkok, June 2018

The European Association for Business and Commerce (EABC) representing the interests of the European business community in Thailand proudly presents our Position Paper for 2018. We are the unified voice of Europe in a close corporation with the National Chambers and representing our Members and Sponsors to support creating a better business environment in Thailand. Main focus was and will be Advocacy—strong relationship with the Thai Government and Authorities to ensure the relevant input from the European companies in Thailand.

This 2018 Position paper is a compilation of recommendations derived from the European Business community in Thailand intended to help Thailand overcome economic challenges and promote the country as an attractive partner for trade and investments. It is a new Position Paper compared to the one published in 2017 with the latest update of important developments in our Positions for all of our 12 Working Groups.

The EABC Position Paper is the unified work of 12 working groups covering Automotive, Cross Sectoral issues (CSI), Digital Economy / ICT, Energy and Energy Efficiency, Food and Beverages, Healthcare and Pharmaceuticals, intellectual Property Rights (IPR), Insurance, Rail and Road Infrastructure, SME, Tourism, and Transport and Logistics. First time we created a joint approach with TEBA in the Automotive area.

Seven years have passed since we first started establishing a “European Chamber of Commerce” which became EABC. It was sometimes a bumpy ride with many adjustments, reviews and a long learning curve. Despite this we could establish ourselves as a trusted partner to support the Royal Thai Government to become more competitive, transparent and more business oriented.

2017 has been a bridging year after the expired EU Grant and building a new setup for the future of the EABC. Main focus was to ensure long term sustainability and a base for the future cooperation with the National Chambers. The dialog with our members and supporters in an efficient structure and a closer cooperation with TEBA to ensure a unified voice of European Business. A new elected Board keeps working on this sustainable development for the future of the EABC and Advocacy. Therefore we had over 100+ meetings with the government or at working group level. That means every 2.5 working days we have delivered on our main activity.

Our positive achievements do not only benefit large corporations but also small and medium sized companies. We are looking forward to offer many smaller companies our support in a close cooperation with the Bilateral Chambers and will develop a special scheme in 2018 to ensure an easy access to the EABC.

On behalf of the European Association for business and Commerce I would like to thank our Board, the Working Groups Chairpersons and their members. Without their voluntary hard work and many unpaid hours to prepare our Position Papers we would not have achieved that strong recognition among the business community. My sincere thanks also goes to our staff, the European Union Delegation to Thailand and everyone else related to EABC in support of our Position Paper 2018.

Yours sincerely,



Stefan Molnar
President, EABC

From Ethical Practices to Accessible Health Solutions for All Thais



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In 2017, GSK Thailand became the only pharmaceutical company in Thailand to receive certification from the Private Sector Collective Action Coalition Against Corruption (CAC) for the second time. GSK was the first company in the Thai pharmaceutical industry to receive this certification in 2013. The renewed certification recognizes GSK's continued commitment to operating its business in an ethical, honest, and transparent manner and conducting corporate social responsibility activities under our company's "Access to Medicine" policy to improve the quality of life for all Thais.



Mr. Viriya Chongphaisal, General Manager,
GlaxoSmithKline (Thailand) Ltd.

"This recognition demonstrates the successful conduct of our business in a way that conforms to socially-responsible and ethical standards, with integrity and transparency within regulations and in compliance with GSK's own corporate guidelines. We believe that this will support us in delivering better quality services and have a positive effect in increasing 'access to medicine' for all Thais, reflecting an improvement in the quality of life of Thais and a healthier future for the country."



Mr. Thavirap Tantiwongse, Public Affairs Director,
GlaxoSmithKline (Thailand) Ltd.

"The renewed certification reinforces our commitment to anti-corrupt practices, ethical governance and the philosophy of doing well by doing good. We hope in a small way to keep reminding all involved in the healthcare industry that our business is to save lives and make them better."

GlaxoSmithKline (Thailand) Ltd.

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**ACCESS TO
MEDICINES**

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About the European Association for Business and Commerce (EABC)

The European Association for Business and Commerce (EABC) was established in 2011 as a platform representing interests of the European business community in Thailand. The overall objective of the EABC is to contribute to improvement of business and investment climate in strengthening Thailand toward a competitive and attractive investment destination as well as a potential gateway to ASEAN. The EABC aims to facilitate investment and further diversify market opportunities and access for European companies in Thailand, in parallel to promote Thailand as a high potential trade and investment markets for European business.

Our main activities include carrying out policy and advocacy dialogues, providing support to European businesses with trade related information, and organising key events to foster opportunities for European businesses in Thailand. The EABC was a part of a strategy of the European Union (EU) to support the internationalisation of European SMEs and other European enterprises by enhancing market access, in particular, in emerging and fast growing markets such as Thailand and the ASEAN.

EABC was established as a Consortium with sixteen Business Organizations and Chambers of Commerce in Thailand and Europe. In Thailand those chambers and similar organisations have some 2,000 members. With strong support from the European Union, EABC interacts as the unified voice of European business aiming to contribute towards the improvement of trade and investment in Thailand fostering stronger business co-operation between Europe and Thailand. Twelve Advocacy Working Groups have been established to facilitate constructive policy and regulatory dialogues among European businesses toward improvement on market access and robust business cooperation between Europe and Thailand. These transversal as well as sectoral Working Groups - chaired by representatives of prominent European enterprises from respective sectors are:

- Automotive
- Cross Sectoral Issues (CSI)
- Digital Economy / ICT
- Energy & Energy Efficiency
- Food & Beverages
- Healthcare & Pharmaceuticals
- Insurance
- Intellectual Property Rights (IPR)
- Rail & Road Infrastructure
- SME
- Tourism
- Transport & Logistics

With strong support from the European Union as well as our partners and extensive networks in Thailand and Europe, the EABC serves as a communication platform for business to interact with authorities and counterparts in Thailand. The EABC is committed to working closely with European businesses, the Royal Thai Government, the EU Institutions, and the Chambers of Commerce as well as counterparts in Thailand, in ASEAN, and in Europe.

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Tanguy Moulin-Fournier
ENGIE Asia-Pacific

Gunnar Bertelsen
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EABC List of Working Group Chairs

Cross Sectoral Issues
Digital Economy / ICT
Energy and Energy Efficiency
Healthcare and Pharmaceuticals
Insurance
Rail and Road Infrastructure
SME
Tourism
Transport and Logistics

Nicholas Bellamy
Robert Fox
Tanguy Moulin-Fournier
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Executive Summary

The global economy has begun to recover, while emerging countries in ASEAN and beyond have entered into a race for FTAs and to become foreign investment destinations. The lack of new market or industry hampers economic growth in Thailand and complicates efforts to move Thailand out of the middle income trap. Thailand's economy is on recovery. Economic reform, which is aimed to strengthen Thailand's economy to a satisfactory level, remains a high focus for policymakers to steer Thailand to move toward an innovation-driven economy, under the Thailand 4.0

The EU is Thailand's third largest trading partner. Despite Thailand's internal challenges, in 2015, total trade exceeded 30 billion Euro. EU imported goods from Thailand were valued at 18.5 billion Euro, while EU exports to Thailand were valued at 13.4 billion Euro, resulting in a positive trade balance for Thailand of more than 6.2 billion Euro. The EU is also the second largest source of foreign direct investment (FDI) to Thailand.

While Thailand's robust economy draws significant players to FTA negotiations, strengthening EU-Thai economic relations will further Thailand prosperity and strengthen European long-term investors in Thailand. The resumption of EU-Thailand FTA negotiations on a technical level is important to strengthen Thailand's competitiveness in the regional economy and beyond. The FTA will bring mutual economic gains for both economies and economic power to Thailand. The natural agreement will come when the time is right. Thailand and the EABC must engage in closer dialogue and commit joint effort and collaboration at both a political and economic level to help improve Thailand-EU economic relations. We must demonstrate our friendship and determination by continuing to forge ahead with EU-Thailand FTA negotiations.

Being considered a 'upper middle income' country, the nation remains an efficiency-driven economy, while moving beyond this means opening up the economy to partnerships and innovation, and significantly advancing policies that promote economic openness and competition, which will drive efficiency and allow new technology to the country. Recognizing mutual economic gains and political will in regional leadership will further enhance Thailand's prosperity, through organizing and maintaining an authorization body supporting centralization for trade and logistics in ASEAN.

The vibrancy of Thailand and its intellectual and friendly Thai 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 will expand the Thai economy further.

Technology is the source of an innovation-driven economy. Falling behind on protection of intellectual property will not promote the flourishing environment of Thai scientists, and makes the country susceptible to the deferment of new and innovative products, which often result in greater value and more affordability for Thai consumers.

Thailand has grown in number with aging population. It will become increasingly difficult to remain as a contracted-manufacturer country due to shortage of labour. This has happened in Europe and developed countries around the world. To step out of poverty, developed countries focus on developing competitiveness for services sector. This includes liberalization of services and ease of employment to support the sector. Services also come in complementarity with manufacturing as well.

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, 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.

Seamlessly connected with ASEAN should be an aspiration for Thailand to achieve. Logistics costs relate to storage, time, energy, and changes for various transportation methods. Additional logistics costs include packaging, security, materials handling, paperwork, tariffs and duties. The Royal Thai Customs is very import authority to ensure transshipment hassle-free for businesses.

A looming energy crisis attracts international attention to Thailand's ability to provide sufficient energy for businesses. Thailand must ensure the country shall not face energy security issues by continuing to explore for new energy and renewable energy. This should also include developing a stronger interconnection in the ASEAN power grid to ensure readiness for transmitting power coming from alternative sources of energy. Large cities consume a huge amount of energy through city lights, and they can be modified to reduce energy consumption, as well as to improve cities' safety and attractiveness as a tourist destination.

Two factors make the Digital Economy in Thailand the fastest growing segment: (i) broadening as more and more economic activity which had manual or off-line processes or were not digitally-based, become digitised and (ii) new 'native' digital activity entering the arena. But the Digital Economy has to work in a structured way which stretches efficiency, encourages innovation and excites. Some fundamentals need urgent addressing. Telecoms reform, skills in the economy, achieving affordable mobile broadband and clearing stymieing regulatory overhead. See the Digital Economy/ICT Chapter.

The WG Logistics and Transport are advocating reform of Thai Laws covering Customs Procedures and access to the Thai Transport market for foreign Logistics companies to facilitate the development of a competitive Logistics Hub for South-East Asia in here in Thailand including Investment from Global Logistics Groups.

Thailand should strengthen tourism industry in holistic view. Three areas that are crucial to improve in order to allow the industry and Thailand flourish more and faster are: (i) guests arrival experience where we suggest to move into online visa before arrival where guests only have to scan their passport to enter the country, (ii) fair price competition to strengthen the implementation of existing hotel operations rules and regulations, and (iii) a framework for a structured cooperation with the government to train new and local talent through apprenticeships.

FTA's enhance wealth and efficiency. It is essential to support free trade and compliance to WTO agreements. This will benefit Thailand as a respected nation and will help conclude multi-lateral FTAs, as FTA obligations generally derive with respect to WTO agreements.

Improvement to cross-border procedures will foster business growth in Thailand and will support logistics and border trade in this nation. Streamlined customs procedures are known to increase speed and efficiency for operators and enhance ease of doing business. Regulations and laws must also support this development to increase effectiveness of the process. Ease of doing business can also help Thai entrepreneurs to quickly and effortlessly establish new opportunities in Thailand, while also helping to reduce costs for businesses. Simplifying procedures together with improving ease of doing business in other dimensions will strengthen Thailand's competitiveness and attractiveness for investments.

The EABC, as a voice of the European business community in Thailand, has adopted Policy Advocacy Working Groups in its structure. The main goal is to create a policy and regulatory platform where industries can participate and propose their business issues of interest as well as recommendations to the Thai authorities. The Working Groups consist of Cross Sectoral Issues, Intellectual Property Rights (IPR), Automotive, Food and Beverages, Healthcare and Pharmaceuticals, Digital Economy / ICT, Insurance, Transport and Logistics, Energy and Energy Efficiency, and Rail and Road Infrastructure. Fundamentally, the EABC Policy Advocacy Working Groups work to generate positive contributions for Thailand's further competitiveness within the spirit of EU-Thailand: partnership for growth.

Continuing on from our previous Papers, European businesses still emphasize enhanced transparency, improved efficiency, an enabling economic and regulatory environment, and liberalization of the services sector as key priorities for tangible improvement in Thailand's position. The 2018 Position Paper is also intended to be a source of information for EU and European Member States to assist in their engagements with Thai policymakers and authorities. We are hopeful that Thai businesses, media, and academics will find this Position Paper useful for their trade-and-economic related future use.

The table below is a summary of key trade and investment recommendations contributed by our EABC working groups. We are fully committed to providing constructive contributions in terms of policy and regulations that will foster a long-term economic partnership between Thailand and Europe. We appreciate all valuable exchanges with the Royal Thai Government and wish to continue our regular dialogue and mutually beneficial collaboration at both policy and business levels.

ISSUES AND RECOMMENDATIONS

Overall Trade and Investment Policy

- The resumption of EU – Thailand FTA negotiations on a technical level is highly recommended to improve economic relations for the two economies.
- Liberalization of services sector is a key enabler of competitiveness, skill development, enhancement of productivity, and a boost of economic growth and resilience.
- Thailand is highly encouraged to strengthen its competitiveness and attractiveness through further liberalization, creation of a level of playing field, and development of hardware and software infrastructure.

Automotive

1. EU-Thailand FTA Negotiations

- Resume FTA negotiations as soon as possible
- EABC recommends that the EU-Thailand FTA places emphasis on reducing NTBs.

2. Technical Regulations

- Align with internationally-accepted UN Regulation and recognize international certification
- The product certification for automotive products should be simplified and open for full acceptance of relevant international certificates and document without additional testing and inspection to ensure greater facilitation of trade.
- Actively engage in developing and implementing ASEAN Mutual Recognition Arrangement for automotive products and accelerate ASEAN MRA time line for implementation.
- The EABC supports clarity regarding – and a clear timeline towards – the improvement of automotive emissions standards and fuel quality to promote environmental and public health enhancement.
- We urge the government to improve fuel quality to be aligned with emissions standards.
- EABC recommends that the Thai government investigates making a variety of vehicle safety measures mandatory.

ISSUES AND RECOMMENDATIONS

3. Taxation

- Thailand shall safeguard existing investment in CFZ as well as promote foreign investment.
- We reiterate our recommendation from the previous year that privileges offered by the CFZ scheme are preserved after the new Excise Tax Act.
- Business operators shall be offered a sufficient transition period for abrupt and critical changes to policies and regulations. Business planning for the automotive sector is prepared at least 2 years in advance; hence, operators shall have an adjustment period of at least 2 years in order to ensure the viability of their business in Thailand.
- The EABC supports the Royal Thai Government's actions to tighten control on grey market vehicle imports through close monitoring of declared customs value, MSRP, ECO-Stickers submission process, and technical testing requirements.
- We welcome the Customs Department working closely with brands in setting up a system to detect illegal practices and stricter vehicle registration.

4. Labour

- Develop mid- and long - term strategies to raise availability of labour in order to solve scarcity of vocational workers, including both quantitative and qualitative shortages of labour

5. Investment

- The EABC recommends that the Royal Thai government must ensure transparency and monitor effectiveness of the licensing granting process. Enforcement on LFA is needed.
- Thailand should not only focus on attracting new investments, but also safeguarding existing investments is necessary to foster the growth of Thailand's automotive hub. This requires long-term support and commitment from BOI, where clarity to investment promotion is needed to avoid unnecessary delays for investment decisions.
- Thailand should continue to raise standards for safety and environmental requirements in the automotive sector to help attract green technology and new investment.
- The EABC recommends the Royal Thai Government continue dialogue with the EABC Automotive working group for improving ease of doing businesses. The EABC automotive working group consists of industry experts that can provide policy recommendations to boost Thailand's competitiveness.

ISSUES AND RECOMMENDATIONS

6. Electric Vehicle (EV)

- We recommend the Royal Thai government to promote Plug-in Hybrid vehicle as a bridging technology transition to a full electric drive.
- Relevant production incentives, special tax discounts, and direct purchase incentives are necessary encouragements for electric vehicle to facilitate faster penetration of markets.
- The Royal Thai government should increase the availability of public charging networks as one of the intrinsic buying decisions, set up a regulatory framework leading to a fair competition, and promote the use of plug-in hybrid and electric vehicle in the state own fleet.

Cross Sectoral Issues (CSI)

1. Ease of Doing Business

- Competitive tax regime
- Continued Implementation of Excise Tax and Customs Reforms
- Improve investment climate in Thailand
- Clarification of interpretation of BOI investment privileges
- Role of court system, resolution of disputes, litigation and arbitration
- Enforcement of competition law
- A Rule of Law policy including Consultation; a Permanent Law Reform Commission, Removal of cumbersome and unnecessary laws and regulations (Guillotine)
- Government take up and accelerated on-line penetration, more details in the Digital Economy/ ICT chapter

2. Creating an Enabling Economic and Regulatory Environment

- Relaxation of foreign ownership restrictions and progressive liberalization of services sector
- Work Permit & Visa: Ease of employment procedures and laws to facilitate free flow of skilled and unskilled labour, including supporting ease of entry of Business Visitors skilled labour, including supporting ease of entry of Business Visitors skilled.

3. Enhancing Transparency

Tackling Corruption

ISSUES AND RECOMMENDATIONS

Digital Economy / ICT

1. Digital Economy – Background (one Recommendation box)

- It is worth a continual reminder that a structured, layered approach is necessary for success.

2. Telecoms Sector – major issues (three Recommendations boxes)

- Telecoms networks and the soft and hard infrastructure of the telecoms sector underpin the digital economy. The structure and operation need to be effective, efficient and innovative. SOEs must evolve to be licensed, competitive operators, not instruments of policy. Major structural reform is needed.
- National broadband architecture needs a proper structure where SOEs as managers do not dominate.
- A national spectrum plan is needed which shows sufficient spectrum; auction starting price is too high and needs revision; abolish the N-1 rule in spectrum auctions; scarcity is artificially caused.
- Work is needed on MVNO policy; a first step would be abolishing individual licences and using class licences.

3. Digital Economy – workings (six Recommendations boxes)

- The multi-stakeholder model of internet governance is needed. This model includes civil society governance and multi-party responsibilities for security. A Trusted Internet is vital.
- Security should start with network and operational security, all parties have a role. Gateways should be fully liberalized and national cybersecurity in one agency.
- Online intermediary responsibility for IPR infractions needs balancing with rights of IPR holders
- Support for new Tech needs clearance of regulatory burdens/ major 'doing business' uplift.
- The proposed Personal Data Protection law has positive features; care is needed with cross border, consent and data access aspects. Data nationalization / localization in the sense of trying to make data a national property does not work; exceptions to limiting cross border flow of certain sensitive data need examination.
- Any proposed eCommerce tax needs a workable platform and global interoperability before launch.
- Capacity building both through enhanced education and freer flow of skilled foreigners are needed.

4. Digital Broadcasting; Digital TV (one Recommendation box)

- The broadcast and telecoms industries, and government could work on a better solution to the use of broadcast spectrum as part of the national spectrum plan.

ISSUES AND RECOMMENDATIONS

Energy and Energy Efficiency

1. Energy Efficiency and Energy Saving

- Energy efficiency in buildings and for industry-- Thailand should consider adjusting its existing energy efficiency policies for buildings and industries in order to better incentivize progress in this domain.
- Energy efficiency in power generation -- Thailand should also promote the efficiency of using fuel in power generation. Cogeneration should be encouraged
- Energy Efficiency from large infrastructure like district cooling system concept-- District cooling is a proven system that efficiently cools buildings/city through centralized distribution of chilled water. District cooling is becoming an essential part of urban development.

2. Energy Security

- Diversification and balanced energy mix: We encourage Thailand to diversify its energy mix and to develop renewable energy sources, in combination with gas, which is a low-carbon fuel
- Future of current licenses for major oil and gas fields, due to expire in 2022-2023 – Now that the government has decided to go ahead with a bidding process for the current licenses it is crucial that the government stands firm on the timeline. Any delays can potentially lead to a gap in supply profile which could be costly to manage. It is very important that Thailand's international partners have clarity on the government's plans if they are to continue investing. Uncertainty will cause them to reduce their investments in advance of expiry.
- Resolution to the Overlapping Claims Area (OCA) – A great opportunity for Thailand lies in development of the Overlapping Claims Area with Cambodia. The gas reserves there could play a significant role in meeting Thailand's energy needs.
- Regulation and energy vision within gas industry – the Government has recently decided to review the regulation of the gas infrastructure value chain, and to regulate tariffs all along this value chain. This is a legal move which has been executed in Europe in the past and EABC would be happy to bring the European experience and best practices to the knowledge of the Energy Regulatory Commission,
- Power transmission and Distribution grid: The EABC recommends enhancing the Power Transmission and Distribution sector and speeding up investments in ageing infrastructure to improve power security and ensure readiness for transmitting power coming from alternative sources of energy.
- Smart grids: We do believe the smart grids are a perfect support for the energy transition, will help reinforce the energy security, and are crucial for the Thailand 4.0 targets.

ISSUES AND RECOMMENDATIONS

3. Alternative/Renewable Energy

- EABC supports Thailand's diversification of energy sources and focus put on more renewable energy (with natural gas as a back-up and transition energy). We believe that this clean and less carbonized energy is crucial for the country, and that Thailand has a large potential for renewable energies. Acceleration of this important change of pattern will help Thailand respect its commitments that were made at COP21, to reduce its CO2 emissions, but will equally enhance its competitiveness.
- EABC recommends a set of measures and incentives to accelerate the development of the solar energy in Thailand, which is a real chance for the country.

4. Lighting

- We recommend that the Thai government enlists the help of experts in building and lighting

Food and Beverages

1. 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 on alcohol
- Illicit alcohol

4. Social Responsibility

Healthcare and Pharmaceuticals

1. Fostering investment attractiveness for innovation and research collaboration

- Tax and non - tax incentive schemes for innovation shall provide competitive benchmarking in the region.
- Enabling viable and accessible local market with available skilled workers. The public and private sectors must work together to advance R&D and ensure access, viability and sustainability of the investment.
- Thailand needs to provide a suitable environment for innovation and R&D collaboration from the development to market entry aiming to enhance competitiveness and to serve the demand of global consumers.
- To attract and enable international product development partnerships in country, the government should consider revising the inclusion criteria to the innovation list beyond nationally owned corporations and permit entry by international and overseas innovators.

ISSUES AND RECOMMENDATIONS

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

- The EABC encourages constructive and inclusive dialogues between the Royal Thai Government and stakeholders including members of the healthcare industry in the processes of regulatory reform which may involve new draft or revision of laws and regulations to enhance transparency, efficiency of implementation and pragmatic resolutions.
- Safety, quality and efficacy of products and services should be the remit of the healthcare market regulatory consideration in accordance to international norm while price inquiry/ control should remain the purview of the fair trade authorities.
- To create vibrant growth in indigenous innovation, Thailand's authorities need to prevent intellectual property infringements including patents. With the disclosure of patent information, adding a condition for generic drugs to notify patent status could be specified in Ministerial Regulations.

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

- The EABC recommends Thailand continues to increase the numbers of competent patent examiners in advance and sophisticated technologies including in the fields of chemical, device and pharmaceutical researches; where the number of patents granted remains significantly low due to a lack of competent examiners.
- To catalyse technology transfer and the creation of indigenous intellectual properties and innovations; the amended Patent Law should be aligned with international standards and practices enabling efficient registration and protection; conditions necessary in the transfer of technology and investment.
- In light of the current extensive patent backlog and lengthy registration timeline for sophisticated healthcare technologies, consideration of adopting patent term restoration can further augment the attractiveness of the country's IP ecosystem in comparison to regional peers.

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

- The EABC encourages continued and expanded regular industry consultation and dialogue to ensure issues can be rapidly, comprehensively and transparently addressed to the mutual benefits of patients and stakeholders in the healthcare system.

Insurance

1. Liberalisation of insurance industry

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

ISSUES AND RECOMMENDATIONS

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

- Amendments to Trademark Act on accession to Madrid Protocol and illegal refilling practices; and amendments to Trademark Act on protection of sound mark
- Challenges of Thailand accessing the Madrid Protocol (International Trademark Registration System)

Intellectual Property Rights

- Amendment of the Geographical Indications Act B.E. 2546 (2003)
- Amendment of the Patent Act to Facilitate Accelerated Registration Process

2. IP Policies

- Trademark elimination via plain packaging policy and excessive measures restricting normal use of trademarks
- Patent and Trademark registration procedures via Licensing Facilitation Act (LFA)
- Enforcement/Counterfeit goods:

3. Intellectual Property Rights for ICT

Rail and Road Infrastructure

- The Royal Thai Government shall create the legal basis for the consideration of modern technologies in design and procurement, including Life-Cycle-Management.

ISSUES AND RECOMMENDATIONS

Tourism

- EABC suggests Thailand should strengthen tourism industry in holistic view. The guest's arrival experience is crucial to improve in order to allow the industry and Thailand flourish more and faster
- We support Thailand to implement fair price competition of existing hotel operations rules and regulations. Well-regulated industry can attract more investment
- We encourage the Royal Thai Government to consider a framework for a structured cooperation with the government to train new and local talent through apprenticeships to ensure sufficient workforce for the tourism industry.

SME

- EABC urges Thailand to provide enhanced access to finance for SMEs to the Loan Guarantee Facility provide guarantees and counter-guarantees to financial institutions (e.g. guarantee societies, banks, leasing companies) so financial institutions can provide more loan and lease finance to SMEs.
- We encourage the Royal Thai Government to also include foreign SMEs to Smart SMEs program and can certainly support the Thai industry in research and development, innovations and high-tech industries areas to achieve the development boost the Government aims for.
- EABC recommends special treatments for SME's to be exempted to obtain such certificates with low business value to do away cumbersome bureaucratic / approval process in particular for SMEs
- EABC recommends that the government to consider non-tax incentives for SMEs in R&D since development may not be profitable enough to realise benefits in the current period.

ISSUES AND RECOMMENDATIONS

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.
- 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, 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
- 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.

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

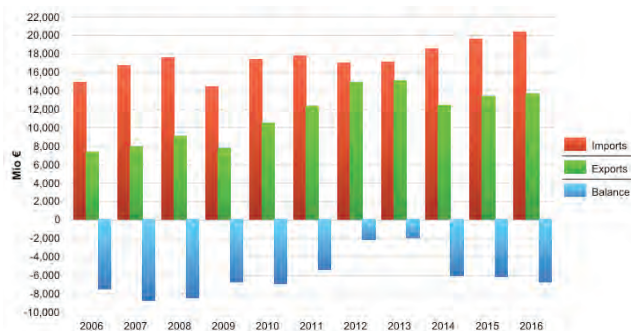
ITU	International Telecommunications Union (UN agency)
JFCCT	Joint Foreign Chambers of Commerce in Thailand
JSCCIB	Joint Standing Committee on Commerce, Industry and Banking
JTEPA	Japan-Thailand Economic Partnership Agreement
LTE	Long Term Evolution - the 4G standard in the GSM world
LWP	Last Wholesale 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 EU is Thailand's third largest trading partner. Despite Thailand's internal challenges, total trade exceeded 30 billion Euro in 2016. EU imported goods from Thailand were valued at 20.3 billion Euro, while EU exports to Thailand were valued at 13.6 billion Euro, resulting in a positive trade balance for Thailand of more than 6.5 billion Euro. From 2006 to 2016, the total value of imported Thai products to the EU increased approximately by 35 percent.

Figure 1: Total goods: EU – Thailand Trade flows and balance, annual date 2006-2016

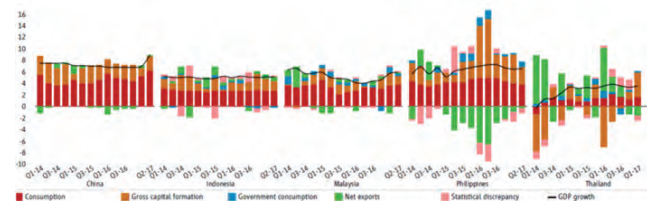


Source: Eurostat Comext - Statistical regime 4

While the world economy started to slow down after 2013, Asian countries reliant on exports and private investment suffered greatly. Thailand's net investment reduced drastically as a result of political turmoil in 2013 and 2014. Net exports are projected to increase less and become less impact to raise Thailand's GDP. The country is expected to grow around 3.5 percent in 2018, while the neighbouring countries such as Vietnam and Malaysia are growing at 5 percent. Thailand is losing its attractiveness for new investments, and higher labour costs make

Thailand less competitive – exacerbated by Thailand's reliance in exports, which account for 70 percent of Thai GDP. Thailand must refresh its attractiveness for new investments from abroad, increase technology and efficiency, deeper trade integration (FTAs), and fostering innovation particularly in services sector. Currently, Thailand could be considered in the upper middle income bracket. To break free from the middle income trap, Thailand needs to welcome research and development (R&D) 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 Thailand to create an environment that is suitable for a creative and innovative economy. In addition, availability for both quality and quantity workforce is also important.

Figure 2: East Asia and Pacific GDP growth projections



Sources: Haver Analytics; World Bank staff estimates.

Figure 3: East Asia and Pacific: GDP growth and projections

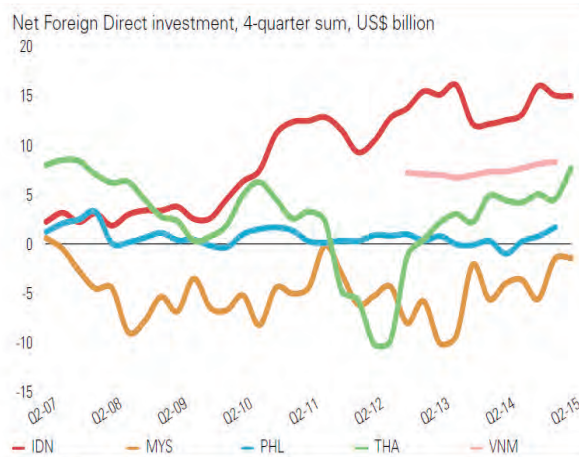
	Forecast					Change from October 2017 update		
	2018	2017	2018	2019	2020	2017	2018	2019
Developing EAP	6.3	6.6	6.3	6.1	6.0	0.2	0.1	0.0
China	6.7	6.9	6.5	6.3	6.2	0.2	0.1	0.0
Developing EAP excl. China	4.9	5.4	5.4	5.3	5.3	0.3	0.2	0.1
Developing ASEAN	4.9	5.4	5.4	5.4	5.4	0.2	0.2	0.2
Indonesia	5.0	5.1	5.3	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	3.1	3.3	3.4	3.5	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	5.3	-1.8	2.2	4.2	4.0	-4.2	-2.0	-0.8
Accumulates about the external environment*								
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	40	41	42	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

*World Bank, "East Asia and Pacific Economic Update", April 2018.

Source: World Bank data and staff estimates.

Positive Foreign Direct Investment (FDI) has been strongly recorded in Thailand. Frequent changes in Thai leadership, resulting from political unrest, shattered investor confidence. This was especially the case in 2012, when net FDI declined by over US\$10 billion. Positive net investment had returned by 2013. To increase new investments, in 2015, the BOI launched investment promotions to support new cluster development. Businesses were promised highly competitive promotions for the 10 new industries that are necessary for Thailand's future economic growth. However, serious measures to safeguard existing industries have not taken place, in order to prevent businesses moving out. Keeping existing businesses in Thailand has become challenging. Cooperation between Thai government agencies must occur, and policies must be strengthened. Doing so will not only open doors to new investments but also reinvestments in existing industries, as the BOI: Thailand Moving Forward scheme is based on existing industries reinvesting in future development.

Figure 4: Foreign Direct Investment 2007-2015

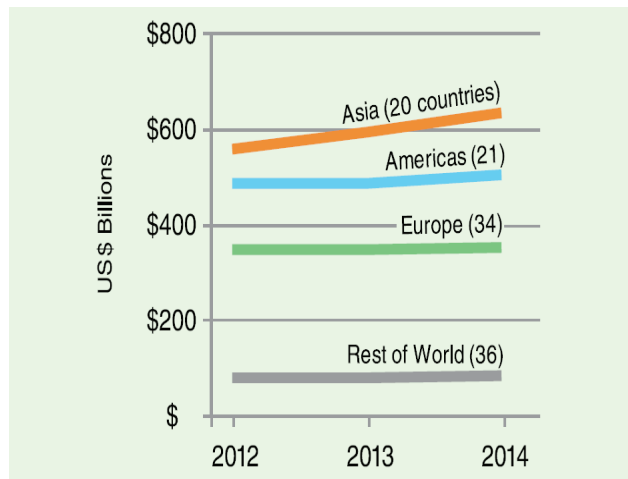


Source: Haver Analytics.

Steering Thailand towards more prosperity requires taking initiative in research and development. R&D is a source of innovation and the right step to move toward an innovation-driven economy. Taking advantage of Asia's economic growth, big developments and improved education, many countries already consider Asia to be a suitable environment for R&D. Asia is projected to spend 2 percent of GDP in R&D, while Japan maintains consistent R&D spending at 3.4 percent. R&D in Thailand remains at less than 0.5 percent. 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 fund public research institutions alone - the country needs to work with the private sector to bring in more investments and expertise. Generally, R&D is in the field of life sciences, engineering and ICT, where 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. The additional effect is knowledge spill-over in to key clusters and tier 2 and tier 3, where major suppliers are dominated by Thai ownership. This requires Thailand to improve regulations and incentive schemes.

Figure 5: R&D Investment in the World, 2012-2014* (Forecast Figure)



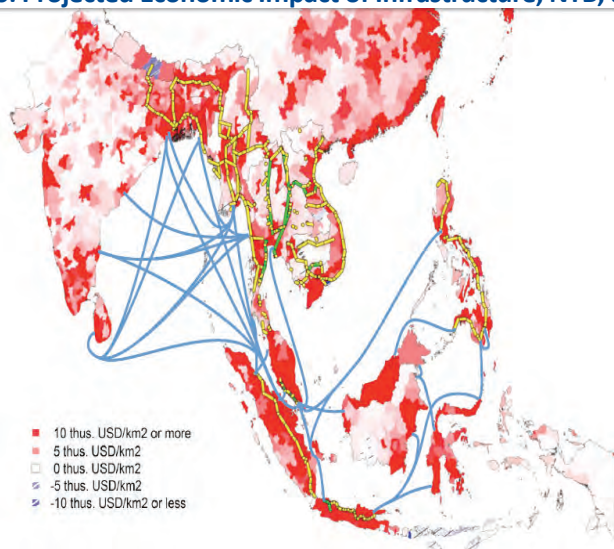
	2012		2013		2014	
	GERD \$Bn	R&D as % GDP	GERD \$Bn	R&D as % GDP	GERD \$Bn	R&D as % GDP
Americas (21)	485	2.5%	489	2.4%	504	2.5%
U.S.	447	2.8%	450	2.8%	465	2.8%
Asia (20)	591	1.8%	596	1.9%	633	1.9%
China	232	1.8%	258	1.8%	284	2.0%
Japan	160	3.4%	163	3.4%	165	3.4%
India	41	0.9%	42	0.9%	44	0.9%
Europe (34)	350	1.9%	349	1.9%	351	1.8%
Germany	92	2.8%	92	2.8%	92	2.9%
Rest of World (36)	81	0.9%	83	0.9%	87	0.9%
Global Total	1,517	1.8%	1,558	1.8%	1,618	1.8%

GERD=Gross Expenditures on R&D; PPP=Purchasing Power Parity.
Source: Battelle, R&D Magazine

Source: 2014 R&D Funding Forecast, December 2013)

Thailand recently became one with ASEAN. This even more emphasizes Thailand's strategic location bridging countries for international trades. Significant infrastructure developments are already underway in South Asia around

improving connectivity through rail and road infrastructure, maritime and air transport. 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.

Figure 6: Projected Economic Impact of Infrastructure, NTB, and SEZ in 2030

Source: *The Comprehensive Asia Development Plan 2.0 (CADP 2.0): Infrastructure for Connectivity and Innovation*

Figure 7: Thailand Logistics Performance 2014

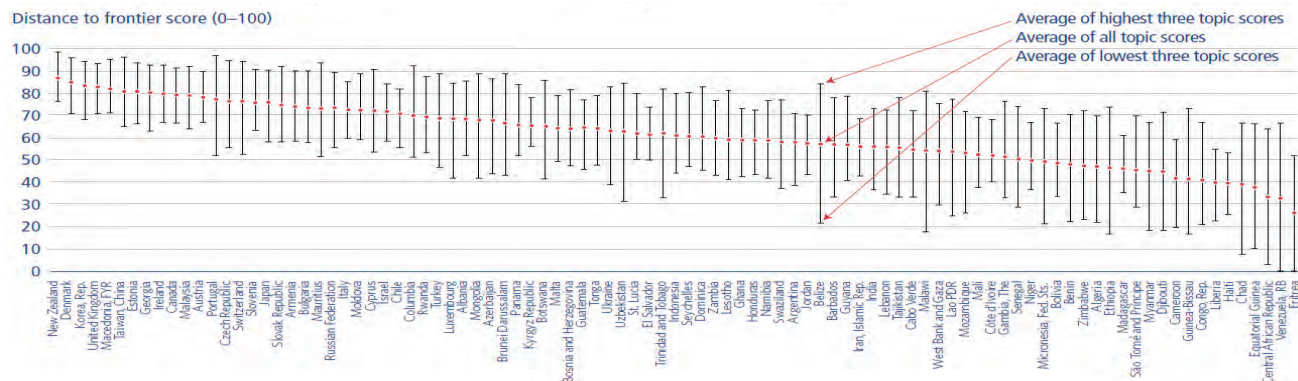
Economy	Rank / 160	Overall	Customs		Infrastructure		International Shipment		Logistics quality and competence		Tracking and tracing		Timeliness	
			Rank	Score	Rank	Score	Rank	Score	Rank	Score	Rank	Score	Rank	Score
Thailand	35	3.43	36	3.21	30	3.40	39	3.30	38	3.29	33	3.45	29	3.96

Source: *Logistics Performance Index 2014*

Enhancing Thailand's Competitiveness: Strategy for Prosperity

The world economy is entering a “new normal” phase of lower economic growth. This requires countries to make a great effort to improve their competitiveness. Thailand's ambition to improve its ranking for Global Competitiveness showed declining progress from last year, 32th to 34th in GCI 2016-2017. Very slow progress has made in relation to the governing body, emphasizing legal and administrative procedures that are not fostering business competitiveness in the world economy. It is important for the Thai government to ensure investor and consumer confidence and support transparency for business operators.

Figure 11: Economy’s regulatory environment for ease of doing business



Source: World Bank, Doing Business, 2017

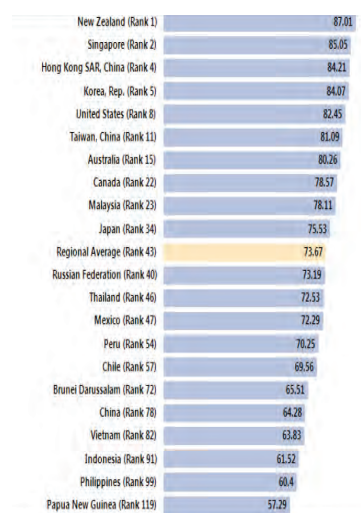
Figure 12: Thailand’s ease of doing business compared to the world

THAILAND	East Asia & Pacific	GNI per capita (US\$)	5,640
Ease of doing business rank (1–190)	Overall distance to frontier (DTF) score (0–100)	Population	68,863,514
26	77.44		
✓ Starting a business (rank) 36 DTF score for starting a business (0–100) 92.34 Procedures (number) 5 Time (days) 4.5 Cost (% of income per capita) 6.2 Minimum capital (% of income per capita) 0.0	✓ Getting credit (rank) 42 DTF score for getting credit (0–100) 70.00 Strength of legal rights index (0–12) 7 Depth of credit information index (0–8) 7 Credit bureau coverage (% of adults) 56.6 Credit registry coverage (% of adults) 0.0	Trading across borders (rank) 57 DTF score for trading across borders (0–100) 84.10 Time to export Documentary compliance (hours) 11 Border compliance (hours) 51 Cost to export Documentary compliance (US\$) 97 Border compliance (US\$) 223 Time to import Documentary compliance (hours) 4 Border compliance (hours) 50 Cost to import Documentary compliance (US\$) 43 Border compliance (US\$) 233	
Dealing with construction permits (rank) 43 DTF score for dealing with construction permits (0–100) 74.58 Procedures (number) 18 Time (days) 104 Cost (% of warehouse value) 0.1 Building quality control index (0–15) 11.0	✓ Protecting minority investors (rank) 16 DTF score for protecting minority investors (0–100) 73.33 Extent of disclosure index (0–10) 10 Extent of director liability index (0–10) 7 Ease of shareholder suits index (0–10) 8 Extent of shareholder rights index (0–10) 5 Extent of ownership and control index (0–10) 7 Extent of corporate transparency index (0–10) 7	✓ Enforcing contracts (rank) 34 DTF score for enforcing contracts (0–100) 67.91 Time (days) 420 Cost (% of claim) 16.9 Quality of judicial processes index (0–18) 8.5	
✓ Getting electricity (rank) 13 DTF score for getting electricity (0–100) 90.99 Procedures (number) 4 Time (days) 32 Cost (% of income per capita) 63.1 Reliability of supply and transparency of tariffs index (0–8) 7	✓ Paying taxes (rank) 67 DTF score for paying taxes (0–100) 76.73 Payments (number per year) 21 Time (hours per year) 262 Total tax and contribution rate (% of profit) 28.7 Postfiling index (0–100) 73.41	✓ Resolving insolvency (rank) 26 DTF score for resolving insolvency (0–100) 75.64 Time (years) 1.5 Cost (% of estate) 18.0 Recovery rate (cents on the dollar) 68.0 Strength of insolvency framework index (0–16) 12.5	
✓ Registering property (rank) 68 DTF score for registering property (0–100) 68.75 Procedures (number) 5 Time (days) 7 Cost (% of property value) 7.3 Quality of land administration index (0–30) 18.0			

Source: World Bank, Doing Business (Thailand), 2018 showing ranking for 2018

Ease of doing business is very important for International attractiveness. Continuous improvement in ease of doing business leads to better economic performance for Thailand. Therefore, improvement to ease of doing business will also enhance the country's attractiveness for new investment. Thailand is noted as of the most improved economies in areas tracked by Doing Business. Some caution is needed however with this World Bank 'doing business' measure. The ranking uses globally standardize criteria and does not include for example work permit and visa issues, which are the single-most commonly referred to issue in this context.

Figure 13: How Thailand and comparative economies rank on ease of doing business 2018



Source: World Bank, *Doing Business 2017* (note the improvement to 26 for 2018)

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. This is a significant step to improve EU-Thai economic relations. However, recent political changes in Thailand in 2014 have interrupted the negotiations, which will resume when the time is right.

The FTA is projected to bring mutual economic gains for the two economies, such as gains in trade, zero percent tariff rates, enhanced investments, increased trade in service, removal of non-tariff barriers, improvements in intellectual property protection for inventors, levelling of the playing field, better market access and more transparency. The EU has recently concluded an FTA with Vietnam, and many ASEAN member states are already in negotiations. Thailand will become less competitive for European Investments if the FTA negotiations do not resume soon.

Despite political circumstances, the EABC supports the continuation of EU-Thailand FTA negotiations on a technical level.

Figure 14: EU-Thailand Trade in Service

Source: EU Commission, 2016

The World Bank launched Thailand Economic Monitor: Services as a New Driver of Growth in December 2016. The report highlighted services sector can serve as a new driver of growth to help Thailand achieve high income and new job opportunities to serve both domestic and global markets. It also emphasized that services sector is becoming increasingly important for Thai economy due to complementarity with manufacturing and source of innovation which is critical for Thailand 4.0. The report had also underlined the important for Thailand to improve regulatory environment for doing business, reduce policy restrictiveness and engage in deeper trade integration.

The manufacturing era has stopped growing and faces competition from other emerging markets. Today, Thailand no longer stands out – other countries have caught up in all dimensions. However, Thailand remains fundamentally strong for services sector. Although the sector lacks behind manufacturing in terms of efficiency, it accounts nearly 50 percent and employs over 40 percent of the workforce. Services sector is projected to grow 3.4 percent while industry remains at 2.8 percent due to weak export and low domestic demand. Therefore, Thailand must head start to liberalize services sector to growth further and reaps the benefits like past liberalization in manufacturing, merchandise trade and imports of capital.

Figure 15: Virtuous Cycle of Growth under EU-Thailand FTA Resumption

Source: EABC, 2016

EU-Thailand: Partnership towards Mutual Prosperity

The EABC Position Paper is the unified work of EABC's ten 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 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 – with over 70 working group sessions held over the past year. This Paper is a resource for the Royal Thai Government’s regulators and policymakers to learn about the issues and to find the best approach. The EABC Position Paper is our sincere contribution to improve Thailand’s competitiveness for the mutual benefit of the two economies, and for long-term European investment in Thailand.

To gain more prosperity, certain things must occur. The country should not simply accelerate the nation without harmony among different interests, and improving international economic relations can serve as a lever towards higher growth and prosperity for Thailand. In the 2018 European Business Position Paper, we cover recommendations to reduce trade barriers, improve the investment climate and ease of doing business, increase Thailand’s competitiveness, amplify strategies to improve Thailand’s position in ASEAN and on the world stage, and engage Thailand on the resumption of EU-Thailand FTA negotiations.



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SUMMARY OF RECOMMENDATIONS

1. EU-Thailand FTA Negotiations

- 1.1 Resume FTA negotiations as soon as possible
- 1.2 EABC recommends that the EU-Thailand FTA places emphasis on reducing NTBs.

2. Technical Regulations

- 2.1 Align with internationally-accepted UN Regulation and recognize international certification
- 2.2 The product certification for automotive products should be simplified and open for full acceptance of relevant international certificates and document without additional testing and inspection to ensure greater facilitation of trade.
- 2.3 Actively engage in developing and implementing ASEAN Mutual Recognition Arrangement for automotive products and accelerate ASEAN MRA time line for implementation.
- 2.4 The EABC supports clarity regarding – and a clear timeline towards – the improvement of automotive emissions standards and fuel quality to promote environmental and public health enhancement.
- 2.5 We urge the government to improve fuel quality to be aligned with emissions standards.
- 2.6 EABC recommends that the Thai government investigates making a variety of vehicle safety measures mandatory.

3. Taxation

- 3.1 Thailand shall safeguard existing investment in CFZ as well as promote foreign investment.
- 3.2 We reiterate our recommendation from the previous year that privileges offered by the CFZ scheme are preserved after the new Excise Tax Act.
- 3.3 Business operators shall be offered a sufficient transition period for abrupt and critical changes to policies and regulations. Business planning for the automotive sector is prepared at least 2 years in advance; hence, operators shall have an adjustment period of at least 2 years in order to ensure the viability of their business in Thailand.
- 3.4 The EABC supports the Royal Thai Government's actions to tighten control on grey market vehicle imports through close monitoring of declared customs value, MSRP, ECO-Stickers submission process, and technical testing requirements.
- 3.5 We welcome the Customs Department working closely with brands in setting up a system to detect illegal practices and stricter vehicle registration.

4. Labour

- 4.1 Develop mid- and long - term strategies to raise availability of labour in order to solve scarcity of vocational workers, including both quantitative and qualitative shortages of labour

5. Investment

- 5.1 The EABC recommends that the Royal Thai government must ensure transparency and monitor effectiveness of the licensing granting process. Enforcement on LFA is needed.
- 5.2 Thailand should not only focus on attracting new investments, but also safeguarding existing investments is necessary to foster the growth of Thailand's automotive hub. This requires long-term support and commitment from BOI, where clarity to investment promotion is needed to avoid unnecessary delays for investment decisions.
- 5.3 Thailand should continue to raise standards for safety and environmental requirements in the automotive sector to help attract green technology and new investment.
- 5.4 The EABC recommends the Royal Thai Government continue dialogue with the EABC Automotive working group for improving ease of doing businesses. The EABC automotive working group consists of industry experts that can provide policy recommendations to boost Thailand's competitiveness.

6. Electric Vehicle (EV)

- 6.1 We recommend the Royal Thai government to promote Plug-in Hybrid vehicle as a bridging technology transition to a full electric drive.
- 6.2 Relevant production incentives, special tax discounts, and direct purchase incentives are necessary encouragements for electric vehicle to facilitate faster penetration of markets.
- 6.3 The Royal Thai government should increase the availability of public charging networks as one of the intrinsic buying decisions, set up a regulatory framework leading to a fair competition, and promote the use of plug-in hybrid and electric vehicle in the state own fleet.

The EABC appreciates the Royal Thai Government's various policies and measures which have enabled the country's automotive industry to achieve its current position and 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 automotive industry contributes greatly to Thailand's GDP, promoting jobs and large arraying suppliers. In this

chapter, the EABC continues its famous series of policy recommendations in 2016 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. 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 was 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 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 2016 European Business Position Paper, the EABC continues 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.

2. Technical Regulations

Despite good intentions to improve the licensing process, significant progress in Thailand's implementation of the WP29 - 1958 Agreement could not be clearly observed in 2016 for automotive and automotive parts manufacturers. For instance, 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. This requirement is inefficient, time consuming, costly, and most importantly it is redundant to obtain another test report when UN Regulation have already been widely and internationally accepted without conditions.

The EABC 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.

We strongly recommend TISI to 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 urges 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. We reiterate our recommendation, strongly urging 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.
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.

ASEAN Mutual Recognition Arrangement (MRA) for Automotive Products

Harmonization of the 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 June 2016. We also urge Thailand to continuously engage in further development of the MRA, including its second phase encompassing 32 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 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 lessening the impact of climate change in the long-term.

Clarity for emissions standards and fuel quality developments is welcomed. The EABC Automotive Working Group stands ready to support Thailand's environmental and automotive fuel development plan and implementation scheme.

Recommendations:

1. The EABC supports clarity regarding – and a clear timeline for – the improvement for automotive emissions standards and fuel quality to promote environmental and public health enhancement.
2. Fuel quality improvements should be aligned with emissions standards.

Road Safety

According WHO official statistics in 2015, Thailand has the second highest road traffic fatality rate in the world with 36.2 fatalities per 100,000 inhabitants including 73% 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.

Recommendations:

1. EABC recommends that the Thai government investigates making a variety of vehicle safety measures mandatory. Most notably EABC recommends to investigate possible rulemaking for ABS for power two wheelers > 125cc, and for ABS and ESC for passenger cars of vehicle class M1. Given the fact that these systems are standard equipment in several vehicles already today.
2. Thai government to consider putting roadmap to harmonize national with international automotive standards (UN regulations).

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

The Ministry of Finance Notification no. 13 regarding Customs Free Zone (CFZ), announced in late December 2015, contains changes that may negatively affect current business operations and investor confidence. EABC pointed out, in the 2015 Position Paper, 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.

On the contrary, the aforementioned MOF Notification not only discourages foreign investment, but also

increases business uncertainty as Customs will now have the right to overrule decisions of other authorities.

Recommendation:

The EABC urges 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 and protecting existing investments in the CFZ.

Customs Custody

The EABC understands the intention of the Licensing Facilitation Act is to improve public services and administrative sector. The impact of the Act reduces time allowed for goods to be in the customs custody to 1 month, previously allows for 2 months. Shorter custody time has undermined the complexity of the automotive industry that often requires many documents. Furthermore, it also impact financial of the supply chain since business needs to place bank guarantee for the goods to be released from the custody before expiration date. Therefore, we recommend the Royal Thai Customs to reconsider customs custody procedures to facilitate the automotive industry.

Recommendation:

EABC recommends the Royal Thai Customs to reconsider customs custody procedures to facilitate the automotive industry.

The Excise Tax Act 2017

The New Excise Tax Act has become in force since 16 Sep 2017 combining several Excise Tax regulations and changing the vehicle tax base to Manufacturer Suggested Retail Price. EABC welcomes any changes in the law that lead to transparency, simplicity, and business certainty. However, we would like to express our concern about the changes that could undermine investor confidence.

EABC has expected to see a reduction in the excise tax rates in compensation for an increased tax burden due to the changing tax base calculation and the government's commitment to ensure the tax revenue neutrality, which would help maintain the automotive industry's competitiveness. In addition, EABC has involved in the subordinate laws drafting process to give opinions and comments. We have requested the Authority to disclose the new excise tax rate and the draft laws revision in advance for business process adaptation.

With the significant change in law and regulations in addition to some unclear interpretation, the Industry has experienced some difficulties in practice to fulfil the new legal requirement during the transition period. Close consultation and working with the Authority has been held to resolve the operational working process and ensure legal compliance to the new laws. EABC highly appreciate the advices and recommendation from the Excise Authority during the implementation period. We would also like to reiterate the same conditions for MSRP and cost information declaration and assessment be aligned between the authorized manufacturer/importer and the grey importer so as to create a level of playing field.

Recommendations:

1. With the significant working process change resulted from the new Excise Law, any strict control should be minimized during the transition period. Both Industry and Excise Authority should closely work to resolve the system and operational issues to enable a smooth implementation process.
2. For a MSRP assessment, we reiterate the same conditions and standards be applied for the grey importers and the authorized manufacturers/importers to ensure a level of playing field.

Grey Market Control

Parallel importation, also known as the ‘grey market’, has long been an issue of concern among automakers in Thailand. By under – invoicing and false options declaration, grey market importers take the chance to reduce the duty and tax burden on vehicles significantly. Additional cost savings from not having to undergo TISI testing provides price - competitive advantages for illegally imported vehicles. Such negligent control has created unfairness and non-transparency in law enforcement. The government is encouraged to apply stricter law enforcement on import procedures and standard testing requirements, in particular, the requirement about CO2, Eco sticker approval, as well as the new Excise tax on MSRP with the aim of eradicating the illegal ‘grey market’ and unfair parallel imports. To ensure effective enforcement going forward, efforts should be geared towards ensuring seamless coordination among relevant government agencies, including TISI, Office of Industrial Economics, Excise, Customs, and the Department of Land Transport.

TISI’s recent requirement for all shipments of grey market imports to pass TISI testing requirements is commendable, as it not only creates a level playing field, but also helps ensure that local consumers get safe and compliant products. It is important to maintain efficient coordination among all the relevant authorities (i.e., TISI, the Customs and the DLT) to effectively address this issue.

The EABC appreciated Ministry of Industry’s support in the development of the automotive industry and its conformity to the way global technology is developing, along with the new Excise tax structure, together with the information technology system related to the ECO sticker, which is applied to help operators fill and submit all required documents for the system. While we understand that Thai authorities would like to reduce the burden on all business operators, vehicle inspection, registration, information to submit for eco stickers, and manufactured suggested retail price (MSRP) declaration should be processed as a set of guidelines so that everyone follows the same direction. EABC, therefore, urges the Thai authorities to establish equal treatment for MSRP declaration, ECO sticker submission and data requirements between grey market operators and authorized manufacturers. This will enhance effectiveness for Thailand’s taxes revenue collection, providing Thailand’s investment climate with fair competition for trade and, significantly, will ensure a level playing field for all business operators.

Recommendations:

1. Reiterating our recommendation in recent years, we encourage Thailand to continue the country’s efforts to tighten its control on grey market imports, particularly through strict customs valuation

examination, TISI testing, and new eco sticker submission process, in order to ensure legal compliance and a level playing field.

2. The Customs and Excise Departments are encouraged to work more closely with brand owners in setting up a system to detect illegal practices of undervalued declaration and invoicing. Clear regulations should be put in place to impose an obligation on importers to obtain the relevant import licenses and to provide warranty and maintenance services. Stricter vehicle registration processes should also help alleviate the problem.

4. Labour

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

We support the Royal Thai Government's policy on promoting vocational training. Efforts to encourage public - private partnerships in engineering and technical training, in addition to government incentives for education, are commendable.

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. 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.

Recommendation:

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 49th in 2016, down from 46th 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. The Ministry of Industry has already shortened the time required to obtain a Ror Ngor 4 permit for manufacturing operations from a maximum of 90 days to no more than 30 days.

Thailand passed the Licensing Facilitation Act (LFA) in 2015. The EABC 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. 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. EABC highly recommends Thailand to consult with the EABC 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 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 targeted manufacturing bases using advanced technology.

For the 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 and tax incentives and amendment of rules and regulations to facilitate investment (BOI, 2015). 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.

An automotive and automotive parts cluster is considered to be a future industry. Automotive manufacturers deploy advanced technology and are deemed to provide significant benefits for Thailand. Seven provinces (Ayutthaya, Pathumthani, Chonburi, Rayong, Chachoengsao, Prachinburi and Nakhon Rachasima) offers Super Cluster benefits for automotive and parts

manufacturers. The benefits include a BOI scheme offering 8-year corporate income tax exemption and an additional 5-year 50 percent reduction and import duty exemption on machinery. In addition, the Ministry of Finance may consider granting 10-15 year corporate income tax exemption for future industries with significant importance and personal income tax exemption for international specialists to work in Super Cluster areas. For other non-tax benefits, permanent residency and permission for foreigners to own land to implement promoted activities are under consideration as well. However, eligibility for the scheme needs clarity for foreign investors. For example, inclusion of future industries and levels of expertise is required to qualify as specialists. The EABC urges the Ministry of Finance to provide clarity in advance in order to avoid delay to investment decisions.

To qualify for a BOI Cluster incentive package, investment will need to be in the relevant cluster and have cooperation with academic institutions. Applications must be submitted no later than the end of 2016 and production must start no later than 2017.

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 carbon 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. The EABC recommends 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. The EABC's recommendations aim to promote Thailand's competitiveness and to raise the public health of the Thai people.

Recommendations:

1. The EABC recommends that the Royal Thai Government ensures the transparency and monitors the effectiveness of the licensing grant process. Serious enforcement in LFA is needed.

2. Safeguarding existing investments requires long-term support and commitment from BOI, and clarity to investment promotion is required to avoid unnecessary delay to investment decisions.
3. Thailand should continue to raise standards for safety and environmental requirements in the automotive sector to help attract green technology and new investments.
4. The EABC recommends the Royal Thai Government continues dialogue with the EABC automotive working group about improving ease of doing businesses. The EABC automotive working group consists of industry experts that can provide policy recommendations to boost Thailand's competitiveness.

6. Electric Vehicle (EV)

The EABC welcomes 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 should be 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 transfer of technology and know-how for the production of electric vehicle in Thailand are very high and require follow-up investments as well as cost for the manufacturing and aftersales training as well as

qualification of personnel. In order to facilitate faster penetration of markets with electric vehicle production, incentives are necessary to attract foreign direct investment in the sector.

In connection to successfully transform the automotive industry, the Royal Thai government's supports in infrastructure and market development are indispensable for developing from plug-in hybrid to battery electric vehicle. Infrastructure development will support to build a critical mass of intrinsic buying decision and will assist to gradually phase out direct purchase incentive after some years. The investment into charging infrastructure also requires government incentives and an appropriate standardization framework to minimize investment and allow a fair competition that yields the highest benefits to consumers. To create a sustainable demand in the market additional tax advantages for the end-users / end-customers are required.

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. The EABC stands ready to assist Thailand on policy discussion and technical support. We recommend the Royal Thai government to start with Plug-in Hybrid vehicle to help bridge technology to full electric drive. Plug-in Hybrid technology is a progressing step that also does not require significant behavioral change from conventional vehicles, therefore, facilitating consumer's adoption to new technology.

Recommendations:

1. We recommend the Royal Thai government to start with Plug-in Hybrid vehicle to help bridging technology to full electric drive.
2. Sufficient and attractive incentives are necessary for xEV investment and faster market penetration.
3. The Royal Thai government should increase the availability of public charging networks as one of the intrinsic buying decisions, set up an appropriate standardization framework to minimize infrastructure investment and ensure a fair competition.
4. Government to develop clear long-term outlook on planned automotive legislation and technology incentives to ensure industry can make long-term investment decisions
5. Regulatory & Tax instruments that help to realise further efficiency potential of combustion engine but offers also a reliable perspective for e-mobility (CO2 based taxation, CO2 limits, Fuel Standards)
6. Enforcement of interoperability of charging station
7. Building codes, EVCI standards, guidelines, permits

8. Financial incentives for improvements to utility infrastructure (e.g. smart grids, smart meters)
9. Support for renewable energy generation
10. Priority lanes, priority parking & charging spaces for EVs and eScooter
11. Waiver of highway tolls & congestion charges (if applicable for TH)
12. Incentivize local content to attract suppliers
13. Adopt international safety standards (for example for battery)

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 **MAZARS**

Cross Sectoral Issues

SUMMARY OF RECOMMENDATIONS

1. Ease of Doing Business

- 1.1 Competitive tax regime
- 1.2 Continued Implementation of Excise Tax and Customs Reforms
- 1.3 Improve investment climate in Thailand
- 1.4 Clarification of interpretation of BOI investment privileges
- 1.5 Role of court system, resolution of disputes, litigation and arbitration
- 1.6 Enforcement of competition law
- 1.7 A Rule of Law policy including Consultation; a Permanent Law Reform Commission, Removal of cumbersome and unnecessary laws and regulations (Guillotine)
- 1.8 Government take up and accelerated on-line penetration, more details in the Digital Economy/ ICT chapter

2. Creating an Enabling Economic and Regulatory Environment

- 2.1 Relaxation of foreign ownership restrictions and progressive liberalization of services sector
- 2.2 Work Permit & Visa: Ease of employment procedures and laws to facilitate free flow of skilled and unskilled labour, including supporting ease of entry of Business Visitors

3. Enhancing Transparency

- 3.1 Tackling Corruption

In our continued efforts to improve Thailand's services sector, this paper is a companion of the EABC 2016 Position Paper and should be read with it.

The EABC Cross Sectoral Issues Working Group commends the Royal Thai Government on its focus to improve ease of doing business in Thailand with objectives for transparency, efficiency and public-private cooperation. With the strategy to strengthen its core competitiveness towards innovation or so called "Thailand 4.0", trade and investment facilitation and transparent regulatory

environment can help attract foreign investment and expertise to the country. ASEAN Member States (AMS) are also competing fiercely to improve similarly. Continuing from our last Position Paper in 2016, in this chapter, the EABC proposes policy recommendations with a focus to enhance Thailand's competitiveness and attractiveness for global investment in Thailand and South East Asia.

It is noted however that the World Bank's 'doing business' rankings are based on globally standardised criteria and are limited in scope. Many issues are outside that scope, including what seems to have become the single most-widely referred to set of issues – Work Permits and Visas, which are in need of significant reform. The World Bank rankings can give the misleading impression that these are addressed. While some progress has been made, the main issues continue largely unaddressed.

1. Ease of Doing Business to Improve Investment Climate in Thailand

Competitive tax regime

To improve the investment and business climate in Thailand, the Thai government has put a reduction of corporate tax as one of the key incentives to attract foreign investors. 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 at a reasonable level, 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:

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.

Additional taxes such as the proposal to extend VAT to foreign service providers (the proposed ecommerce tax) should be reconsidered in light of the likely significant complexity and difficulty of a system of registering for VAT from overseas and on-line.

Imposing additional taxes on eCommerce activities will inevitably impact end users/consumers since these taxes will increase the cost of services. For example, we are concerned that the proposed tax if imposed on foreign online travel agents providing services to Thai individuals may negatively affect the Thai tourism industry and reduce revenue collection from tourist spending in Thailand, which is pointed as a key drivers of growth of the Thai economy for 2018.

The 'Guillotine project' brings a higher standard of law making, a requirement for aspects such as ease of use, practicality and economic value without inappropriate burdensome regulations should also be taken into consideration. The eCommerce tax, as proposed, seems to include some potentially onerous and unfair requirements.

The proposed e Commerce Tax is covered in more detail in the Digital Economy /ICT Chapter.

Implementation of Excise Tax and Customs Reforms

The EABC appreciates the opportunities granted by the Excise Department and the Customs Department, for our members to offer their perspectives on the draft implementing regulations of both the Excise Tax Act B.E.2560 and the Customs Act B.E.2560. Allowing the private sector to participate in the public hearing during the drafting process helped ensure that the regulations would be practicable and would not cause business disruptions.

We recognize that both the Excise Tax Reform and the Customs Reform were two important milestones for Thailand's endeavor to streamline its regulatory and fiscal framework for ease of doing business and mobilization of tax revenues to support national economic development. The new Excise Tax Act B.E. 2560 became effective on 17 September 2017 and the issuance of sub-regulations has already been fully completed. Under the Excise Tax Reform issues surrounding the rules on Suggested Retail Price (SRP) were among the focus areas for reform assessment, as the use of SRP as the tax base does affect various excisable goods and, in business reality, there could be various scenarios where the SRP may not be easily determined. The Excise Department issued a notification in relation to the determination of the SRP and we recognize the efforts from the Excise Department in being currently conducting a survey with the view of gathering information on the market prices of certain goods so to determine the SRP. The results of this survey are expected to be utilized as a guideline for excise officers in measuring the SRP submitted by taxpayers. However, the SRP determination is still a challenging issue for excise officers and taxpayers, therefore, we are of the view that

taxpayers should be granted sufficient opportunities to provide supporting arguments and evidence for their SRP declarations, and the Excise Department should limit its discretionary power in prescribing the SRP only where necessary and as permissible by law. In other words, pricing in general should be left to the private sector to determine as appropriate for the market.

On Customs Reform, the new Customs Act B.E. 2560 became effective on 13 November 2017. The issuance of sub-regulations is to be completed within 180 days from the day the new Customs Act entered into force (i.e. in May 2018). The law was developed with an aim to comply with the WTO Trade Facilitation Agreement (TFA), which Thailand has ratified and to which it has made notifications of its commitments. There are several key changes in the law including the reduction of customs penalties and incentive payment. The maximum penalty for duty evasion was reduced from 4 times CIF value plus duty to 0.5 - 4 times duty shortfall in the new Act. The incentive payment was reduced from 25%-30% with unlimited amount to 20% of sale of the exhibit or fine with capped amount at THB 5 million per case. Based on this, taxpayers may be liable to lower customs penalties per case in comparison to the previous Act. However, the Customs Department may be more stringent and conduct more often post-clearance audits in order to stimulate the revenue collection.

Under Section 77 of the new Constitution of Thailand B.E. 2560, prior to the enactment of every law, the State should conduct consultation with stakeholders, analyses impacts that may occur from the law thoroughly and systematically, and also 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” the Excise Department hosted a meeting with impacted taxpayers in order to evaluate the outcomes of the new law and collect taxpayers’ feedback. Comments are under consideration. The result of the public consultation as well as the decision of proposing further amendments to the law (if any) are expected to be made public by the Excise Department in due course.

The Customs Department also invited all taxpayers for a meeting on 2 March 2018 in order to also discuss the outcomes of the new Customs Act and provide feedback. Under the already opened public consultation procedure, taxpayers have been able to provide feedback. The Customs Department has communicated its strong commitment to the result of the public consultation on the new Customs Act as a way to improve the ease of doing business in Thailand by the private sector.

[source: <https://www.tfadatabase.org/members/thailand/measure-breakdown>]

Recommendations:

Continual assessment and improvement should be done, by seeking feedback from the private sector. Close consultation between public-private sectors should be held on a regular basis for such purposes. In particular, the following should be put on among the focus areas:

1. Excise: Application of the rules on the Suggested Retail Price (SRP) without interfering with business and market mechanism.
2. Customs: How the new penalty and reward schemes improve transparency and reduce conflicts of interest, as per the obligation under the WTO Trade Facilitation Agreement. The revised Customs Act is a step in the right direction but more needs to be done to move away from the reward scheme, and to increase efficiencies.

Improve Investment Climate in Thailand

To promote Thailand as an attractive jurisdiction for foreign direct investment, it is important that Thailand remains competitive in relation to surrounding countries in spheres which are central and key to investors.

One such sphere is taxation. Tax is a cost of doing business in any country, however, providing stability and certainty in the tax and regulatory environment will go a long way in improving investor confidence and setting Thailand apart from other Asian countries.

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

Recommendations:

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 2%, a company would need to achieve a 10% profit margin. Although this would be more acceptable, a further reduction in the withholding tax rate to 1.5% would make Thailand even more competitive. In that instance, a company would need to achieve a profit margin of 7.5% to ensure it is not in an overpaid tax position. This is certainly 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. In addition, it adds to the perception that the TRD may extend a tax audit for as long as possible in order to benefit from this surcharge. 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 advanced 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. In these and others instances it would be beneficial for taxpayers to obtain an 'advanced tax ruling' from the Revenue Department which is binding and issued in a timely manner. Currently, the rulings are not binding precedents 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 which, arguably, have no basis in law. 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 is a host of 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, in order 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 futile.

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. Where such losses expire, however, the tax benefits become obsolete. 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. E-Tax invoices

Since 2012, the Revenue Department had allowed approved companies with registered capital of Baht 10 million or more to prepare and issue tax invoices electronically. But the system had strict conditions that were difficult for many taxpayers, including SMEs, to comply with.

As explained by a tax firm¹ the Thai Revenue Department (TRD) announced in mid-2017 a new regulation to permit SMEs to issue electronic tax invoices by email. TRD has also implemented an e tax portal.

Under the new regulation, the criteria for granting approval to a VAT registrant to issue e-tax invoices by email include:

- The VAT registrant is an individual who has annual revenue of not more than Baht 30 million for the 2015 tax year or a company or juristic partnership that has annual revenue of not more than Baht 30 million for the financial year commencing on or after 1 January 2015 onwards
- Not being a VAT registrant in the process of obtaining approval or was approved under the regulation announced in 2012
- Having no record of using fake tax invoices or tax evasion

The regulation requires e-tax invoices to be issued using a new system jointly developed by the Revenue Department and Electronic Transactions Development Agency (ETDA). A VAT registrant will be required to send the e-tax invoice to its customer by email and copy such email to ETDA.

After the email has been sent to ETDA, the system will stamp the time and resend the tax invoice to the VAT registrant and his customer for their reference.

While a positive step, the efficacy of the system continues to be under review.

11. International Headquarter (IHQ) requirements

In respect of the new IHQ tax scheme the following changes are suggested:

11.1) The IHQ tax scheme requires expatriate employees to be based in Thailand for at least 180 days in every calendar year before qualifying for the reduced personal income tax rates. We propose to

¹ <https://www.bdo.co.th/en-gb/insights/new-regulation-for-issuing-e-tax-invoices>

eliminate (or reduce) this requirement as the expatriate employees may not meet the 180 day threshold in the first year and/or the last year of the assignment since this may not be commercially required for the company. It is also unclear whether existing expatriate employees under the prior Regional Operating Headquarter (ROH) tax scheme can continue to accumulate and count their number of days spent in Thailand whilst the company is under the ROH but has applied for the IHQ tax scheme.

11.2) The tax transitioning process for IHQ once the 15 year IHQ tax incentive has lapsed is unclear and clarification is needed to provide more certainty for investors on the long term implications of an IHQ scheme.

Further, in light of OECD and EU action (see item 13, below), the future of the IHQ scheme is in some doubt; a replacement scheme which complies with the issues noted may eventuate.

12. International Trading Company (ITC) An ITC refers to a company incorporated under Thai law which performs the following activities for its foreign incorporated customers:

12.1) Purchasing and selling finished goods, raw materials and parts; or

12.2) Providing services relevant to the international trade business, including organizing packaging, transporting, insuring and storing of finished products etc. In order to qualify for the tax incentives under an ITC, the goods can never enter Thailand. Although this is acceptable under the first activity, it is giving rise to various practical issues in respect of the second activity, specifically where the

repackaging of goods is provided as a service offering.

We therefore propose that the requirement that goods may not enter Thailand only applies to the so-called trading activities conducted by an ITC (i.e., listed in bullet 1 above). In respect of the provision of services (i.e., listed in bullet 2 above), it is proposed that the requirements are relaxed to allow for the entry of goods into Thailand, provided the ownership of such goods does not pass to the ITC (i.e., they continue to be owned by the foreign vendors or customers).

Where goods are imported this may give rise to a VAT charge for the foreign vendors or customers. This VAT charge should subsequently be refundable upon exportation. To reduce the cash flow burden for the foreigner, a VAT exemption should be provided.

Further, in light of OECD and EU action (see item 13, below), the future of the ITC scheme is in some doubt; a replacement scheme which complies with the issues noted may eventuate.

13. The OECD's "Harmful Tax Practices - 2017 Progress Report on Preferential Regimes" and the European Union's (EU) list of non-cooperative jurisdictions for tax purposes released on 5 December 2017

The Thai Government appears to have committed to amending or abolishing the five corporate tax regimes that were classified as "harmful tax practices" in the OECD's 2017 Report, namely, (i) International Headquarters (IHQ); (ii) Regional Operating Headquarters (ROH); (iii) International Trade Center (ITC); (iv) Treasury Center (TC), and (v) International Banking Facilities (IBF).

According to a recent update on the review of preferential regimes being reviewed released by the OECD (January 2018), Thailand still appears to be in the process of amending and/or abolishing these regimes.

However, the Thai Government has not yet released any information or formally communicated anything on these matters to the public/ taxpayers, in particular, regarding its proposed approach for amending or abolishing the identified regimes. The lack of transparency regarding the intended actions by the Thai government in these matters and absent dialogue with the impacted taxpayers is causing tax uncertainty in Thailand. Tax uncertainty as to timing, direction and magnitude of a tax policy change negatively affects the economy in general and the willingness of foreign investors to invest in Thailand.

Tax certainty can be improved. One of the key aspects is that the institutional process steering the development of a tax policy needs to be transparent and predictable, with positive side effects on tax certainty. Having a transparent and predictable tax law process – recognizing the different phases - may improve tax certainty along several channels, for instance by keeping a clear communication of the government intentions and timing of the policy changes and engaging key participants of the private sector in the consultation process pre- and post-reform/change. Improving the relationship between taxpayers and tax authority may also generally promote tax certainty. Current taxpayers wish to have certainty on the tax treatment of their cross-border investments and new investors look for certainty in the investment climate, strong communication during a policy change period is therefore crucial.

Recommendations:

13. We recommend that the Thai government improves tax certainty around the removal/ amendment of the five regimes identified as harmful tax practices, by making a formal announcement on the status of the discussions with the OECD and EU, commitments made by the Thai government in response to the OECD report and on its proposed approach and timeline for these future tax regime changes. Moreover, we recommend that the Thai government focus on planning this tax changes, by amending the corporate income tax benefits associated with these tax regimes only (as this is the focus of the OECD Report and concerns) and do not amend or abolish the personal income tax benefits and/or any non-tax benefits included in the current regimes; holding pre-announcement consultations; communicating their content and timing clearly; and more generally establishing a structured approach in managing the reform process.

Clarification of interpretation of BOI investment privileges

According to the current scheme and regulations, Section 31 of the Investment Promotion Act (Investment Promotion Act, B.E. 2520), tax exemption on profit derived from promoted activity should be granted. Additionally, in cases where a loss has been incurred during the period of receiving exemption, the permission has been granted to deduct such an annual loss from the net profits accrued after the expiration of the period of exemption.

Meanwhile, while this is explicit interpretation and implementation under the BOI investment privilege, the Revenue Department has a different interpretation and request the deduction of loss within the period of exemption. This creates uncertainty in privilege implementation for EABC members with risk to sustainable business investment from re-assessment by the Revenue Department. If Thailand would like to drive forward its economy and enhance its investment attractiveness through an incentivized system, this may trigger concerns in the implementation phase.

Recommendations:

The EABC recommends BOI should be responsible for ensuring of interpretation of tax privilege and recognition across inter-government agencies to encourage transparency, consistency and sustainability

Court system, resolution of disputes, litigation and arbitration

Continuing from the 2013 and later EABC Position Paper, the EABC would like to again emphasize the important role of the court and arbitration system in ensuring foreign business confidence in the country and attracting more FDI to Thailand. This includes its speed and efficiency in processing disputes, issuing and enforcing judgments and arbitration awards.

Recommendations:

Litigation

1. General: In general, the civil and criminal litigation system needs to be made more efficient, sped up and made more user-friendly. Putting the whole Court system on line needs to be an 'e Government' or 'Digital Government' goa.

2. Pre-trial injunctions: There are occasions when it may be necessary to apply to the court for an injunction (in Thai this is referred to as a 'provisional remedy') prior to the issue of the substantive action. For example, to prevent the removal of assets out of Thailand, or to seize evidence, or to examine assets. In practice, it is often very difficult to obtain such an order. Rules should be adopted to make it clear in what circumstances the court would consider issuing such an order, and the conditions that might be imposed on a person who applies for such an order, for example requiring an indemnity where the person against whom the injunction is issued suffers loss.

3. Injunctions in general: As to injunctions in general, we make similar comments for pre-trial injunctions above. In practice, it is often very difficult to obtain an injunction, and the circumstances in which it might be successfully applied for should be considered and made clear.

4. Affidavits: At present, affidavits do not technically exist in Thai law. Affidavit evidence, meaning written evidence that has been sworn as true, is often useful where, for example, the evidence is admitted by all parties, and can then be read out at the trial, thus avoiding the need for the witness to have to attend court.

5. Summary judgment where there is no real defense to a claim: Currently, there is no procedure for a party to apply for a summary judgment on the grounds that the defendant has no real defense to a claim, and is merely prevaricating or using delaying tactics. Such a procedure, if adopted, would help to speed up litigation.

6. Entering judgment in default: At present, there is no procedure to obtain a fast judgment where, for example, the defendant has failed to file a defense within the period allowed under the CPC . It is necessary for a court hearing to be convened to dispose of the case. We would suggest, where the claim is for a fixed sum of money and interest, that it would be possible to enter a final judgment, by proving the proceedings have been served on the defendant, and that no defense has been entered, without the need for a court hearing. If the defendant can prove that he was not served with the proceedings, and that he has a prima facie defense to the claim, then he would still have a right to apply for the default judgment to be set aside, and to defend the action.

7. Trial on consecutive days: Current civil procedure in most courts is that a trial takes place on one day, and is then adjourned for a second day of evidence that may be 4-6 weeks ahead, and so on. This is slow and inefficient. We would suggest that in general, a trial should take place on consecutive days in both civil and criminal cases. This would speed up the process of litigation.

8. Pre-trial disclosure of documents: At present, there is no procedure to compel parties to disclose documentary evidence in their possession prior to trial. The closest procedure is to apply for the issue of a witness summons against a person to produce the documents at trial. This may cause delays, and a party may be taken by surprise and may have to ask for an adjournment to consider the new evidence. We would suggest that there should be a procedure whereby within one month of close of pleadings, each party must disclose to all other parties in the case a

list of documents in its possession that are relevant to the case, and supply copies of such documents to a party upon request. Such a procedure enables all parties to make an assessment of the strength/weakness of their case, and will often lead to settlement negotiations, and a compromise settlement.

A similar procedure could be adopted to obtain pre-action disclosure or disclosure from third parties who are not parties to the case.

9. One appeal only: Whilst the CPC contains provisions that allow for one appeal from the Court of First Instance to the Court of Appeals, and limits a second appeal to the Supreme Court except in specified circumstances, in practice, it is relatively easy to mount a second appeal. This drags out the process of litigation. Our recommendation would be to allow one appeal only to the Court of Appeals. A second appeal to the Supreme Court would only be possible on a point of law of public importance, and with permission for a second appeal being granted by either the Court of Appeals or the Supreme Court. In a criminal case, there would always be a right to a second appeal if, as a result of new evidence being discovered, the conviction can be shown to be unsafe or unsatisfactory.

10. Improved system for enforcement of judgments: The enforcement of civil judgments is slow and inefficient. It is relatively easy for a judgment debtor to delay paying a judgment or to conceal his assets. We would suggest a speeding up of the processes for judgment enforcement.

We would also suggest that a judgment debtor could be subject to an oral examination, to be summoned to court to give sworn evidence about his assets and income, and to produce documentary evidence of assets and income, and to explain why the judgment has not been paid.

11. There should be a division of the Civil Procedure Code to deal with the issues that are highlighted in this paper. If necessary, foreign legal academics can participate in this. The United Kingdom for example went through this procedure some more than a decade ago (the so-called Woolf Reforms).

12. In keeping with support for greater respect for the Rule of Law, additional measures are recommended:

- i) A proper consultation system and procedure, not a single token effort. The APEC Good Regulatory Practices are a useful guide, and s. 77 of the new Constitution (referred to the Customs part of this chapter, above) which mandates some details about how consultation should be done, is a major improvement.
- ii) A permanent Law Reform Commission which can take references about major areas. Two would be the Civil Procedure Code and the Civil and Commercial Code
- iii) Upgraded standard of written judgments. Even in a civil jurisdiction such as Thailand, judgments have useful value as precedents, supporting greater consistency in decision-making. Discerning the rules from judgments is important.

Recommendations:

Arbitration

1. Arbitration clause in contracts with a government authority: At present, there is a Cabinet resolution of 2015 in force that allows arbitration clauses in contracts where a government authority is a party except in three situations: PPP contracts, Concession Agreements and contracts needing cabinet approval under a 2005 Decree. This wide range of exceptions continues to be unfair and partisan. It puts the other contracting party at a disadvantage, if such contracts cannot be referred to arbitration, which can be faster and less expensive than the dispute being processed in the civil litigation system.

A 2013 World Bank study shows a positive correlation between availability of arbitration and FDI. Enhancing arbitration would be an important element in promoting Thailand as an investment location.

In investor-state disputes, Thailand is one of eight which is not a full member of the World Bank's ICSID which has 166 full members. ICSID is the body for resolving investor-state disputes.

2. Position of foreign lawyers representing parties in arbitration: There is a regulation which inhibits the ability of foreign lawyers to speak in certain arbitrations in Thailand (i.e. act as arbitrator advocates), or act as arbitrators. A foreign lawyer may only speak in arbitration where Thai law is not the jurisdictional law (egg chosen law or proper law of an agreement in dispute) and the award will not be enforced in Thailand (the latter not always being possible to determine up front). Further, it seems that, for

arbitrator advocate situations, based on some DoE practices, the party the arbitrator advocate represents must be a respondent rather than the originator (a distinction which is not always relevant in an arbitration), for a work permit to be available. We would suggest revision of this regulation so that a foreign lawyer may represent a party in arbitration in Thailand, any of these limitations and that work permits be readily available for arbitrator advocates including as needed on a 'urgent duty' (WP-10) basis. It is also recommended that arbitrators be able to carry out arbitrations without the need for a work permit.

Enforcement of competition law

Thailand's main legislation regulating anticompetitive practices is the Trade Competition Act B.E. 2542 (1999) ("the Act"). In addition to several other laws which may affect competition by seeking to protect the consumer, promote competitive practices and by affecting how businesses behave and interact², the Act is implemented by the Office of the Trade Competition Commission in the Department of Internal Trade (DIT) in the Ministry of Commerce (Mock). The Commission is chaired by the Mock and includes representatives of the Ministries of Commerce and Finance along with other members appointed by the Council of Ministers.

²Such as:

- the *Unfair Contract Terms Act B.E. 2540 (1997)*, which provides a legal basis on which the courts determine whether the terms of a contract are unfair and gives them the power to intervene by limiting or voiding such unfair terms;
- the *Prices of Goods and Services Act B.E. 2542 (1999)*, which gives legal basis for price controls and prescribes certain business practices as infringements on the operation of a free market (section (iv));
- The *Direct Sales and Direct Marketing Act B.E. 2545 (2002)*, which entered into force in 2007, regulates direct sales through the internet; and
- The *Liability for Damages Arising from Unsafe Products Act B.E. 2551 (2008)*, which established consumer courts and made producers and importers liable for selling unsafe products and put the burden of proof on them rather than on consumers.

Competition on fair terms fosters efficiency and innovation. It supports open markets allowing businesses to provide better value for consumers. It supports the evolution away from rent-seeking, concession-type approaches. IMD's World Competitiveness ranking for Thailand for 2017 continues with only slight improvement but no material underlying change at 27th (of 63 economies). This suggests that the objectives of the Trade Competition Act are not part of the system. The purposes of GATT and GATS and enactment of the Trade Competition Act (the antitrust law) was to protect consumers and to ensure entrepreneurs and other businesses have an opportunity to compete fairly. Well-regulated competition is not well understood in many sectors. The Office of the Trade Competition Commission under the Department of Internal Trade (DIT) has not been as active as it might have been in industry education. There are, however, sectors where the relevant regulator is more active (e.g. Securities and Exchange Commission) and such activity could be an example of more appropriate regulatory enhancement.

In general, the Act covers all types of business operations. However, the Act does not apply to some carved-out areas, or businesses prescribed by Ministerial Regulations to have an exemption from the Act. There are several types of anticompetitive behaviour prohibited under the Act, including: abuse of a dominant position such as fixing buying or selling prices, applying conditions or restrictions

to sales or purchases, or restricting supply of goods or services; mergers that may result in monopoly or unfair competition; agreements between businesses that amount to a monopoly, or a reduction or restriction of competition; agreements that restrict purchase of goods or services from overseas; and unfair business practices.

The Act has rarely been enforced in certain sectors and is generally regarded as an ineffectual tool. The 2017 amendments may change that. Published studies and reports suggest that the performance of Thailand's competition law has not been very satisfactory to ensure the existence of market contestability and to prohibit anticompetitive behaviour. It could be argued that certain industries are prone to existence of anticompetitive behaviour, particularly those where Thai conglomerates possess prominent positions or where producer concentration is high. Despite the increasing importance of public utilities to keep pace with economic dynamism, privatization and reforms to further enhance efficiency in the sectors are yet to take place. Despite its existence for more than a decade, enforcement still remains a problem, such as capacity constraints and deficiencies in the legal infrastructure and provisions, for example, structure of the Trade Competition Commission, penalty system, etc. Sector-specific competition regulation in the telecoms industry, for example, suffers from a lack of enforcement. Furthermore, no progress has been evident since the SME Act passed in 1999, and a list of action taken to promote the fair competition in the country has not been published.

The Act was amended in 2017 and amendments now in force. A consultation process on the regulations is an important next step. Some key changes:

- Competition Commission now separate from Ministry with own budget
- Covers business operators in the industrial, commercial, financial, insurance, and service sectors, or other businesses to be prescribed by the Commission
- State-owned enterprises now covered (except for national security, public interest etc. and other sectors covered by specific competition laws for example telecommunications)
- Prohibitions and scope:
 - Abuse of market power
 - Mergers (ss 51-3)
 - Anticompetitive agreements eg cartels
 - Hardcore cartels Agreements between competitors (in same market) eg price-fixing – criminal penalties
 - Non-hardcore cartels – with other businesses (eg reducing product quality, appointing sole distributor, administrative fines
 - Agreements with foreign businesses – contracts etc which result in monopoly or unfair restriction of trade without justifiable reason and which has severe impact on economy and consumer interest
 - Prevention of unfair trade practices
- Penalties
 - Up to now only criminal offences – Commission sent recommendations for penalties to Public Prosecutor (and no penalties imposed like Canada – because of high standard of proof for criminal offences) – now if Public Prosecutor refuses then

Commission can seek Attorney-General's prosecution of the case.

- Now administrative penalties (imposed by Commission) for certain conduct eg Mergers; Anticompetitive agreements with non-competitors
- Commission can issue written orders requiring business to suspend, cease, rectify or vary conduct
- Managing directors, managing partners or person in charge are also be liable
- Those affected by anti-competitive practices can seek damages (and can get together to form a class to sue)

Recommendations:

Trade competition is regarded as a core policy measure to promote economic efficiency and prohibit anti-competitive behaviour for the end benefit of consumers . The EABC is strongly supportive of any promotion activities to ensure effective functioning of Thailand's competition policy to address unfair trade practices. Further, the enforcement of competition regulation where it applies to specific sectors, needs better industry support and recognition that it is a tool for the benefit of the sector overall. The amendments to the Act are largely a good step in the right direction. Community education is needed.

A Rule of Law policy

Respect for the law in Thailand is weak. There is a belief that if you have money and connections you can get around an issue. Weak Rule of Law is an investment and 'doing business' obstacle.

³ https://worldjusticeproject.org/sites/default/files/documents/ROLIndex_2017-2018_Thailand_eng_0.pdf

⁴ *ibidem*

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"³.

"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."

"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"⁴.

Development of Laws and Content – typical

A typical legal / administrative model in practice (with some exceptions):

- A new law with a centralised power with a committee usually chaired by PM or nominee; majority are career bureaucrats, minority are

subject matter experts. Example: proposed Fintech development board under a draft Fintech law in MoF; but sandbox development and regional Fintech MoUs are done by Bank of Thailand.

- Vague and over-reaching provisions, sometime impossible to comply with or very difficult, time consuming or expensive ('if you've done nothing wrong you have nothing to worry about'). Example: Computer Crimes Act.
- Selective enforcement, which is open to bribery.
- Rushed or token consultation and usually only one step, with little or no industry education or industry buy-in.
- Well-intentioned but poorly conceived laws. Example: (a) LFA; (b) Issued but then withdrawn NBTC Notifications on registration of tourist SIM; OTT regulation; (c) IHQ-type laws where the intent is thwarted by work permit and visa issues; (d) half measure improvements to companies doing business – eg conduct of board meetings – thwarted by pointless additional restrictions (eg restrictions in holding meetings by phone); or thwarted by work permit and visa issues.
- Opaque process in the development and consultation about draft laws – lack of clarity about drafts (no release date, no mark up, no version control, no explanation of what was taken in and why)

EABC proposes a major rethink and re-setting about respect for law and the primacy of the Rule of Law, as follows:

1. Consultation

Proposals for a proper consultation process are long-standing. Indicatively they could be

- i. Concept paper with response times
- ii. Public hearing
- iii. Summary of responses
- iv. First draft law with explanation
- v. Public hearing
- vi. Second draft with markups and explanation
- vii. Final comments
- viii. Final version for submission to NLA

Proper consultation is a key part of the APEC Report on Good Regulatory Practices (GRP)⁵, authored by Jacobs Cordova & Associates. A regulatory impact assessment is usually needed.

2. 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.

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

⁵ http://mddb.apec.org/Documents/2016/EC/CONF1/16_ec_conf1_005.pdf

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).

3. 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. This is also referred to in the law section above.

4. Guillotine

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.

In Thailand, given the large number of vague laws which are open to many interpretations and are hard to comply with, a culling of unnecessary laws and regulations will greatly help.

Experience has shown that this needs to be done at a high level, not at line ministry level. It seems unlikely that the 2015 Decree Law, leaving it to line ministries to carry out reviews, will work.

The emergence of a 'guillotine' approach with Public – Private collaboration, would seem to have a far greater chance of success and every effort should be made to support this approach and ensure success. EABC appeals to government leaders at the very top to continue to support this effort.

The Guillotine project first phase looked at 'doing business' issues, focusing on eight of the ten World Bank criteria. The second phase aims to tackle some of the 6,000 licences in Thailand to remove and streamline. Criteria are applied.

Indicatively this has been structured in layers. While the structure is being tested and is thus under review, it is important to consider possible negative consequences of many layers.



Recommendations:

The EABC urges the Royal Thai Government to:

- (i). Take measures to enhance Rule of Law standing; including establishing more effective consultation procedures to give more support for constitutional provision requiring it; 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.

EABC values the regular consultations held and urges more. Our 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.

2. Creating an Enabling Economic and Regulatory Environment

Relaxation of Foreign Ownership Restrictions/ Liberalization of Services Sector

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 under the Foreign Business Act (FBA); the entity may or may not be BOI promoted. The FBA has three lists; an FBL is available for activities under List 3; Ministerial approval is needed for List 2 and List 1 is not open to foreigners.
- A local entity relying on other sector-specific legislation

Thailand must ensure new regulations promote market entry and foreign equity participation in several sectors. The restrictions of foreign ownership have been a major obstacle in investing in Thailand for a long time.

According to the **Foreign Business Act B.E. 2542 (1999) (FBA)**, foreign participation in all services businesses is regulated. The nature of the regulation is that a company may be 49% foreign owned without a foreign business licence. It may be majority foreign owned if a licence for that is granted by the Ministry of Commerce. Where the company is BOI promoted, a similar licence is issued. Certain types of services (e.g. retailing, wholesaling, agency and construction) may be majority foreign owned, provided a minimum level of share capital is paid into the company, and in the case of construction, limited to specified construction activities. The application process can take some months. A large number of documents have to be compiled and collated. The process does not encourage foreign investment; in fact it may deter bona fide investors.

European investors are at a disadvantage vis-à-vis U.S. nationals and companies which still benefit from national treatment provisions in the US-Thailand Treaty of Amity and Economic Relations (1968) with respect to establishing, as well as acquiring interests, in enterprises of all types for engaging in commercial, industrial, financial and other business activities, with the exception of seven specific sectors⁶. Given the expiration of the WTO derogation from Article II GATS (MFN-clause) at the end of 2004, Thailand is urged to consider these legitimate concerns in its policy formulations and ensure a level playing field in investment applicable to all investor countries, duly aligned with its WTO obligations and expectations in ASEAN instruments.

The EABC has and will continue to support implementation of the existing review mechanism on List 3 in the FBA to duly remove restrictions and meaningfully encourage foreign investment in a broad range of services sectors and also to address real liberalization. The recommendations from the 2013 EABC Position Paper and the 2016 paper still continue.

Service sector liberalisation is not just about raising foreign equity levels. We again emphasize five key elements for the meaningful liberalization of services which apply generally and not just to the AEC context:

- a. Relaxation of foreign equity limits
- b. Facilitation of free movement by changes to work permit and visa rules
- c. Sector-specific changes and mandates by way of relaxation of restrictions on permits, licenses and other barriers to entry, and to mandate access to facilities
- d. Other sector-specific reforms or mandates e.g., structural changes in a sector to make it competitive, including reform of the role of State-Owned Enterprises
- e. Improvement and greater efficiency in the licensing procedures to obtain majority foreign ownership.

In AEC's services liberalization, Thailand is yet to put in place the necessary changes toward the AFAS (ASEAN Framework Agreement on Services) target of 51 percent foreign equity allowance in all services sectors since December 2010 or 70% by the end of 2015; a date which has come and gone. As with goods (ATIGA, which is already in existence) an ASEAN Trade in Services Agreement is being developed (ATISA).

Incursions on the FBA standard

The 'FBA standard' is a test based on first level of shareholding, not on control or other factors. List 3 is required to be reviewed annually (ie removing items from List 3 so that they are open to majority foreign ownership) but has never been in practice (but see below about limited conditional removal for the EEC). The 2016 relaxation to exempt four finance-related sectors from the FBA did not achieve effective liberalisations; sector-specific legislation addresses them.

Some 19 activities in support of the Eastern Economic Corridor have been moved from List 3 of the FBA, reported to have been done on Friday 16 June 2017 but only for the EEC. This is not an amendment to the law but an administrative action which could allow up to 100% foreign ownership without the need to obtain a Foreign

⁶ Namely communications, transportation, fiduciary functions, banking involving depository functions, exploitation of land and natural resources, owning land, and domestic trade in agricultural products

Business Licence and seems to be very focused with conditions on certain activity.

The Minister said (per Bangkok Post report): “The move allows foreign companies to join joint bids on infrastructure projects, but also for other government projects such as rail, the skytrain, airports, power plants and petroleum exploration businesses”.

Incursions on 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.
- iii. Insurance with some caps at 25% but in practice different.
- iv. Aviation services from January 2017, relying on a 45 year old Decree – restricts nationality, control, shareholding for an AOL, on safety grounds.

Foreign ownership limits in life and non-life insurance companies in 2015 were liberalized, so that 25 percent foreign ownership is permitted with a license, and up to 49 percent foreign ownership is allowed with a license from the Insurance Commission as regulator. More liberalized and streamlined through an industry regulator (where it exists) is recommended.

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, some 9 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 personnel level issue is separate but related to the shareholding issue.

The 39 professions not open to foreigners under a 1979 Decree are being reviewed.

There were ten professions which were recommended by a workshop in September 2017 to be opened. But no foreigners were part of that deliberation and some may not be of interest.

- Labour work
- Agriculture, animal husbandry, forestry, or fishery
- Bricklaying, carpentry or other construction work
- Shop/Outlet attendance
- Cutting or polishing diamond or precious stones
- Mattress and quilt blanket making
- Shoemaking
- Hat making
- Dressmaking
- Pottery or ceramic ware making

EABC has proposed the following as being of interest (mainly in professional services):

Agriculture
 Brokerage
 Auction
 Accounting, Auditing
 Architectural services.
 Civil Engineering
 Tour Guide
 Legal services (only for Arbitration)

The situation is complex as each profession has its own regime and issues, and sector-specific legislation apart from the 1979 Decree.

Recommendations:

1. Progressive liberalization of Thailand's services sector is strongly encouraged and the EABC will continue pushing for this policy agenda.
2. Immediately, activities and services that are incidental to main businesses of a majority owned foreign company need not be subject to foreign ownership limitations. In the longer term, we believe all services should allow up to 100% ownership, recognizing the elements of effective service liberalization.
3. Unless there is an economy-wide change, the FBA standard should consistently apply. Incursions into that standard have caused difficulties.
4. Any attempt to tighten the law, such as the use of additional criteria (e.g. an extension of the existing definition of 'foreigner/ alien' to include management control and/ or voting rights in addition to foreign shareholding could lead to the violation of WTO commitments and is therefore strongly discouraged. In addition to avoiding further restrictions on foreign

ownership under current legislation, the EABC aims to obtain a level playing field with other non-European competitors in the services sector.

5. A review of the 39 professions restrictions is needed, prioritising some eight.

Foreign land ownership

It is not necessary to consider liberalisation of the foreign land ownership rules under the Land Act (1954) and the Condominium Acts (1979 as amended) if a longer lease is permitted. The issue can be solved by permitting a longer lease, for example of 99 years, for all types of property whether residential, commercial, industrial or agricultural. This will allow lessors and lessees to determine the commercial terms of a lease without being inhibited by legal constraints. The Civil and Commercial Code would need to be changed to reflect this.

Recommendations:

1. More flexibility needs to be provided for residential and commercial leasing of land and buildings. The fixed maximum lease periods of 30 and 50 years limited the ability of commercial negotiations between landlords and tenants. A longer term of leasing is suggested by the EABC as well as a clarification of technical rules regarding the enforceability of options and assignment of leases.
2. The EABC would like to repeat our recommendation from the 2013 Position Paper on the establishment of a mechanism that allows ownership of commercial land by foreign companies. Although the BOI and the Industrial Estate Authority of Thailand (IEAT) can grant permission for land ownership to the majority of

foreign owned Thai companies, not all are eligible for such investment privileges.

3. The current foreign ownership cap of 49 percent of usable space in a condominium building should be reviewed, together with technical rules requiring the purchase monies to be brought into Thailand rather than earned locally.

A longer lease term is necessary to further liberalize foreign land ownership, especially for commercial use. We support Thailand to consult with our Cross Sectoral Issues working group to enable suitable legislative schemes to facilitate greater flexibility between lessors and lessees

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.

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.

We believe that some senior government officials may not be aware of the problems and may not appreciate the harm caused.

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.

There are **two groups of people**: 1. Those not working in Thailand (Business Visitors); and 2: Those who need to live and work in Thailand (Employees and others).

Group 1: 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

It is not clear whether the interpretations announced by DoE in March 2015 are still relevant but the proposed Ministerial Declaration proposed would make them obsolete.

The proposed Ministerial Declaration (with proposed legal text and other details) in English and Thai are separately prepared, which also addresses the following issues:

Those doing unpaid, volunteer work. There are some safeguards to avoid abuse.

Arbitration in Thailand needs promotion. It is proposed that an Arbitrator would not need a work permit (and that rules about work permits for foreigners acting as counsel in arbitration proceedings should be more accommodating). (See earlier in this Chapter about arbitration)

This proposed declaration is supported by historical background. Thailand is already a party to the APEC 'Business Mobility' principles, but has not implemented these in domestic law and they should apply to all nationals (see below in Recommendation 3 about a business visa / visa free proposal).

There have been two 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 which narrowed the definition of ‘work’. Under the new Decree, ‘work’, starting as any physical or intellectual effort, also requires that the activity must be linked to activities conducted for the purpose of carrying on an occupation or undertaking a business.
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 in Appendix 3 in English and Thai.
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.

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’). But it is said to address only about 1,000 applicants and there are some gaps.

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

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 some 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.

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.

3. Enhancing Transparency

Transparency and certainty in policymaking and implementation of rules and regulations are crucial to ensure foreign businesses' confidence in the Thai economy. In order to achieve this, it is important that rules and regulations are aligned between departments and ministries as well as that timely public consultation takes place prior to rules, regulations and laws being enacted. Equally important, the policy framework and legal environment must be improved to serve fair market-based competition and relevant parties. When changes to the law are being considered, it is important that stakeholders should be involved in a fair and open consultation process on such changes. In regards to licensing agencies and enforcement, it is important to separate the functions of a licencing authority and the agency that enforces such obligations in order to avoid

any conflict of interest. Enhancing transparency in policymaking and the application of rules and regulations will allow due protection of legitimate business interests and fair competition. This will then make it possible to ensure that the drivers of productivity, efficiency and innovation can be strengthened.

Despite ongoing efforts by different agencies/stakeholders to enhance transparency and curb corruption, lack of clarity and transparency in policymaking and its implementation, plus application, of rules and regulations still exist as main concerns.

Tackling Corruption

Private sector set initiative to promote anti-corruption strategy. Some progress has been made, eg., customs rewards reduction. 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 that it was not satisfied with the minor improvement and regarded the overall position as not materially changed.

Why is this so important? Because corruption used as a dishonest means to avoid the law and to gain a commercial advantage by illegal means as well as presenting financial costs. It also disturbs investment decision in Thailand because many European companies have to abide by domestic anti-corruption to avoid transnational breach. It becomes an additional cost for business, and those who indulge in it gain an unfair advantage, over those who observe the law and who do not.

Continued private sector initiatives such as those of the Thai Institute of Directors and The Anti-Corruption Organisation of Thailand (formerly known as Anti Corruption Network). It has been found that one of the most effective ways to combat corruption in a sector is for all vendors / participants to say 'no', both individually and collectively, to refuse to participate in paying bribes.

The Organic Act on Counter Corruption, B.E. 2542 (1999) was changed in July 2015 to strengthen anti-corruption law, including making the giver liable, not just the recipient.

The law was also changed to introduce penalties for Thai nationals and Thai juristic persons for paying foreign officials, thus using extra-territorial reach. This is similar in concept to the US FCPA and the OECD model law, implemented by some 60 countries.

In 2017 the NACC announced "Guidelines on Appropriate Internal Control Measures for Juristic Persons to Prevent Bribery to State Officials, Foreign Public Officials, and Agents of Public International Organizations". The internal control measures under the Guidelines comprise eight fundamental elements. These are:

1. strong, visible policies and support from top-level management to prevent bribery;
2. risk assessment to effectively identify and evaluate exposure to bribery;
3. enhanced and detailed measures for high-risk and vulnerable areas;
4. application of anti-bribery measures to business partners;

5. accurate books and accounting records;
6. human resource management policies complementary to anti-bribery measures;
7. communication mechanisms that encourage the reporting of suspicion of bribery; and
8. periodic review and evaluation of anti-bribery prevention measures and their effectiveness.

Recommendations

1. To strengthen enforcement, the function of a licensing authority and the agency that enforces such obligations in order to avoid any conflict of interest should be separated. If the enforcement of law exists, it should be serious enforcement. Significant progress is still required.
2. NACC needs to be armed with whistleblower protections and witness protections (currently lacking) Laws need to be changed to support this.
3. Private sector collaboration needs to be strengthened, for example by all vendors in an industry finding mechanisms to allow them to say 'no' collectively and individually.

Digital Economy / ICT

SUMMARY OF RECOMMENDATIONS

See also the Recommendations boxes throughout this Chapter

1. Digital Economy – Background (one Recommendation box)

1.1 It is worth a continual reminder that a structured, layered approach is necessary for success.

2. Telecoms Sector – major issues (three Recommendations boxes)

2.1 Telecoms networks and the soft and hard infrastructure of the telecoms sector underpin the digital economy. The structure and operation need to be effective, efficient and innovative. SOEs must evolve to be licensed, competitive operators, not instruments of policy. Major structural reform is needed.

2.2 National broadband architecture needs a proper structure where SOEs as managers do not dominate.

2.3 A national spectrum plan is needed which shows sufficient spectrum; auction starting price is too high and needs revision; abolish the N-1 rule in spectrum auctions; scarcity is artificially caused.

2.4 Work is needed on MVNO policy; a first step would be abolishing individual licences and using class licences.

3. Digital Economy – workings (six Recommendations boxes)

3.1 The multi-stakeholder model of internet governance is needed. This model includes civil society governance and multi-party responsibilities for security. A Trusted Internet is vital.

3.2 Security should start with network and operational security, all parties have a role. Gateways should be fully liberalized and national cybersecurity in one agency.

3.3 Online intermediary responsibility for IPR infractions needs balancing with rights of IPR holders Support for new Tech needs clearance of regulatory burdens/ major 'doing business' uplift.

3.4 The proposed Personal Data Protection law has positive features; care is needed with cross border, consent and data access aspects. Data nationalization / localization in the sense of

3.5 trying to make data a national property does not work; exceptions to limiting cross border flow of certain sensitive data need examination.

3.6 Any proposed eCommerce tax needs a workable platform and global interoperability before launch.

3.7 Capacity building both through enhanced education and freer flow of skilled foreigners are needed.

4. Digital Broadcasting; Digital TV (one Recommendation box)

4.1 The broadcast and telecoms industries, and government could work on a better solution to the use of broadcast spectrum as part of the national spectrum plan.

The concept of the Digital Economy is the subject of a definition developed by EABC relying on extensive consultation (see below). The Digital Economy is broadening as more and more economic activities which had manual or off-line processes or were not digitally-based, become digitised and new 'native' digital activity enters the arena. The background and recommendations in the then-described ICT Chapter (including Digital Economy) of the EABC 2016 Position Paper continue to be relevant, other than as updated by this Digital Economy/ICT Chapter in this Position Paper. In this fast changing area, this chapter is an extensive update, but unfortunately with little or no movement on certain fundamentals.

The EABC definition of Digital Economy (see p.88 of the 2016 Position Paper and below) shows how reliance on telecoms infrastructure and a well-structured, well-functioning services sector is an essential factor in make a digital economy work.

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. For overall policy making, the Ministry of ICT is now the Ministry of Digital Economy & Society (MDES), with some minor rearrangements. The three main agencies are DEPA (Digital Economy Promotion Agency; previously known as SIPA), ETDA (Electronic Transactions Development Agency) and EGA (Electronic Government Agency). 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.

Recommendation about the Digital Economy concept:

1. It is worth a continual reminder that a structured, layered approach is necessary for success.

1. Digital Economy – background

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

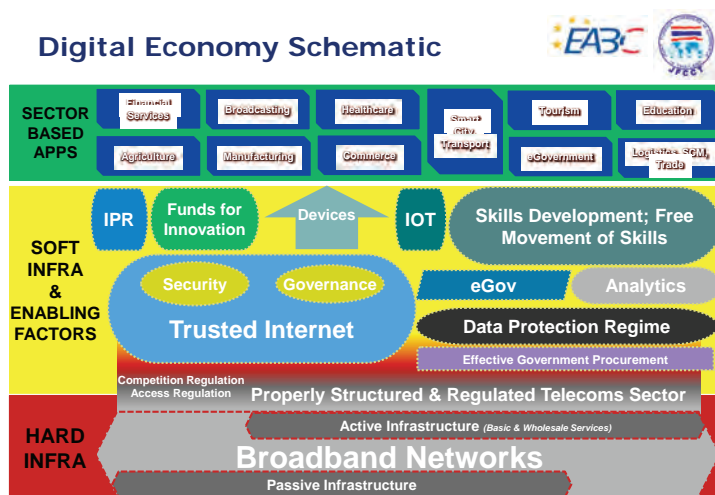
This includes core telecoms services such as voice, messaging, data, and video.

The goods and services within the digital economy can be broadly grouped as:

- **intrinsically digital** – streaming video, ebooks, computing services, software-as-a-Service, social media (e.g. Facebook, LINE)
- **substitutes for established equipment and services** – virtual private communications networks, security services, virtualised PBXs, and services delivered on-line (e.g. accounting / other business processes, graphic design, software development, Software-as-a-Service, data analytics, knowledge-based outsourcing)
- **marketing, sale, logistics, etc. of physical goods** – e.g. Amazon, eBay, Alibaba, Tarad.com, Pantipmarket

Digital Economy is the means of enabling participation by all in social and economic enterprise, and also includes the role played by governments in developing infrastructure and services.

The Digital Economy works as we see it in three layers – the descriptions build up from bottom to top on pages 88-92 of the 2016 Position Paper.



Digital Economy done Mar 2015

A properly structured and regulated telecoms sector necessarily underpins the Digital Economy.

2. Telecommunications sector – major issues

Here in this 2018 Position Paper we highlight six of the major issues about the telecoms sector which impact the Digital Economy and thus the economy.

(a) Industry reform/ restructuring and SOE Reform

The telecoms industry globally works on a tried and tested three layer structure. Thai law 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 a now very outdated concession arrangement whereby two SOEs owned the spectrum and allowed the private sector to use it under concession arrangements. As the two SOEs are still 100% state owned, they are used as instruments of policy and still wield effective informal power beyond those of an operator.

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.

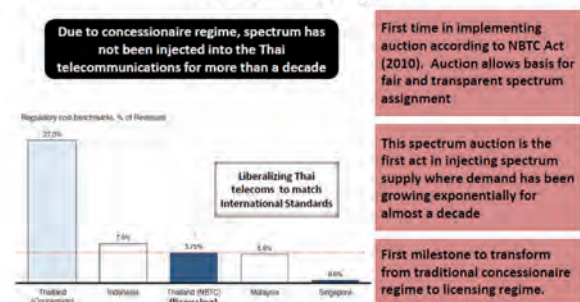
Evolution and reform have been tried a few times, but stalled at stage (iv).

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.
- (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 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



Source: NBTC 2013

- (iv). A poor basis for 5G which relies most importantly on an appropriately structured sector.
- (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 would be less costly to promise all workers in the SOEs jobs through to retirement (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.

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 creating a workable and regulated wholesale market and re-direction; restricting 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 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).

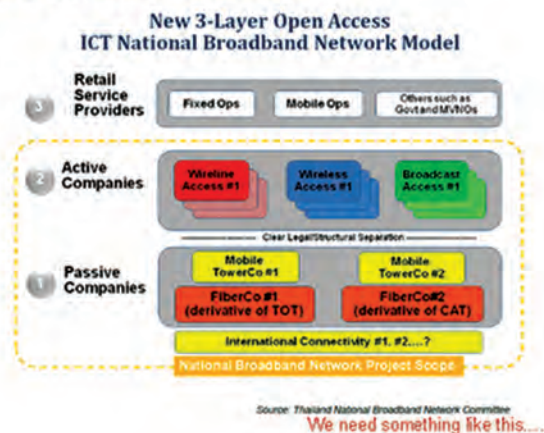
In terms of policy there is no major SOE reform planned (only as stated a merging of some assets) – a major policy gap which continues to have a negative economic impact in a variety of ways. Some senior government leaders may not fully appreciate the importance of these reforms. The current government has the legal tools and powers (which prior governments may have lacked). But this 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 the existing SOEs may possibly serve some well, the opportunity to do a properly structured national backbone with appropriate wholesale regulation has not been taken. While tasking the two SOEs to do provide for rural services may provide some results, it is not optimal and unlikely to be sustainable economically. A structured approach whereby financial returns (and thus funding) varies from different parts of the network is necessary. It is noted that as at early March 2018, spectrum responsibility is to shift from NBTC to MDES.

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.

Model ca 2010 - Thailand



Recommendations about the telecoms industry:

1. Structural reforms to the telecoms industry and SOEs (State Owned Enterprise) (TOT and CAT) are needed; the industry is not efficiently structured (eg no organised wholesale market) and SOEs as currently operating, have an overall negative impact on the industry as a whole. We will hit a wall on these issues leading up to 5G if this issue is not resolved. EABC encourages the Ministry and other stakeholders to engage about understanding what to do; EABC has proposals.

2. We reiterate the recommends from the 2016 Position Paper about broadband, with the following principles being used:

- i) A wholesale market for services should be developed immediately and not wait for any considerations around an NBN or indeed the deployment of one.
- ii) A PPP model for an NBN be investigated, where shareholders / contributors would be the SOEs, other infra owners, financial investors etc. with the SOEs not having a majority. Some government funding and soft loans (including possibly from regional development agencies) are likely to be needed. To ensure investor confidence, an independent manager of the asset owner is recommended. The new PPP Law should support such projects. Risk sharing considerations are reflected in the new PPP law. The new law does need resolution of the arbitration issue; it is recommended that arbitration be allowed for government contracts.

- iii) Infra owners can vend or lease in but there is no monopoly other than possibly about passive hard infrastructure elements – existing wholesale and infra providers should be able to continue
- iv) Appropriate separation (e.g., structural or operational) as between infra owner and retail service provider needs to be determined. A range of wholesale services should be available at non-discriminatory, cost-oriented rates.
- v) Professional manager answerable to the owners and stakeholders.
- vi) Facilities-based competition should continue and not be terminated.

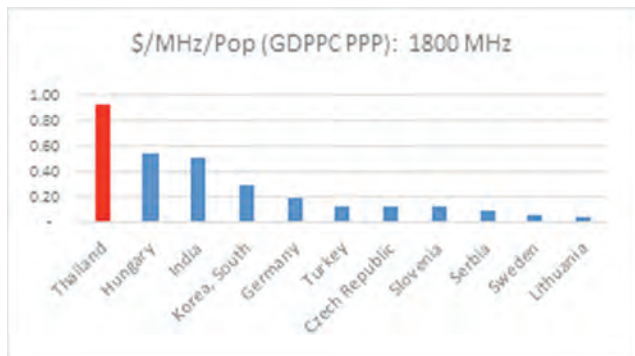
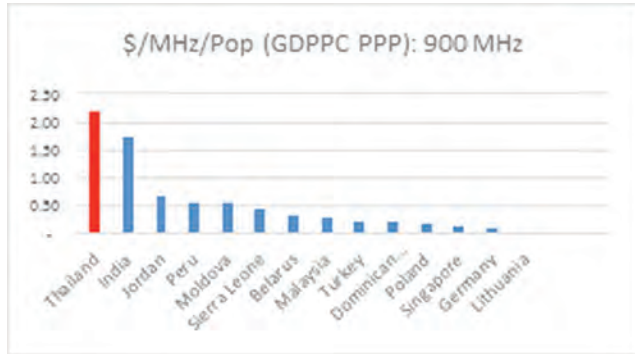
(c) Spectrum

Spectrum is a national asset and scarce national resource. It needs to be managed to optimise returns to the treasury against valuable use to the economy as a whole, not just to maximize returns to treasury. A national spectrum plan which shows sufficient spectrum is needed. It needs to harmonise with the region.

There is a scarcity of spectrum availability in Thailand (eg: wireless industry in Thailand uses only 320 MHz today of spectrum). It is comparable to Bangladesh and Pakistan. Thailand's use amounts to roughly 50 % of the spectrum used in a typical EU country and most developed economies, including Malaysia and Singapore, putting Thailand at a disadvantage. To support further digitalization, the EU for example plans to double the amount of spectrum available to its mobile industry by 2025, in line with the plans of many developed economies.

The EU achieves this by imposing legal obligations on its Member Countries aimed at to improving the EU's digital infrastructure. Conversely, Thailand has not released "fresh" spectrum into the market since the 3G auction, and is gradually lagging further behind. To merely prevent the current gap from widening, Thailand would need to double the amount of spectrum by 2025.

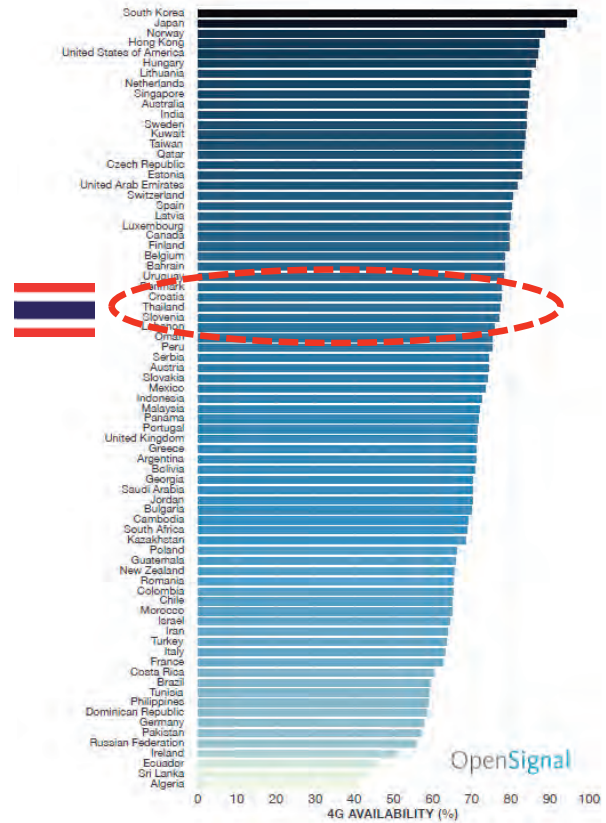
In 2016, Thailand had set auction reserve prices for 4G spectrum at a level that was lower than the independent assessment of the market value, in keeping with best practices. This still yielded a 'market discovered price' well in excess of the reasonably set reserve pricing, though there were obvious issues with that process given that the winning bidder was unable to meet their obligations. 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. Problematically, the chart below classifies Thailand as an extreme outlier in spectrum prices in both the 900MHz and 1800MHz bands.



Source: GSMAI

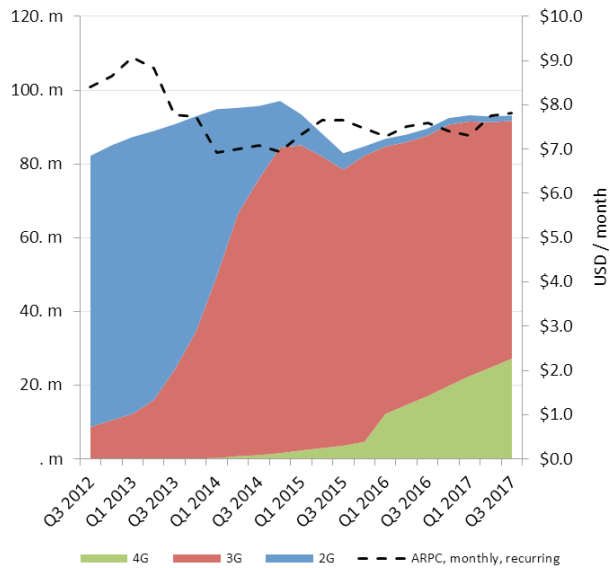
Damage to the economy and consumers from such high prices does not primarily result from the passing on of spectrum costs to consumers via more expensive services. The real harm to society and the economy is lower quality of service and lower capacity in wireless networks caused by artificial spectrum scarcity and lower speeds

Achieving the Thailand 4.0 vision will generate an immense amount of benefit for government, consumers, and businesses alike.

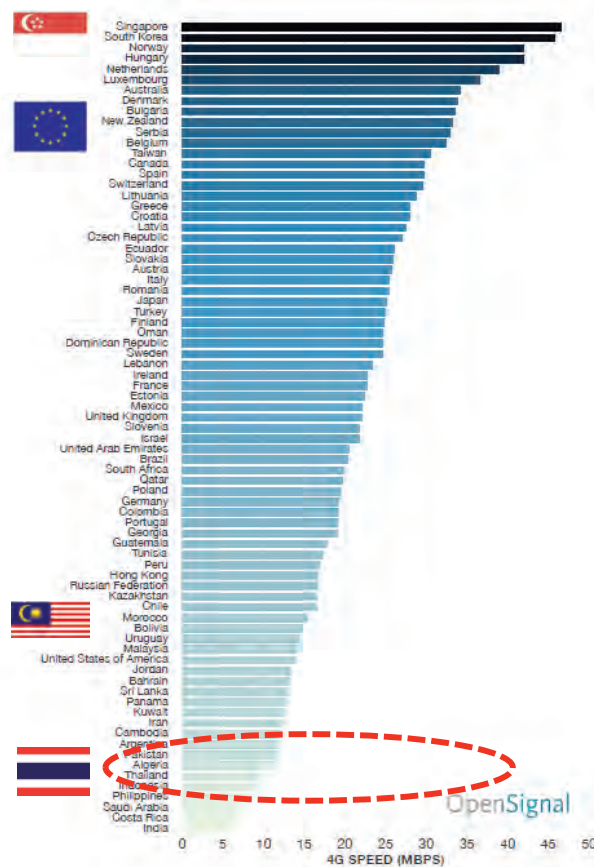


Thailand ranking well on 4G availability

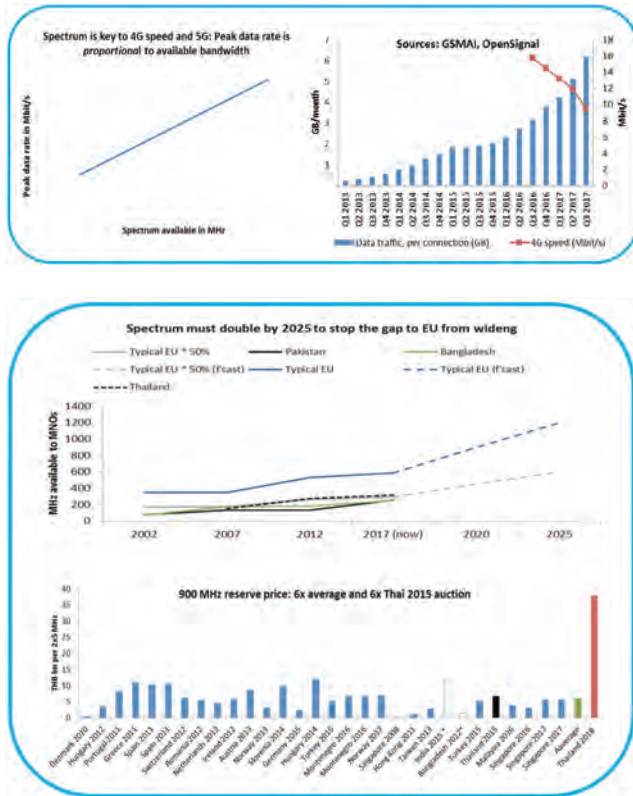
Thailand: Connections by technology and monthly revenue (right axis)



3G and 4G usage soaring



But speeds continue to decline due to spectrum scarcity. This cannot be fixed by operator investments alone.



If not revised, the planned 2018 spectrum auction would most likely reduce spectrum availability by at least 10 MHz due to high reserve prices and N-1 rule

Net increase to 2025 must be 300 MHz just to maintain gap to EU, and 900 MHz to close the gap; clear risk of Thailand falling behind Europe and other ASEAN countries

Improving 4G speeds and introducing 5G will not be possible unless more spectrum is released at more reasonable prices putting Digital Thailand 4.0 ambition at risk

(d) MVNOs

A Mobile Virtual Network Operator (MVNO), is an organization offering mobile services, similar to mobile network operators (MNOs). However the MVNO does not own spectrum, 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.

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.

Consequently, MVNOs are intended to support innovation, bridge digital divide, contribute to the growth in the sector to ensure the achievement of the broader industry and national economic objectives.

Over the past 19 years, MVNOs have helped stimulate competition in the mobile market globally, launching innovative tariffs and services and attracting niche consumer segments. In Europe virtually every cable and fixed-line operator has a mobility strategy, largely based on MVNO, and in Australia, one in ten is a MVNO customer.

Today there are over 1,000 independent MVNOs operating in 72 countries, serving 215 million subscribers. Ovum¹ predicts that nearly 24% of all new subscriber connections over the next five years will come from MVNO subscribers.

The international experience is that MVNOs have delivered:

- More consumer choice
- Innovative pricing plans
- Innovative products and services
- innovation in, and often enhancements in, customer service

With a predicted compound annual growth rate (CAGR) of over 10.5% in the forecast period 2015-2020, APAC is home to the world's fastest growing MVNO sector, even

more than the highly competitive MVNO markets of Europe and North America, according to Grand View Research².

MVNOs - what is the issue?

In 2009, the first five MVNOs were given a license to operate in Thailand. However the introduction of MVNOs in Thailand nine years ago has not succeeded in laying the foundation to ensure innovation, the achievement of the broader industry and national economic objectives.

As of December 2017, the NBTC) has provided 54 companies with MVNO licenses, nine have launched, and only five are in operation today and most are struggling.

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. 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.

¹ Ovum - [http://wholesale.sprint.com/docs/default-library/ovum-sprint-b2b_mvno-thought-brief-final-\(06-2015\)640891899BC3.pdf](http://wholesale.sprint.com/docs/default-library/ovum-sprint-b2b_mvno-thought-brief-final-(06-2015)640891899BC3.pdf)

² Grand View Research - <https://www.grandviewresearch.com/press-release/global-mobile-virtual-network-operator-mvno-market>

Recommendations about Spectrum and MVNOs:

1. Affordable mobile broadband underpins the Digital Economy.
2. Necessary reforms to the telecoms industry/SOE (State Owned Enterprise) evolution (TOT and CAT); the industry is not efficiently structured (eg no organised wholesale market) and SOEs as currently operating, have an overall negative impact on the industry as a whole. We will hit a wall on these issues leading up to 5G if this issue is not resolved. EABC encourages the Ministry and other stakeholders to engage about understanding what to do.
3. Starting price is too high; a fresh economic assessment is needed rather than using last bid from previous auction. This may need a change to law or regulation.
4. Scarcity slows down access speeds and is an artificial price inflator. A road map which addresses scarcity is needed (NBTC plans to issue a road map early in 2018, but the draft shown so far has only re-farmed spectrum for 2018, not new spectrum). Net increase to 2025 must be 300 MHz just to maintain gap with EU, and 900 MHz to close the gap; clear risk of Thailand falling further behind Europe and other ASEAN.. Improving 4G speeds and introducing 5G will not be possible unless more spectrum is released at lower prices. Digital Thailand and Thailand 4.0 at risk. NBTC has announced sub division of 1800 MHz into 9 slots rather than 3. This will help with participation, but does not address price or spectrum scarcity.
5. Abolish N-1 rule (another artificial price inflator) where one less licence is offered than the number of bidders.

6. For MVNO (Mobile Virtual Network Operators), recommended is developing of a workable and fair policy to address opportunities afforded by having MVNOs. 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.

(e) An Independent regulator - NBTC

We reiterate the issues about the importance of an independent regulator a in the 2016 Position Paper. The three dimensions to independence 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.

(f) Foreign Equity Restrictions and service sector liberalisation

The 2013 EABC Position Paper and the 2016 Position Paper covers this in more detail. 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. 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 licences. 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. 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. More details are in the 2016 Position paper.

Recommendations about foreign equity:

1. 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.
2. The Foreign Dominance Notification should be frozen, not applied and then rescinded (removed) in the medium term.

some extent the impact of the public consultation reduced. Additional laws have been introduced.

Generally the objectives of these laws should be about developing capability, legally empowering but most importantly about facilitating and protecting. In this sector in particular, too much state control will not give the best outcome in the long run.

3. Digital Economy – workings

(a) Digital Economy Family of Laws

The then eight major laws in the so-called Digital Economy family, briefly described in a table on p. 92 of the 2016 Position Paper, are at various stages of development. As noted in the 2016 Position Paper, public consultation was conducted by ETDA on the bases of these laws during 2015. But major changes were later introduced and to

Ref	Name of Law	Purpose	Comments	Status
1.	Frequency Act, aka NBTC Act	Amendments to existing Frequency Act 2010, to constitution of NBTC and role of NBTC and how spectrum is issued.	<ul style="list-style-type: none"> • Robust independent NBTC important; recommend some changes to strengthen governance and independence. • All spectrum for commercial use should be allocated by auction (or beauty contest for short list + auction) • Regulator should be the single licensing authority 	Enacted
2.	Personal Data Protection Law		<ul style="list-style-type: none"> • Purpose should be about confidence in the jurisdiction and consumer protection, not just consumer protection. • Cross border insufficient; data must be allowed to go offshore under rules. • Consent, other issues. <p>The draft Fintech law (developed in 2017) plugs a gap for part of this.</p>	Draft resurfaced after two years Jan 2018; consultations done; submissions made; expected to be enacted ahead of EU GDPR commencement.
3.	Computer Crimes Act amendments – and elsewhere?	Tighten CCA	CCA was changed previously to include some over-reaching and unworkable provisions, although the high level intention was good. A 2010 proposed change (controversial) was shelved. Surveillance powers not helpful for the essential ‘trusted internet’ which has security and governance aspects. Amended to include IPR protections but without an optimal balance for on-line intermediaries.	Major debate and objections – law is enacted.

Ref	Name of Law	Purpose	Comments	Status
4.	Digital Development for Economy and Society	Consolidates into one law, these three laws: <ul style="list-style-type: none"> • Committee for Digital Economy and Society • Promotion of Digital Economy • Digital Development Fund for Economy and Society law 	Policy making powers in a committee. What checks and balances? How far will it cover spectrum management for example? Establish National Digital Economy Promotion Committee and committee office Establish Digital Dev Fund for Economy and Society, DDF for E&S Committee.	Legislation is enacted.
5.	Ministry, Department and Bureau Reform law	Reforms MICT into MDES		Passed – establishes Ministry of DE&S
6.	Electronic Transactions Act amendment.	Amend ETA to provide for not only eSignature or Digital Signature.	An important enabler. The draft Fintech law (developed in 2017) plugs a gap for part of this.	In development
7.	ETDA law	Re-empower ETDA		In development
8.	Cybersecurity law	Dispense with due process, give powers Establish NCSC	Some controversies Note 'trusted internet' concepts.	Proposed law in development.
9.	Draft Royal Decree establishing ETDA	Revises ETDA		Not clear; believed passed
10.	Competition Law upgrade (missing)	Promote and regulate completion.	Should apply to telecoms sector; does not but dos apply to digital economy generally. 2017 revisions see more in Cross Functional chapter	Revision to Trade Competition Act made 2017.
11.	Structural reform eg: Mandated access to wholesale services and infra from SOEs (missing)	Towards properly structured industry	Infrastructure – covered in detail at 28 March Open Forum – see long PPTX.	No law on this. A major policy gap; see this Policy paper

Other developments in the digital economy include a Fintech law, development of a national ID system and the law to underpin it, necessary laws better to support electronic or digital government amongst others.

(b) Trusted Internet; peering & security

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 CCA 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.

Unfortunately the amended CCA does not well support the TRUSTED INTERNET concept.

Security should start with network / operational security; but a broadband network and its proposed dominance by an SOE will not give the necessary confidence that it will be operated fairly. An SOE should not have a special role like that, the SOEs (or one, if merged) need to evolve to being competitive, focused operators, not organs of government policy.

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,

Industry collaboration for peering, domestic internet exchange etc are all encouraged, but producing a new government-controlled CAT-led collaboration should be reconsidered. A network company which needs to be trusted by the whole industry, should not be the driver of a kind of security which includes national security ideas. Rather in terms of security, network and operational security should be its focus.

For **national security issues**, a separately managed government agency – not tied in with capacity building or fundamental infrastructure operation, will give a proper focus on purpose and avoid concerns about conflict of interest. It is a genuine concern in business circles that a competitor may offer a bribe to an official to provide access to confidential company data. Opportunities for such conflict should be removed, and not built in by design. This should be one aspect of a Cybersecurity law.

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.

**Recommendations about laws in the sector;
TRUSTED INTERNET and GATEWAYS:**

1. Generally the objectives of these laws should be about developing capability, legally empowering but most importantly about facilitating and protecting. In this sector in particular, too much state control will not give the best outcome in the long run.
2. Wind back centralised state control (eg the way the Digital Economy & Society Committee is empowered and works) to achieve these aims.
3. Foster a multi-stakeholder model of internet governance, allowing civil society to play a recognised role in addition to other user groups. In this model, network security is somehow everyone's job.
4. National cybersecurity should be vested in one agency which is independent of any operator, state or private. International gateways should be fully liberalised in all respects.

(c) e-Commerce, ePayments

eCommerce in Thailand is rapidly growing. It is supported by a number of laws and aspects. Here we focus on ePayments.

Standardised global payments and settlements

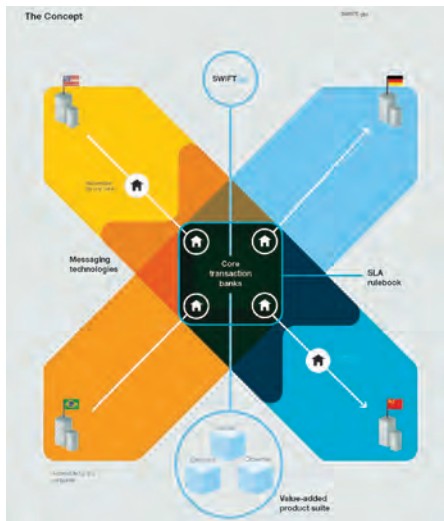
All businesses in Thailand, no matter their size, like to get paid quickly and efficiently for the goods and services they provide, domestically or cross-border. Same day credits to bank accounts ease capital concerns for SMEs and

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.

Commercial Banks (including some Chinese banks), Central Banks, NBFIs (Non Bank Financial Intermediaries) such as insurance companies and broker-dealers, custodian banks and some corporates are members of SWIFT gpi. SWIFT is a co-operative owned by 11,000 members.

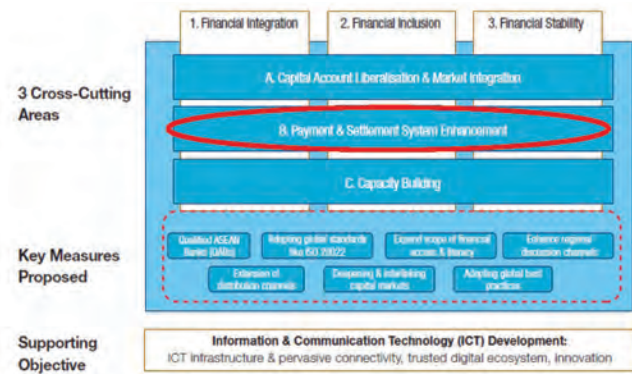
SWIFT gpi has transformed the way cross-border payments are transacted, with greater speed, transparency and traceability. A real-time view of payments means banks and financial institutions know how much cash is needed to fund their intra-day trading operations. This helps them optimise their cash flow. The fees related to the payment are known, as is the final amount paid to the end beneficiary, which is confirmed in real time to the sending institution.



SWIFT gpi went live in early 2017, with more than 140 banks are either live or in the implementation phase, representing 78% of all international cross-border payments. SWIFT gpi is on track to facilitate near-real-time transfer of payments between more than 11,000 financial institutions in over 200 countries. Currently, 46% of payments sent using SWIFT gpi are credited to the end beneficiary in less than 30 minutes. Overall, 92% of payments are received by the beneficiary within a day. Transactions taking longer do so for a known reason, which requires extra document checks and existing FX controls. For countries with harmonised cross-border payment, foreign exchange and compliance regulations (eg US-EU), payments often reach the beneficiary's account within seconds, including all necessary compliance checks.

By the end of 2018, every institution which is enabled with SWIFT gpi will be able to trace every payment they send using SWIFT gpi across all 11,000 institutions on the

SWIFT network. SWIFT gpi is likely to be the default standard for all cross-border payments by the end of 2020.



Source: SWIFT - Achieving Financial Integration in the ASEAN Region, March 2017

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.

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

IPR protection is an important aspect of building a knowledge and innovation economy and in supporting investor confidence overall.

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.

IPR in an eCommerce context

Online infringement of intellectual property rights is a growing problem worldwide. The role of both rights holders and online intermediaries in addressing this problem including the issue of establishing possible liability for such infringement involves necessarily complex questions. A balanced approach was found in the 2015 amendments to the Copyright Act. On line intermediaries such as ISP (eg mobile network operators) and data hosts have limited and somewhat blunt tools (eg block access, put a whole site off line) which can cause economic harm if misused.

Those provisions however were found to be difficult to prosecute. A subsequent amendment to the Computer Crimes Act covers all forms for intellectual property. The

pendulum may have swung too far the other way; the rights of IPR holders need to be balanced with those of on-line intermediaries.

Recommendations about IPR:

1. Software Piracy needs education to change practices, and also very affordable versions to that incentives for misuse are reduced.
2. A better balance is needed for the rights of IPR holders and responsibilities of on-line intermediaries needs review, in time, in light of experience with changes to the Computer Crimes Act.

(e) 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. In keeping with developments in many parties of the world, sandbox guidelines have been issued by the Bank of Thailand. There have been a number of sandbox participants, and as of 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. Experience with the Business Collateral Act needs review. 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 Chapter. A regulatory Guillotine approach seems attractive. The tendency towards gravitating to Singapore or Hong Kong once some development is reached, is still strong.

The EU Business Avenues to S E Asia (ICT) annual programme 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.

(f) Blockchain technology

Blockchain trust relies on a chain rather than on a central point for authentication. Thus ‘distributed ledger’ applications are popular. There are many other applications. Blockchain can greatly reduce cost and enhance efficiency.

(g) eGovernment / 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.

The Electronic Government Agency (EGA) is addressing this challenge which will be a major effort. A National ID programme (under development via ETDA and others) should feature as an element of identifying system users and providing some necessary information. Security and privacy are large issues.

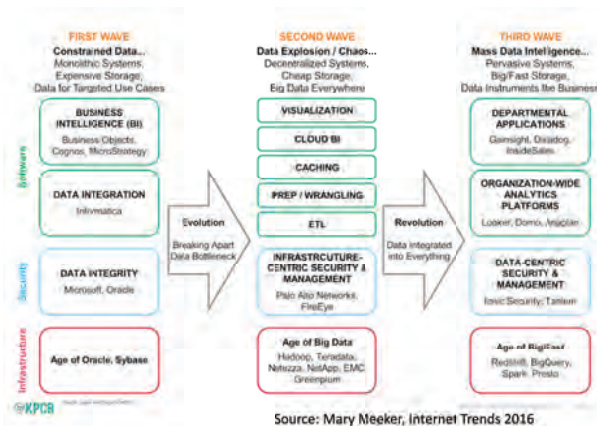
Unfortunately the Licence Facilitation Act (while offering some good steps towards standards and reducing corruption) has no eGovernment target. The manuals which Agencies produce under it are based on whatever state the Agency is in in terms of eGov development. As going on-line requires process re-engineering, new manuals would have to be done. It is recommended that the LFA be revised to accommodate these objectives.

Recommendations about New Tech and Digital Government:

1. 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 needs good support.
2. A ‘whole of government’ architecture with phased development of inter Agency and Citizen to Government (C2G) capability, building to this architecture, is needed.

(h) Data; Privacy and a Personal Data Protection law.

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.



McKinsey Global Institute calculates the GDP impact of data flows in 2014 as \$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.



(i) Data Hub Fundamentals

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:

- i) A well-structured, innovative telecoms sector (underpinning the Digital Economy)
- ii) Cost effective broadband infra and services
- iii) A Trusted Internet
- iv) Effective cybersecurity
- v) Effective privacy
- vi) Affordable mobile broadband
- vii) A respected data protection regime which supports fair cross border traffic and supports data quality.

(ii) Data Protection law fundamentals

- a). Objective to create an attractive, efficient and respected data services hub
- b). Clear duties of data controller / data processor
- c). Integrity about personal data. Data owner effective ability to correct data. There are consumer protection objectives as well as an economic objectives; the two are related.
- d). Privacy of commercial and commercial data and communications. (In the 'Trusted Internet' concept, security and privacy should not be opposites).
- e). Security so that privacy harmonises with data security.

- f). Workable and not burdensome cross border Rule-of-Law based regime, and not so lax as to make Thailand a port of convenience ('The Liberia of data services'). Cross border should not be a back door method to unauthorized disclosure but should enable ease of use for analytics, customer and product management and foreign end-use purposes.
- g). Some kind of anti-data nationalization regulation and practice, but with specific, limited exemptions where the onus is on the Data Controller seeking not to disclose. (There is often sector specific legislation governing certain data sets; see more below).
- h). Promotion of the system via industry education with a mindset that privacy is economically and socially valuable.
- i). Clear understanding of what is personal data and what is not. Public data / open data are important for various applications including smart cities, improved transport management,
- j). Easy dispute resolution via a government operated or government endorsed Centre and by supporting Arbitration.
- k). Harmonisation as far as possible with accepted international standards and practices. The EU GDPR for example will apply to many companies in Thailand not just on cross border issues but also on how certain data must be managed.

EABC (with JFCCT) has made a detailed submission on the draft law. We identify five from the submission made

³ At www.oecd.org/sti/ieconomy/oecdguidelinesontheprotectionofprivacyandtransborderflowsofpersonaldata.htm

⁴ See <http://www.cbprs.org/>

⁵ <https://www.privacyshield.gov>

(iii) Cross border rules:

This is domestic Thai law which regulates the ability to disclose data across borders. EABC has proposed a clear Rule-of-Law based regime which even if it is to appear in delegated legislation should be known up front.

The "accountability model," in the OECD Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data³ and subsequently endorsed and integrated in many legal systems and privacy principles, including the APEC Cross-Border Privacy Rules (CBPR)⁴, provides an approach to cross-border data governance that effectively provides protections and fosters streamlined, robust data flows.

The data collector which discloses across borders would remain responsible under Thai law, regardless of where it is disclosed to. The transferee jurisdiction should have at least the standard applicable in Thailand, a responsibility of the data controller to check.

The former EU-US 'Safe Harbor' regime (replaced by a 'Privacy Shield'⁵ arrangement) has some applicable principles but the EU-US situation is not easily adaptable to one covering disclosure and use of Thai data abroad but other standards in APEC CBR and EU GDPR do offer guidance. The EU General Data Protection regulation comes into force in May 2018 and is something of a world standard. It reaches European companies doing business in Asia.

The Thai law should continue to apply, whether the data was collected by a foreign platform / entity or was disclosed cross border.

We have proposed adding provisions about ensuring that the law in the transferee jurisdiction has standards. The Singapore regulation offers a model. There is also a useful exclusion for 'transit data' in that source legislation.

The January 2018 draft law which facilitates recognizing international standards could be amended to make clear that compliance with existing internationally accepted cross-border data protection regimes (e.g. relevant ISO standards; APEC CBPR; EU General Data Protection Regulation (GDPR)) will meet the this Thai law's requirement.

(iv) Extra-Territoriality: As a separate but related issue, the law applies to relevant data outside Thailand. This could be data which is disclosed abroad, or data relevant to persons in Thailand, collected abroad. 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 <https://www.internetjurisdiction.net/>⁶, is a global effort to harmonise cross border and issues of competing systems of law.

As a policy matter, what can the Law say? There is a suggestion below about a layered approach when facing the issue of what part of the Law would apply in a foreign setting.

⁶ Executive Director Bertrand de la Chapelle spoke at the Fifth Biennial conference of the Asia Society for International Law in Bangkok, Nov 2015 Professor of Law, Bond University; Managing Editor of *International Data Privacy Law*, published by Oxford University Press <https://academic.oup.com/idpl>

This would apply to personal data (as defined in the Law) either collected by a foreign entity (ie a person in Thailand provides personal data to a foreign platform) or collected in Thailand but disclosed to a foreign platform.

EABC also had assistance from an expert in cross border and extra-territoriality, Professor Dan Svantesson⁷ about a useful approach to extra-territoriality which are in our Submission to MDES. This 'layered' approach to extra-territorial application is described in the 2016 Position Paper.

We would also recommend 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.

(v) Right to access/correct/delete as relevant is an important aspect of data integrity. The GDPR includes such a provision and the Thai law should also.

(vi) 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.

(vii) Data Nationalisation / Localisation: GATS jurisprudence shows this is not allowed subject to exceptions in medical records, personal financial records, national security. The onus on 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 proposed in Thailand's case, 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.

Recommendations about data:

1. Noting the detailed submission made on the draft Personal Data Protection law and the larger issues around it, it is recommended that the law reflects the points in this submission
2. Effect a Rule of Law based cross border regime which looks to the quality of protection in the transferee jurisdiction and continues responsibility under the Thai law.
3. Continue to avoid data localization / nationalization, but focus instead on developing a workable treatment for specific exceptions such as medical records, financial records and national security issues.
4. Aim to harmonise as much as possible with the EU GDPR and other international norms.

(i) eCommerce Tax

In line with world-wide but not universal trend, various economies seek to tax profits made from on-line commerce. The motivation may have been to do with

profit shifting, as described in the OECD Base Erosion & Profit Shifting (BEPS) programme.

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, no tax invoice would be available and VAT input credits would not be used, against the neutrality principle. The proposal brings great complexity.

Recommendations about eCommerce Tax:

EABC has urged the TRD to consider the proposal in light of:

- a) Thailand's policy towards Thailand 4.0
- b) The World Bank 2018 ranking is 26th which is a significant improvement from the previous year. This was achieved by making some changes. 'Paying taxes' is one of the ten criteria used globally by the World Bank for assessment of ease of doing business. Adding complexity now to paying taxes may have an unintended result. The current (new) Constitution in s. 77 requires that 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 also disclose the results of the public consultation and analysis to the public and take them into consideration at every stage of the legislative process. A Cabinet guideline suggests a simple compliance by on-line consultation at a minimum. But this is an important law which needs all parties to understand it.

c) The Guillotine project, in addition to a plan to cull some of the 6,000 licences, brings with it a new way of law making (under legislation proposed as part of that initiative) by applying APEC 'Good Regulatory Practice' principles which requires tests about aspects such as any proposed law's efficacy, ease of use, fairness etc. Effective consultation is also a part of this. The new Constitution sets out some details about public hearings, which should be referred to.

d) Thailand's national policy is about digital government.

In light of these, 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 part (c) 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.

(j) Skills in the Digital Economy sectors; Free movement

ICT skills are in short supply. Two actions are needed – education and re-skilling, and relaxation on 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 industry participants. This implies a change to education and also to certification for ICT skills. We do not note it separately here; however, intellectual property protection is an essential ingredient in the attractiveness of various IT hub plans.

Universities grapple with ensuring that graduates are appropriately skilled. An IT Finishing School is one solution. Use of an IT Competency Framework is another. Generally, a move away from rote learning to encourage enquiry and imagination is needed.

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, on which EABC has recommended as follows:

- 1) Revised IT education with emphasis of soft skills such as problem solving and project management; 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).
- 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 – The Cross Sectoral Chapter of this Position Paper makes recommendations on work permit and visa reform, which is also the subject of a major EABC policy release done March 2018. 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.

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 is well needed.

Recommendations about skills and capacity building:

1) Recognise that skills will be local and foreign, unavoidably.

2) Skills will come from local education and training, and the movement of foreign skilled people in Thailand.

3) Avoid local certifications as much as possible, but use a system of recognition and an IT competency framework.

4) Major reforms to work permit and visa (see Cross Sectoral chapter)

5) A package of measures in enhancing applied R&D, industry-academic collaboration, academic-academic collaboration and training.

Digital Literacy, including cyberbullying, education and programmes about them, are needed.

(k) Procurement: eAuction, Unlimited Liability, Software IP

The recommendations in the 2016 Position Paper continue. Procurement by government is under review and engagement on this will be important. A new regulation requires using an on-line system. While reactions are mixed, it is generally positive. The use of eAuction with multi-variate analysis continues with some operational challenges.

4. Digital Broadcasting; Digital TV

Digital Broadcasting has not only brought greater spectral efficiency and quality of images, but also a whole range of ways of interacting with customers, allowing for big data analysis for additional functionality and benefits, managing images etc. Now in full operation, digital content will need a regime for intellectual property protection and data protection.

In late 2013, the NBTC held auctions to issue the country's first commercial digital spectrum, and then issued 24 commercial digital terrestrial TV licences. This heralded a new era in converged digital media.

The history of these has not worked out quite as hoped, many found business tough-going. A resolution relying on s.44 is being applied to alleviate some of the burden.

With streaming video enabled by mobile broadband, this space has become very competitive.

A better solution to the use of broadcast spectrum is needed as part of the national spectrum plan.

Recommendation about digital broadcasting:

1. The broadcast and telecoms industries, and government could work on a better solution to the use of broadcast spectrum as part of the national spectrum plan.

Glossary of Terms – please refer to 2016 Position Paper.

Energy and Energy Efficiency

SUMMARY OF RECOMMENDATIONS

1. Energy Efficiency and Energy Saving

- 1.1 Energy efficiency in buildings and for industry-- Thailand should consider adjusting its existing energy efficiency policies for buildings and industries in order to better incentivize progress in this domain.
- 1.2 Energy efficiency in power generation -- Thailand should also promote the efficiency of using fuel in power generation. Cogeneration should be encouraged
- 1.3 Energy Efficiency from large infrastructure like district cooling system concept-- District cooling is a proven system that efficiently cools buildings/city through centralized distribution of chilled water. District cooling is becoming an essential part of urban development.

2. Energy Security

- 2.1 Diversification and balanced energy mix: We encourage Thailand to diversify its energy mix and to develop renewable energy sources, in combination with gas, which is a low-carbon fuel
- 2.2 Future of current licenses for major oil and gas fields, due to expire in 2022-2023 – Now that the government has decided to go ahead with a bidding process for the current licenses it is crucial that the government stands firm on the timeline. Any delays can potentially lead to a gap in supply profile which could be costly to manage. It is very important that Thailand's international partners have clarity on the government's plans if they are to continue investing. Uncertainty will cause them to reduce their investments in advance of expiry.
- 2.3 Resolution to the Overlapping Claims Area (OCA) – A great opportunity for Thailand lies in development of the Overlapping Claims Area with Cambodia. The gas reserves there could play a significant role in meeting Thailand's energy needs.
- 2.4 Regulation and energy vision within gas industry – the Government has recently decided to review the regulation of the gas infrastructure value chain, and to regulate tariffs all along this value chain. This is a legal move which has been executed in Europe in the past and EABC would be happy to bring the European experience and best practices to the knowledge of the Energy Regulatory Commission,
- 2.5 Power transmission and Distribution grid: The EABC recommends enhancing the Power Transmission and Distribution sector and speeding up investments in ageing infrastructure to improve power security and ensure readiness for transmitting power coming from alternative sources of energy.
- 2.6 Smart grids: We do believe the smart grids are a perfect support for the energy transition, will help reinforce the energy security, and are crucial for the Thailand 4.0 targets.

3. Alternative/Renewable Energy

- 3.1 EABC supports Thailand's diversification of energy sources and focus put on more renewable energy (with natural gas as a back-up and transition energy). We believe that this clean and less carbonized energy is crucial for the country, and that Thailand has a large potential for renewable energies. Acceleration of this important change of pattern will help Thailand respect its commitments that were made at COP21, to reduce its CO2 emissions, but will equally enhance its competitiveness.
- 3.2 EABC recommends a set of measures and incentives to accelerate the development of the solar energy in Thailand, which is a real chance for the country.

4. Lighting

- 4.1 We recommend that the Thai government enlists the help of experts in building and lighting to create environments that are an asset to the nation, attract tourists and act as a driver of economic growth for all sectors of the economy.
- 4.2 Thailand should consider creating and implementing a lighting master plan as part of the country's energy efficiency drive. The lighting master plan will help promote Thailand as a center for tourism.

Preamble

Thailand's total energy consumption has grown continuously in the past decade due to domestic economic growth, demand for energy from increasing production, and demand for power generation, among other factors. Security of supply, environmental concerns (including based on Thailand commitments at COP 21), and impact on the competitiveness of Thai economy in an environment which is more and more competitive, are key issues for the country.

On the other hand, energy has entered a new era called "energy transition", and Thailand should consider it at its new long-term vision, plenty of opportunities for a better future.

The EABC Energy and Energy Efficiency Working Group was established to serve as a forum to discuss critical

issues in this particular field, and to enhance the role of the European business community in dealing with Thailand's key energy challenges. We hope this 2018 European Business Position Paper can provide useful suggestions to the Royal Thai Government and relevant agencies to provide economic stability for Thailand and increase further industries' competitiveness,

Energy policy

Everywhere in the world energy policies have to reach the optimum balance between 3 pillars: the availability of the energy, its affordability, and its sustainability. There is no "universal rule" on how to reach it, and this should 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 documents, like PDP 2015-2036 (currently under final revision), AEDP 2015-2036 and Thailand Smart Grid Master Plan 2015-2036, are paving the way to large changes in the energy landscape for Thailand.

1. Energy and Energy Efficiency

The most available, most affordable and most sustainable energy is the one which is not consumed. This simple rule recalls how much energy efficiency should be the first axe of efforts of Thailand energy policy.

Main areas of efforts are industry, transport, heating/cooling. Lighting comes to a lesser extent.

The Thai Ministry of Energy had published the "Thailand 20 - Year Energy Efficiency Development Plan (2011 - 2030)", commonly referred to as the EEDP. This document states that "This 20-year Energy Efficiency Development Plan (EEDP) is formulated with a target to reduce energy intensity by 25 percent in 2030, compared with that in 2005, or equivalent to reduction of final energy consumption by 20 percent in 2030." The Thai INDC suggests this has been superseded by the EEP 2015-2036 which targets reduction of emissions by 30% by 2036

United Nations (through their United Nations Thailand Environment Programme – UNEP) reiterates that district cooling systems are an extremely efficient way to reduce energy consumption in countries like Thailand.

Recommendations:

1. Energy efficiency in buildings and for industry-- Thailand should consider adjusting its existing energy efficiency policies for buildings and industries in order to better incentivize progress in this domain.
2. Energy efficiency in power generation -- Thailand should also promote the efficiency of using fuel in power generation. Cogeneration should be encouraged.
3. Energy Efficiency from large infrastructure like district cooling system concept-- District cooling is a proven system that efficiently cools buildings/city through centralized distribution of chilled water. District cooling is becoming an essential part of urban development.

2. Energy Security

Thailand has faced consistent challenges with energy security in the past decade. To maintain economic stability and robust economic growth, a new area of the energy sector must be identified to overcome existing challenges facing the Thai economy.

The first concern is addressed as a growing gap between Thailand's energy demands and its domestic energy supply. Due to an increase in income level and the opportunities coming from AEC implementation and Thailand 4.0 strategic plan, Thailand's energy usage and consumption has continuously increased over the past decade.

Diversification

A lack of alternative energy sources would push Thailand close to facing energy shortages in the near future. That's why, it is of essence for Thailand to balance as much as possible its energy mix, between the energy sources available domestically (both today, in short and in longer term) and those Thailand have to import. Diversification of energy types as well as energy sources is a crucial root for energy security.

Recommendation:

1. Diversification and balanced energy mix: We encourage Thailand to diversify its energy mix and to develop renewable energy sources, in combination with gas, which is a low-carbon fuel.

What role for gas

We believe natural gas is a strong support to the competitiveness and the sustainability of Thai industry for coming decade, and to the State commitments to COP21.

To that extent, it is of essence that the related infrastructures will be developed accordingly, and that the economic actors, whether public or private, are incentivized to invest in safe, and strong assets.

As the Government has been pushing for the implementation of a new legal and regulatory framework (regulated economics all along the value chain, Third Party Access, ...) it is of essence that the regulation be both incentivising (with ad-hoc investments remuneration mechanisms) and stable in time.

The EABC welcomes the Royal Thai government's commitment to resolving key energy policy issues. Ensuring access to secure and affordable energy supplies is essential to Thailand's long-term economic success. We believe that timely resolution will substantially solve Thailand's looming energy supply challenges, while also helping to meet the country's ambitious greenhouse gas reduction targets.

Recommendations:

1. Future of current licenses for major oil and gas fields, due to expire in 2022-2023 – Now that the government has decided to go ahead with a bidding process for the current licenses, we believe it is crucial that the government stands firm on the timeline. Any delays can potentially lead to a gap in supply profile which could be costly to manage.

It is very important that Thailand's international partners have clarity on the government's plans if they are to continue investing. Uncertainty will cause them to reduce their investments in advance of expiry.

2. Resolution to the Overlapping Claims Area (OCA) – A great opportunity for Thailand lies in development of the Overlapping Claims Area with Cambodia. The gas reserves there could play a significant role in meeting Thailand's energy needs.

3. Regulation and energy vision within gas industry – the Government has recently decided to review the regulation of the gas infrastructure value chain, and to regulate tariffs all along this value chain. This is a legal move which has been executed in Europe in the past and EABC would be happy to bring the European experience and best practices to the knowledge of the Energy Regulatory Commission

Power Transmission and Distribution

The Power Transmission and Distribution sector (T&D) needs faster execution in building and commissioning infrastructure to achieve the goals of Thailand's Power Development Plan. Projects are sometimes delayed for several reasons: legal reasons (rights of way), financial reasons (payments to the sector), and non-tariff barriers (limits on technology transfer into Thailand). Increasing installed power capacity from 37GW to 70GW in 2036 requires a doubling of the T&D grid as well.

On the other hand, Thailand shall consider financing power transmission projects in the region, mainly focused to on neighboring countries of Laos, Myanmar and Cambodia. Whilst already being a central force mainly through the geographical location, this will strengthen the As ASEAN Grid and keep Thailand's interest up in the expected transition towards renewable energies: these renewable energy sources all require a stronger ASEAN Grid. Participating at the early project stages with offering project financing for transmission line projects, paths the way enlarge the influence in this critical infrastructure in the region.

Recommendation:

The EABC recommends enhancing the Power Transmission and Distribution sector and speeding up investments in ageing infrastructure to improve power (energy) security and ensure readiness for transmitting power coming from alternative sources of energy.

A stronger interconnection in the ASEAN power grid will also strengthen the strategic position of Thailand and will positively impact costs of power and the industrial development of the country.

Smart grid

The Royal Government has been mentioning many times the energy smart grids as an important part of both the energy polices and the S-curve that should drive the next decade for Thai economy.

Recommendation:

Smart grids: We do believe the smart grids are a perfect support for the energy transition, will help reinforce the energy security, and are crucial for the Thailand 4.0 targets.

3. Alternative/Renewable Energy

As part of the worldwide energy transition, Thailand has committed itself during the Paris COP 21 Summit to work actively to reach on long-term a decarbonised energy mix. EABC recognises that this makes fully sense, given the large potential low carbon energies represent in the country.

This will however take significant time, financial effort, and active policies.

Over coming years Thailand, will have to (i) push actively for "almost zero carbon" sources including solar energy, wind energy, micro hydro, biomass, biogas and waste-to-energy, (ii) keep securing energy security at lowest carbon level (mostly through natural gas), whilst going on and adapting the existing energy mix

We believe that a range of renewable energy sources can definitely play a key role in meeting Thailand's energy demand and environmental goals. As leaders in green

technology, European businesses are happy to offer the best methods and practices to support this.

Solar PV

Solar technology has been facing recently significant innovations leading to important improvements of efficiency and significant reductions in costs. The size of recent projects awarded worldwide in 2017, as well as their price per kWh, has nothing to do with any references of previous years. In addition, solar generation has very significantly evolved when it comes to energy storage, whether with classical batteries, hydrogen cells, or other technologies. Solar which used to be considered as an intermittent power generation solution is slightly evolving towards more stability all along the day. This is a good piece of news for Thailand which is blessed with attractive sun conditions. We believe solar deserves a real part of the future electricity policies in the Kingdom, whether as large solar farms or as small, decentralised solar rooftop solutions.

To promote clean energy sources EABC recommends Government could use a wide range of support schemes:

- specific financial incentives like ad-hoc low rate loans Support Project Financing at favourable commercial terms & conditions, 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, CO2 reduction, etc.
- reduced import duties for high quality solar panels and powering generating equipment
- a sensible regulatory framework for large scale /

large scope RE/PV utilization, including sensible Net-Metering policies, advanced framework for PPA's.

Among latest innovation in the field of solar are the floating solar PV systems. This is an innovative way to reduce the issue with land availability, with solar panels being installed on water surfaces with no competition with agriculture. They even come with higher efficiency and can reduce water evaporation to some extent. Although still an innovation, this has already been tested in South East Asia and could make sense in Thailand.

The European PV Solar industry has extensive expertise, know-how and experience in such systems. EABC and its member companies are more than happy to share the latest technologies, developments and research & development initiative in the PV Solar sector. Although Europe is mostly not in the sunbelt region, our systems are still extremely efficient and cost effective. This knowledge can be shared with Thai companies and investors to upgrade the PV Solar energy in Thailand. Thailand with their high yield radiation environment could even profit more with such expertise and competence of the European Solar Industry.

Waste to Energy

Thailand's Intended Nationally Determined Contribution (INDC) mentions a Waste Management Roadmap (incl. promotion of waste-to-energy technology). First tenders have been successfully organised in 2017 and new ones are expected.

EABC supports this kind of initiative, both for its energy aspects and for the positive impact on our environment, including in some touristic places.

European business will be happy to provide its support, through benchmarking of European experiences and through activity of European companies.

Recommendations:

1. EABC supports Thailand's diversification of energy sources and focus put on more renewable energy (with natural gas as a back-up and transition energy). We believe that this clean and less carbonized energy is crucial for the country, and that Thailand has a large potential for renewable energies. Acceleration of this important change of pattern will help Thailand respect its commitments that were made at COP21, to reduce its CO2 emissions, but will equally enhance its competitiveness.
2. EABC recommends a set of measures and incentives to accelerate the development of the solar energy in Thailand, which is a real chance for the country.

4. Lighting

Lighting, whether in touristic areas or not, is a sector where energy efficiency could be implemented with success. Smart public lighting powered sensors and IoT could be installed in order to reduce electricity consumption (in line with smart cities development plans). Benchmarks show, that consumption can be reduced by up to 60% with smart LED lighting technologies.

Recommendations:

1. EABC appreciates any opportunities to provide benchmarks from European cities to Thai cities and support this positive development. We recommend that the Thai government enlists the help of experts in building and lighting to create environments that are assent to nation, attract tourists and act as a driver of economic growth for all sectors of the economy.
2. Thailand should consider creating and implementing a lighting master plan as part of the country's energy efficiency drive. The lighting master plan will help promote Thailand as a centre for tourism.

Food and Beverages

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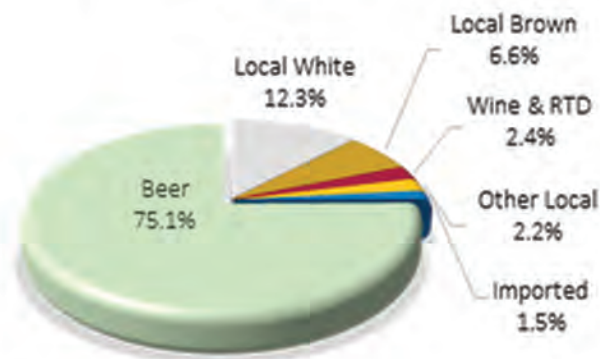
1. **Thailand Alcoholic Beverage Market**
2. **Regulatory Environment and Non-tariff Barriers to Trade**
 - 2.1 Graphic health warning on alcoholic beverage packaging
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4. **Social Responsibility**

EABC Food and Beverages Working Group firmly supports the Royal Thai Government to enhance the country's competitiveness and readiness to become the hub of trade and investment in ASEAN as well as the world's investment destination. This ambition critically requires the government to reform and modernize taxation system and regulatory environment to be up to speed with global megatrends as well as complied with international best practices.

We are proud that our participation brings valuable contribution to the country's latest excise laws reform and commends the Royal Thai Government to continue working with business and investors to address the remained restrictions, both tariff and non-tariff measures, in order to bring more transparency, efficiency, fairness and ease of doing business.

1. Thailand Alcoholic Beverage Market

**THAILAND ALCOHOLIC BEVERAGE VOLUME
CLASSIFIED BY CATEGORY**

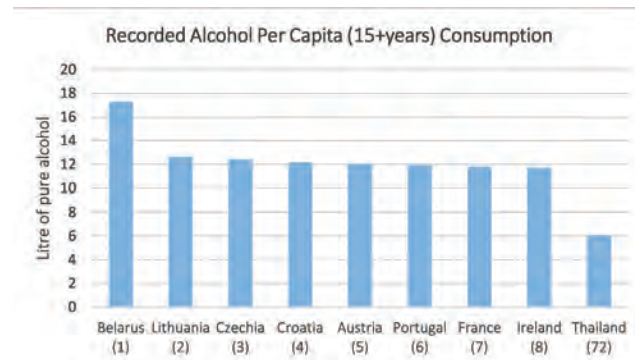


Total size of the Thailand alcoholic beverage market in 2016 was approximately 3.1 billion liters ranked 72nd for alcohol per capita (15 years and older) consumption in the world (please refer to Table 1). The market volume was dominated by beer (75%) followed by local white liquors or Lao Khao (12.3%) and local brown liquors (6.6%)

respectively whilst imported liquors were only 1.5% to total market as illustrated in the chart on the right. The liquor tax reform in 2013 failed to address excessive consumption and harmful use of alcohol issues but indirectly encouraged consumers to trade down to cheaper liquors, same or different category, or to unpaid duty liquors evidenced by the steady growth of beer and local distilled liquors volume, the soaring counterfeit and smuggling liquors and continuously diminishing in imported liquors volume since then.

Table 1 Total alcohol per capita (≥ 15 years of age) consumption (litres of pure alcohol) reported and ranked by World Health Organization (WHO)

RANK	COUNTRY
No. 1	Belarus
No. 2	Lithuania
No. 3	Czechia
No. 4	Croatia
No. 5	Austria
No. 6	Portugal
No. 7	France
No. 8	Ireland
No. 72	Thailand



Source: <http://apps.who.int/gho/data/node.main.A1026?lang=en>

Currently, safety and quality of alcoholic beverage is subjected to the Codex Alimentarius, the joint food standards program of Food and Agriculture Organization of the United Nations (FAO) and World Health Organization (WHO), in order to ensure consumer health and safety, product quality and fair practices in food trade globally. In Thailand, alcoholic beverage quality and safety have been regulated by 2 major laws including Food Act 1979 and Excise Tax Act 2017 (previously governed by Liquor Act 1950).

Recommendation:

Alcoholic beverage is food commodity consumed and traded globally. It can be part of a balanced lifestyle when consumed moderately and responsibly by adults (ages 20 years and older) who choose to drink. However, the misuse of alcohol such as excessive drinking, drunk driving and underage drinking can cause health and other issues. EABC recognizes the right of the Royal Thai Government to take measures necessary to protect public health and to address harmful use of alcohol. However, such measures shall be transparent, not create any trade barrier nor

discrimination between imported and locally produced liquors and not, directly or indirectly, obstruct consumer's right to access accurate information and freedom to access safe and high-quality products.

2. Regulatory Environment and Non-tariff Barriers to Trade

Alcoholic Beverage Control Act 2008 (ABCA) is the major law governing consumption, sales, marketing and promotional activities of alcoholic beverage. The Office of Alcohol Beverage Control Committee (OABCC) under Department of Disease Control, Ministry of Public Health (MoPH) together with anti-alcohol groups led by Thai Health Promotion Foundation (known as "Sor Sor Sor"), an autonomous governmental agency funded by the 2% of earmarked tax collected from alcoholic beverage and tobacco products (value approximately 4.3 billion baht in fiscal year 2016), have aggressively pushed through extreme and uncompromising laws and regulations. These include, but not limit to, the following:

2.1 The Labelling Regulation

Notification of the Alcoholic Beverage Control Committee Re: Rules, Procedure and Condition for Labels of Alcoholic Beverages 2015 (Labelling Regulation) came into full enforcement since 20th October 2015 aimed to prevent children and adolescents from drinking alcoholic beverage. The Labelling Regulation, however, immediately raises strong concerns among private sector and members of the World Trade Organizations (WTO), Technical Barriers to Trade (TBT) Committee that strict but unclear and impractical requirements of the Labelling Regulation

may cause burdens and uncertainties to business, especially importers, as well as a risk of trade disruption.

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

EABC regrets that the Labelling Regulation itself has not been revisited or amended as stated at the consultation meeting between EABC and Ministry of Public Health (MoPH) in February 2016 when the parties unanimously agreed that this regulation as well as its technical guidelines were unclear, difficult to implement and could constitute a trade barrier. The revision of technical guidelines published at the website of OABCC in April 2017 does not bring any significant clarity but lead to discretion conferred on individual officers, on a case-by-case basis.

We welcome and support stakeholders' consultation session on the Labelling Regulation recently organized by National Health Commission Office (NHCO) even though only a limited number of stakeholders invited (some alcohol importers and manufactures and some embassies) were invited and unclear action taken afterward.

Recommendation:

EABC looks forward to further consultations that include all stakeholders such as retail business, restaurant industry, and hotel industry to ensure sufficient information and recommendation are gathered to further initiate amendment to Labelling Regulation which will bring clear and practical requirements and conform with international obligations and industrial standards.

2.2 Graphic Health Warning Label (GHWL)

The 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 (“GHWL Law”) was introduced in 2009 claiming that it would reduce consumption among children, adolescent and women as well as alcohol-related societal problems in the absence of any credible scientific evidence. The draft law seeks to impose a tobacco-style pictorial health warning graphic that covers substantial area of the labels and packaging materials.

Concerns raised by the alcohol industry include the following:

- Alcoholic beverage is “food” and its labels are regulated under Food Act 1979, therefore, it is inappropriate to introduce tobacco-style pictorial warnings without proper consideration of the fundamental differences between the two product categories which demand separate control measures;

- Requirements of the law are extreme and disproportionate that could not only negatively affect individuals who consume alcoholic beverage moderately and responsibly as part of a balanced-lifestyle, with no harm to themselves, families and community, but also impose unjustifiable restriction on international trade and other undesirable outcomes. For examples:
 - Deteriorate tourism climate and create negative impacts to related industries, especially, restaurant, hotel and entertainment;
 - Damage brands equity and trademark value;
 - Encourage illicit alcohol such as smuggled, counterfeit, and trademark infringed activities.
- The law will create unnecessary burden to businesses as well as barriers to trade. It also fails to comply with international practice.

We regrets to see that the Office of Alcohol Beverage Control Committee (OABCC) aims to implement the GHWL law in the near future by applying the awarded winning photos from the Contest organized by OABCC together with anti-alcohol NGOs for pictorial health warning label for alcoholic beverage which are not complied with international industrial practice and comments from WTO TBT members.

Recommendation:

EABC recognizes the need to protect the health of consumers and the legitimate objective of the Royal Thai Government to reduce level of alcohol consumption within its adolescent and women, however, there is lack of a detailed and precise explanation of the scientific evidence which led to the

conclusion that GHWL measure would reduce consumption of alcohol among those target group. To ensure that such measure is prudent which will not create trade restrictive or disruption, EABC would request the Royal Thai Government to invite stakeholders including WTO TBT members for consultation and comment prior an implementation of the measure.

3. Tariff Barrier to Trade

3.1 Excise tax on alcohol

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 the end consumers. In Thailand, excise tax on alcohol is used by the government as a tool to achieve two major objectives including;

1. Raising government revenue;
2. Solving the alcohol-related harm problems.

Currently, 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 value of product, are applied. Beside, earmarked taxes of 17.5% is also imposed on alcohol excise taxes for allocating to the communities, social activities and public health funds.

The alcohol excise taxation reform in 2013 adopted a complicated and discriminatory tax structure and imposed significantly high ad valorem to specific taxation leading

to market deterioration. While imported liquors experienced substantial prices increase, volume collapse and soaring illicit liquors issues, locally produced and lower-priced liquors such as beer and Lao Khao tended to be favored by such reform since their volumes continued to grow.

EABC supports and welcomes the Excise Tax Act 2017 that comes into effect on 16th September 2017 hoping that it can address the structural flaws of the previous alcohol tax reform, bring improvements in various areas, especially, transparency, fairness, ease of doing business and promote Thailand 4.0 policy. However, EABC remains concerned about the legal implementation and future excise tax changes as described below:

- The new excise tax rates and structure do not improve fair competition between locally produced and imported liquors nor address the excessive alcohol consumption issues since the proportion of specific to ad valorem taxation (based on Suggested Retail Price or SRP) is not changed significantly which, therefore, “Lao Khao” has still been taxed at the rate comparative lower than other liquors (please refer to tax rates set in 2.1 and 2.2 of Table 2);

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

Liquor Act B.E. 2493 (1950) - Obsolete -			Excise Tax Act B.E. 2560 (2017) - Effective 16-Sep-2017 -		
	Ad Valorem (LWP Excl VAT) %	Specific Baht Per LPA		Ad Valorem (SRP Excl VAT) %	Specific Baht Per LPA
1. FERMENTED LIQUOR					
1.1 Beer	48%	155	1.1 Beer	22%	430
1.2 Wine & sparkling wine, made from grape			1.2 Wine & sparkling wine, made from grape		
(1) LWP Excl VAT ≤ 600 baht / alcohol ≤ 15%	0%	1,000	(1) SRP Excl VAT ≤ 1,000 baht	0%	1,500
(2) LWP Excl VAT > 600 baht / alcohol ≤ 15%	36%	1,000	(2) SRP Excl VAT > 1,000 baht	10%	1,500
1.3 Fruite wine with ingredient of grape or grape wine	5%	70	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	5%	70	1.4 Others: apart from 1.1, 1.2 and 1.3	10%	150
2. DISTILLED LIQUOR					
2.1 Local white liquor "Lao Khao"	4%	145	2.1 Local white liquor "Lao Khao"	2%	155
2.2 Others: apart from 2.1	25%	250	2.2 Others: apart from 2.1	20%	255

LWP: Last Wholesales Price
SRP: Suggested Retails Price
LPA – Litre of Pure Alcohol

Source: *Royal Thai Excise*

- Implementing laws as well as necessary resources, including but not limited to operational procedures, excise officials and information system linkage with the Royal Thai Customs who duties to collect excise taxes from imported goods on behalf of Royal Thai Excise, were not ready when the law came into effect caused business some delays, uncertainties and opportunities cost;
- Requirement on certificate of analysis imposed on imported liquor may ignore an international standard and causes unnecessary burdens, both costs and times, to liquor importers.

Recommendation:

EABC believes that specific taxation, with appropriate tax rates, is the most effective and international best practice methodology for taxing alcohol which improves fairness in trade and transparency. The approach brings advantages not only to the government but also to the business and consumers who choose to drink since tax leakage lessens in accordance with reduction in incentives from illicit alcohol activities such as counterfeit and smuggling production, while harmful use of alcohol is effectively tackled as alcohol players are indirectly encouraged to offer lower alcohol content but higher quality liquors. **EABC, hence, urges the Royal Thai Government to gradually phase out of the use of ad valorem taxation on alcohol and transition towards a wholly specific taxation.**

3.2 Illicit alcohol

High excise tax rate on alcoholic beverage as well as inadequate and inconsistent level of prevention and suppression by enforcement officials are among the major factors that encourages illicit alcohol activities including counterfeit, smuggling and trademark infringement. These activities damage the country's economy and investment climate, restrict freedom to trade of legitimate products and, more importantly, being harmful to consumers' health.

According to the global crime research, illicit alcohol ranks within the top ten high value crimes in Thailand. The more premium and fast-moving brands are, the most impacted from illicit alcohol activities. In 2016, International Wine and Spirit Research (IWSR) estimated that smuggling quantity of top three international whisky brands was 3.5 million liters, resulting in 1.57 billion baht (£35 million) of government revenue loss. Currently, counterfeit alcohol is frequently produced and sold as "duty free goods" mostly through stores along the borders and social media platform such as LINE, Facebook and Instagram.

Recommendation:

EABC respectfully requests the Royal Thai Government to consistently conduct "search and seize" of illicit alcohol, especially on social media platform and bootleggers or traditional off-trade premises along borders. We would also recommend enforcement officials, other than imposes fine penalty, to drive criminal cases further to successful prosecution by applying all relevant laws, including but not limited to trademark law, landlord liability law, money laundry law, etc., to effectively deter offenders from the crime.

4. Social Responsibility

Alcoholic beverage is part of a balanced lifestyle when consumed moderately and responsibly by adult, aged 20 years and older, who chooses to drink. However, we recognize that alcoholic beverages may be consumed irresponsibly, creating problems for individuals and for society. EABC Food and Beverage Working Group is keen to see alcoholic beverages consumed and enjoyed in the right way and does firm support the World Health Organization (WHO) target that will reduce harmful use of alcohol by 10% within 2025.

Followings are some successful campaigns that our members are proud of what we have achieved.

- Self-regulations that ensure alcoholic beverages are advertised and marketed responsibly.
- Responsible Drinking Education that aim to educate consumers of impacts from alcohol, inform their choices about consuming alcohol and promote drink responsibly culture.
- Smashed Project is a global theatre-in-educational program that aim to break the culture of underage drinking and reduce alcohol related harm amongst young people by partnering with the government agencies and the alcohol industry.
- Road Safety is a campaign by co-operation with Royal Thai Police and other government agencies which aims to reduce road accidents caused by drunk drivers especially during the New Year and Songkran festive seasons.

EABC Food and Beverages Working Group appreciates further opportunities to cooperate with the Royal Thai Government to develop alcohol proactive and preventive education for schools and communities.

Healthcare and Pharmaceuticals

SUMMARY OF RECOMMENDATIONS

1. **Fostering investment attractiveness for innovation and research collaboration**

- 1.1 Tax and non - tax incentive schemes for innovation shall provide competitive benchmarking in the region.
- 1.2 Enabling viable and accessible local market with available skilled workers. The public and private sectors must work together to advance R&D and ensure access, viability and sustainability of the investment.
- 1.3 Thailand needs to provide a suitable environment for innovation and R&D collaboration from the development to market entry aiming to enhance competitiveness and to serve the demand of global consumers.
- 1.4 To attract and enable international product development partnerships in country, the government should consider revising the inclusion criteria to the innovation list beyond nationally owned corporations and permit entry by international and overseas innovators.

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

- 2.1 The EABC encourages constructive and inclusive dialogues between the Royal Thai Government and stakeholders including members of the healthcare industry in the processes of regulatory reform which may involve new draft or revision of laws and regulations to enhance transparency, efficiency of implementation and pragmatic resolutions.
- 2.2 Safety, quality and efficacy of products and services should be the remit of the healthcare market regulatory consideration in accordance to international norm while price inquiry/ control should remain the purview of the fair trade authorities.
- 2.3 To create vibrant growth in indigenous innovation, Thailand's authorities need to prevent intellectual property infringements including patents. With the disclosure of patent information, adding a condition for generic drugs to notify patent status could be specified in Ministerial Regulations.

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

- 3.1 The EABC recommends Thailand continues to increase the numbers of competent patent examiners in advance and sophisticated technologies including in the fields of chemical, device and pharmaceutical researches; where the number of patents granted remains significantly low due to a lack of competent examiners.

- 3.2 To catalyse technology transfer and the creation of indigenous intellectual properties and innovations; the amended Patent Law should be aligned with international standards and practices enabling efficient registration and protection; conditions necessary in the transfer of technology and investment.
- 3.3 In light of the current extensive patent backlog and lengthy registration timeline for sophisticated healthcare technologies, consideration of adopting patent term restoration can further augment the attractiveness of the country's IP ecosystem in comparison to regional peers.
- 4. Enabling market environment and sustainable healthcare financing approaches to support innovation**
- 4.1 The EABC encourages continued and expanded regular industry consultation and dialogue to ensure issues can be rapidly, comprehensively and transparently addressed to the mutual benefits of patients and stakeholders in the healthcare system.
- 4.2 The EABC strongly supports 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 cost savings. Alternative access model for innovative medicines to support state budget management and budget increase predictability can form the basis for expanding the scope of regular public/private dialogue.
- 4.3 The EABC urges Thailand to support open competition and competitive neutrality in the healthcare sector to incentivise investment in accordance to the government's S curve strategy and support Thailand's elevation above the middle-income trap.
- 4.4 As a critical trade and investment enabler, It is essential that legislations forming the procurement and regulatory frameworks and the Trade Competition Law, be reviewed for further liberalization to allow competition on an equal basis attracting both local and foreign direct investments (FDI).

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, 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 consistency 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.

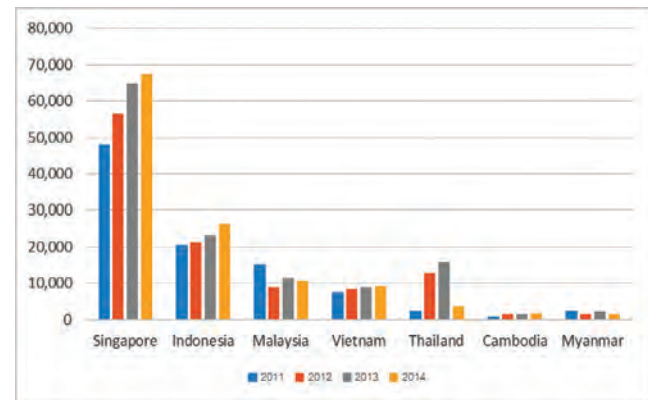
This document aims to underscore some of the hindrances preventing Thailand from becoming an innovation-led economy and a true leader in healthcare provision.

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. Although there is a positive relationship between FDI and the development of innovation, market size and market growth rate are the predominant factors for FDI.

Additionally, the innovative 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. Figure 2 shows that Thailand needs further enhancement to attract a fair share of FDI, compared to its ASEAN neighbours.

Figure 2: Net Inflows of Foreign Direct Investment (FDI) in ASEAN countries, 2011-2014 (USD Million)



Source: The World Bank, 2016

Recommendations:

1. To attract research investment and enhance research collaboration, tax and non-tax incentive schemes for innovation should be established, competitively benchmarking in the region.
2. Ensure viable and accessible local market with available skilled workers. The industry cannot go in alone. The public and private sectors must work together to advance R&D and ensure access, viability and sustainability of the investment.

3. Thailand needs to provide a suitable environment for innovation and R&D collaboration from the development to market entry aiming to enhance competitiveness and to serve the demand of global consumers.

4. The government should consider revising innovative list to enable the multinational companies in enlisting in order to encourage international collaborative investment in R&D in Thailand.

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

Referring to the enforcement of Licensing Facilitation Act, B.E. 2558 (2015), the EABC appreciates ongoing collaborative actions of Thai Food and Drug Administration and the Office of Public Sector Development Commission to streamline regulatory process efficiently with significant improvement in registration and approval timeline in order to facilitate business operations and competitiveness. 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 Drug Act may create concerns on technical barriers, if there involves the sections relevant to price inquiry and patent information inquiry for drug registration requirements of innovative medicines as well as the additional national drug committee's role to define the price of any medicines apart from those median price or maximum price for procurement in public sector's procurement system, which deviates from and is contrary to internationally accepted regulatory standards.

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.

The European industry may have key concerns if the regulatory requirements for marketing authorization applications included in the new Act, notably:

- a) Mandatory disclosure of patent information of innovative medicines during marketing authorization submissions; under the concern of data duplication and redundancy with the patent database at the Department of Intellectual Property
- b) Disclosure of price, either in the format of selling price or price structure, for innovative medicines during marketing authorization submission;
- c) Empowerment of the National Drug Committee to additionally establish price control mechanisms apart from those applicable maximum prices for procurement in public sector's procurement system.

The registration requirements of medicines should be established under the norm of safety, quality and efficacy, in order not to create any excessive barrier or unnecessary burdens to innovative and essential medicines and create any unintentional restriction to public health benefits. As well, it should be cautiously considered that the marketing authorization approval should not be associated with any subjective decision to price considerations of novel medicines since this will have negative impacts to a social, scientific and economic perspective including sending the wrong signal to the investors towards innovation

development as well as leading the concerns as technical barriers to trade and discriminatory towards novel medicines due to misalignment with internationalized standard .

Recommendations:

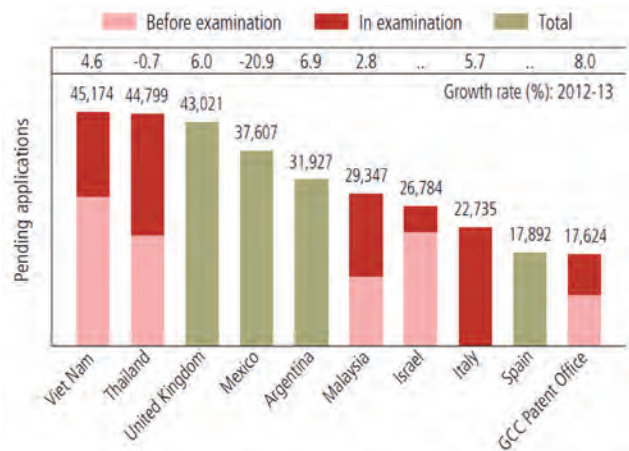
1. The EABC encourages constructive dialogues between the Royal Thai Government and multi-stakeholders including industry in the regulatory reform which may involve new draft or revision of Law and regulations to enhance transparency, involvement and practical resolutions.
2. Price inquiry/ control should not be compulsory in regulatory process which will be in alignment with international regulatory practice.
3. With regards to the disclosure of patent information, adding the condition for generic drugs to notify the patent status of the medicine to be registered with authorities, could be specified in the Ministerial Regulation. This is in order to prevent patent infringement of the generic drug companies that will cause unnecessary business conduct costs to the generic companies

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, especially in terms of pharmaceutical patents. Data collected by the WIPO affirms high figures of patent backlog compared to other countries, as demonstrated below:

Figure 3: Patent Application Backlog

Source: WIPO Statistics Database, 2014

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.

The Department of Intellectual Property (DIP) is aware of the necessity to resolve 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 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.

EABC would also like to support the change of opposition system from pre-grant opposition to post-grant opposition. 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.

Alternatively, patent term restoration or adjustment has been established in the international legal framework regarding unreasonable delay in patent registration, 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.

Recommendations:

1. Prioritize an increase of adequate resources of competent patent examiners in high technological advancement and high backlogs as well as support capacity building to bring approvals within a reasonable timeframe, which will ensure sustainable solutions for all stakeholders.
2. The amendment of Patent Law should be aligned with international standard and practice to improve the efficiency in patent registration system as well as enhance innovation development.
3. Alternatively, establish patent term restoration as a solution to create fair practice to compensate rights holders, considering the current patent backlog in

Thailand as well as the delay of regulatory marketing authorization. Patent term restoration should occur only in case of delay. This should enhance the effectiveness and productivity at the government procedural level with mutual benefits to Thai entities and foreign direct investment.

4. Enabling 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 limiting access.

In the current circumstances of the procedures for pricing, reimbursement and national government procurement may be unclear, inconsistently enforced, and lack transparency.

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. Comptroller General's Department, the payer of CSMBS, announced the new Oncology Prior Authorization (OCPA) list for CSMBS on 19 January 2018 with an effective date on 14 February 2017. The OCPA list involved pre-defined indications and protocols that will allow patients for direct reimbursement with pre-registration for payer approval prior to the treatment. In addition, 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. Any innovative medicines registered after the 1st January 2018 will not be eligible for any reimbursement. This creates critical limitation to patient access to cancer treatments with 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.

Basing on the aspect of national government procurement, Thailand has established the policy of setting Maximum Price for Government Procurement. This policy has been used as the cost containment measure especially for innovative medicines. The price negotiation has been conducted in price development with the establishment of international reference pricing system based on the prices from the countries with incomparable contexts or different healthcare and reimbursement system. This could address the concerns in predictability, transparency

and consistency in price referencing. Industry would like to encourage the government in consultation dialogue to ensure the implementation of pricing policy under predictable timeframe and with appropriate international reference pricing that transparent, consistent and comparable country basket and value of innovation should be recognised in alignment with international practice.

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.

Recommendations:

1. Encourage more industry consultation or regular dialogue to ensure transparent procedures and to enhance access to medicines.
2. Establish transparent procedures for pharmaceutical pricing, reimbursement process considering the value of innovation to therapeutic outcomes and clinical needs rather than cost savings. The government should explore additionally on the alternative access model for innovative medicines to support budget management and budget increase predictability.
3. 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.
4. Continuing our recommendation from the previous EABC Position Paper, 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.

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.

Expertise Shortage/Difficulties to Attract and Maintain Foreign Investors and Experts

Foreign entry can help enhance competitiveness and market efficiency. Literatures on trade and investment in financial services, including insurance, suggest greater competitiveness from foreign 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;

a) 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.

b) 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:

a) 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.

b) 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:

a) 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;

b) 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;

c) 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.

d) implement an efficient and safe information technology system which provides secure and compliant management of data;

e) 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 Amendments to Trademark Act on accession to Madrid Protocol and illegal refilling practices; and amendments to Trademark Act on protection of sound mark
- 1.2 Challenges of Thailand accessing the Madrid Protocol (International Trademark Registration System)
- 1.3 Amendment of the Geographical Indications Act B.E. 2546 (2003)
- 1.4 Amendment of the Patent Act to Facilitate Accelerated Registration Process

2. IP Policies

- 2.1 Trademark elimination via plain packaging policy and excessive measures restricting normal use of trademarks
- 2.2 Patent and Trademark registration procedures via Licensing Facilitation Act (LFA)
- 2.3 Enforcement/Counterfeit goods:

3. Intellectual Property Rights for ICT

An effective intellectual property regime can attract investments and innovation and, and lead to increased technology transfer which will drive the Thai economy to be more competitive in ASEAN. Attempting to shift to an innovation-driven economy, the Thai government has to establish effective patent and copyright laws as a basis of the framework required. Since IPR plays such a key role in the development of new technology and innovation, it must be kept constantly under review and be aligned with current international standards through Thailand's membership of the relevant international treaties. In this chapter, the EABC recommends necessary changes to IP law and policies to foster Thailand's competitiveness.

1. Amendments to IP-related legislation

Amendment to the Trademark Act supporting Thailand's accession to the Madrid Protocol, allowing a registration of unconventional mark and multi-class application, has been enacted and in effective in late July, 2016.

Amendments to Trademark Act on accession to Madrid Protocol and illegal refilling practices; and Amendments to Trademark Act on protection of sound marks

The EABC has underlined during various meetings with the Thai authorities the urgency to protect unconventional marks such as scent and sound as well as to prevent illegal refilling, which affects various industries including food and beverages, perfumes and cosmetics, and automotive,

in order to reassure the protection of consumers as well as the rights of IP owners. The Thai Department of Intellectual Property (DIP), during various discussions and consultations with the EABC and its European business representatives, duly took note of the issues and concerns. In the end, only sound mark is accepted to be one type of mark for registration and has the same legal requirements as traditional marks. Though the Trademark Act introduces the accession to the Madrid Protocol, it needs the process of ratification by the Thai Ministry of Foreign Affairs to be completed in order for the Madrid system to be effective in Thailand.

Recommendations:

1. Ensure full utilization of existing enforcement measures, whilst the provisions for protection of unconventional marks and against illegal refilling practices come into force. Efforts should be rapidly dedicated to target illegal refilling practices, which should be recognized as a basic act of trademark infringement.

In this vein, in order to act efficiently to eliminate illegal refilling acts, definitions referring to private refilling acts and/or broadly accepted practices could be avoided. 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 often related to illegal refilling, such as 3D trademark packaging protection and protection of trade dress.

Challenges of Thailand accessing the Madrid Protocol (International Trademark Registration System)

EABC identifies a few of the possible issues likely to arise with Thailand joining the Madrid System:

Advantages Expected:

The key advantage of the Madrid Protocol is the streamlining of international trademark registrations.

The Madrid Protocol is a useful tool to enable local businesses to protect their trademarks in multiple jurisdictions by filing one application accompanied by one set of fees.

Possible Challenges:

1) Lack of preparation/resources at the Department of Intellectual Property (DIP)

- New rules will significantly impact current trademark registration system (multi-class, new set of fees etc.), possibly causing confusion among users;
- The Thai Trademark Act should be amended to take into account the Madrid Protocol context;
- High risk of failure by DIP staff to meet deadlines;
- Medium risk of delays in communication between the DIP and WIPO in order to ensure full compliance with the Protocol;
- Risk that less efforts are dedicated by DIP staff to provide consultancy services and helpline for users for national applications;

- Risk of high reliance on WIPO due to lack of knowledge locally;
- Whether Thai classification will subsist with the Madrid System;
- Risk that DIP staff will not be able to deal with additional workload as none of the staff has experience in new procedures. These problems may be compounded with only some staff being proficient in the language(s) being used for the Madrid system;
- Additional registrars shall be hired in anticipation of this new type of work; and
- Whether the Thailand trademarks database will be able to support the incoming trademark applications, both those filed through the Madrid Protocol and those filed directly through the national route.

2) Concerns for trademark owners, stakeholders, attorneys and agents

- Communications between the DIP and the IB could result in problems for the DIP, and would have a domino-effect on trademark owners and agents;
- Timeframes of the system are inflexible. Significant adverse effects could result from the failure by users of the system to meet particular deadlines;
- Stakeholders are required to be well-informed about the implications of the Protocol. It may be that Agents will be reluctant to introduce the Protocol as they fear the loss of clients, reduction in their work and the reduction in revenue. The rationale for this is that foreign applicants will resort to filing through the Protocol, as those applying

though the national route may not require the assistance of local agents.

Recommendations:

We urge the Royal Thai Government to hold regular consultations with the EABC. Our IPR working group welcomes the opportunity to support Thailand and to provide best practices in these areas.

Amendment of the Geographical Indications Act B.E2546 (2003)

The EABC welcomes Thailand's recognition of the 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).

Section 3 of the Act, which gives a definition of GIs and sections 27 and 28, which give protection to GIs, do not fully implement the provisions of Article 22(2) of the TRIPS Agreement because these sections only appear to protect the registered geographical indications themselves and do not prohibit the use of any means that indicates or suggests the GI.

In addition, Article 23 of the TRIPS Agreement has not been fully implemented by section 28 of the Act. Whilst the additional protection provided by Article 23, which prohibits the use of certain expressions in association with wine and spirit GIs, has been implemented, Article 23's prohibition on the use of GIs in translation has not been included in section 28.

Recommendations:

We urge the Royal Thai Government to hold regular consultations with the EABC. Our IPR working group welcomes the opportunity to support Thailand and to provide best practices in these areas.

Amendment of Patent Act to Facilitate Accelerated Registration Process

The period of patent approval from the submission to the approval date remains unpredictable and can be counted as long as 12.6 years on average in Thailand, due to a lack of human resources – particularly chemical and pharmaceutical patent examiners – at the DIP. The bottlenecks, resulting in only 1,286 patents granted in 2014¹ and 1364 patents granted in 2015², give rise to uncertainty of investment protection for rights holders and increase the possibility of infringement from local generic companies during the pending approval periods, which damages both local businesses and innovators. Under such unpredictable circumstances, the patent term restoration or adjustment have never been established in the Thai legal framework.

As mentioned above, the current delay in patent approval discourages applicants from seeking patent protection in Thailand. On a related note, a good source of profit for the patent office is the annual renewal fees for maintenance of patent applications or patents. Some jurisdictions, like the European Patent Office (EPO), require the payment of an annual fee from the third year on for a pending patent application. In other jurisdictions like Singapore or Thailand, the renewal fees are due only

once the patent is granted, although the patentee has to pay accrued renewal fees from the fourth or fifth year on. Consequently, it is evident that the patent office under the DIP faces the loss of potential revenue from renewal fees should the patentee opt to abandon the patent before it is granted. In conclusion, not only does the huge delay of the DIP in granting patents discourage applicants to seek protection in Thailand, but this also means missing out on potential earnings for the DIP.

Article 44 of the nation's interim constitution (fast track shortcut).

Although the DIP has substantially increased the number of Patent examiners, the executive order under section 44 to reduce patent's backlog has **not yet been formally announced** – patent approval process remained to be improved.

Impacts: Uncertainty of investment protection for rights holders, increase the possibility of infringement from local generic companies during the pending approval periods, damages both local businesses and innovators. Current delay in patent approval discourages applicants from seeking patent protection.

Recommendations:

1. We recommend Thailand increase the numbers of examiners and improve the patent approval process with a reasonable timeframe for patent registration. See the Intellectual Property Rights (IPR) chapter on page 178.

¹ http://www.wipo.int/ipstats/en/statistics/country_profile/profile.jsp?code=TH

² <http://www.ipthailand.go.th/th/patent-012>

2. Patent term restoration should be considered and established as a solution to create fair practices to compensate rights holders, considering the current patent backlog in Thailand as well as the delay of regulatory marketing authorization. In the circumstance that a reasonable timeframe of registration is presented, the patent term restoration will only occur in case of a delay. This should enhance effectiveness and productivity in government procedural level with mutual benefits.
3. Promote a regular dialogue and consultation between the public and private sectors for information sharing

2. Policies Related to IPs

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 alcohol beverages and tobacco products; however, we do not believe that unnecessary and unproven restrictions or impingements on trademarks are appropriate means of achieving this goal. Instead, they could lead to several unintended consequences.

In order to help Thailand establishing a clear plan to efficiently tackling Intellectual Property Infringements and in an attempt to improve Thailand's competitiveness and strengthen the country as a favorable trading partner, we would like to raise the following issues related to Intellectual Property Rights (IPR):

1. Trademark Elimination via Plain Packaging: Ever-growing restrictions imposed on the tobacco industry

The tobacco product control act, which has entered into force since July 4, 2017, Section 38 on package of tobacco products, allows the Government to implement more packaging restrictions, including plain packaging. Such policy would result in companies having to relinquish their use of registered trademarks, or valuable elements of registered trademarks, in order to comply with the new requirements. These requirements would clearly damage intellectual property rights in Thailand, negatively impact foreign and Thai companies alike, increase the level of illicit trade and trademark infringements and also set a legislative and regulatory precedent that is inconsistent with national and international trademark laws, as well as the World Trade Organization agreements.

Extreme measures: Broad prohibition on commercial production, import and advertising of products used in a way that stimulates smoking (extended to e-cigarettes), point-of-sale display ban, minimum age increased from 18 to 20, ban on stick sales, ingredient disclosure requirements (without any directions, as to how such trade secrets/confidential proprietary information will be protected from unauthorized disclosure)

Article 38 – Open door to the introduction of plain packaging for cigarettes by allowing the MOPH to impose the criteria and features of tobacco products' packaging: size, color, symbol, label, trademark, pictures and messages.

New ministerial regulations implementing plain packaging are thus expected. It is worrying for the Tobacco industry as it implies trademark elimination on Tobacco products

but also for other sectors such as food and beverages since it will pave the road for similar regulations in these sectors.

Impacts: trademark/trade secret elimination – technical trade barriers – inconsistent with the WTO’s TRIPS Obligation – disproportionate – efficiency not scientifically proven – reinforce the low protection of IPRs in Thailand – not favorable to achieve Thailand 4.0.

2. Labeling regulation and excessive health warnings:

Similarly, the Alcohol Labelling Notification impedes the use of certain registered trademarks for alcohol beverages and likely constitutes a serious barrier to trade, especially to international companies, and some brands could be forced to exit the Thai market. Furthermore, such a Notification is difficult to comply with due to its ambiguity and broadly defined terms. This raises a grave enforcement concern, considering the reward scheme. Most importantly, plain packaging of any protected trademark products would increase and ease the production and transaction of counterfeit goods.

Notification of the Alcoholic Beverages Control Committee, Re: Rules, Procedure, and Conditions for labels of Alcoholic Beverages published in the Royal Gazette on January 22, 2015 and implemented on April 22, 2015: Imposing labeling restrictions at the expense of branding elements.

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.

Since no official confirmation of the above has been released, it remains unclear whether the Notification is in force (in which case, the alcohol industry, displaying messages and marks as usual would be subject to penalties) **or** suspended.

This situation which remain unsolved is worrying for the related industry since penalties may be enforceable at the MOPH’s discretion.

3. Enforcement/Counterfeit goods:

Medicines:

a) **Refilling issue;** 2 definitions of counterfeit in Thailand under IP laws and (draft) Drug Act (intent matters) and difficulties to identify counterfeit medicines. In Thailand, if medicine has 80-100% active ingredients, it is considered as a substandard, not a counterfeit.

b) **Parallel imports** permitted in Thailand: medicines coming from other ASEAN countries = bought from original companies with correct labeling, company logo and guidelines in Thailand but no license to import into Thailand. No quality control, no information on storage, potential damage for the reputation of the brand and pharmaceutical companies which are responsible in case of issue.

c) **Litigation:** no laboratories in Thailand certified as forensic for drug testing to be used as evidence of counterfeit for court prosecution. Need to go to Singapore (pricey). Very little prosecution in Thailand due to burden of proof on the Plaintiff. Penalties are different if counterfeit medicine is harmful or not but difficult to

prove. Fines are not dissuasive, too low compared with the huge profits generated by the business (criminal organizations). Lack of enforcement at the borders (MY-TH/KH-TH/MM-TH) and against each level of the business (importers/distributors/outlets).

d) **Lobbying NGOs/public awareness:** some pharmaceutical products sold as “generics” infringe pharmaceutical Patent.

- Problem of public distortion so authorities back away (Patents block access of medicines to poor people).
- Problem of collusion between authorities and authorities-infringers. Lack of willingness to provide for a strong IPR enforcement. No surveillance in place at strategic borders and when delivering authorizations to export.

Furthermore the introduction of health warning designs for alcoholic beverage packaging still appear to be underway as per Thai representatives’ statement during the last WTO’s Trade Policy Review in November 2015.

Alcohol:

a) **Lack of reactivity from authorities:** Department of Special Investigation (very busy, slow implementation), Customs (good but understaffed), Police (lack of technical knowledge on IP). Difficulties to enforce against counterfeit manufactured in Thailand, need for DIP to educate enforcement authorities.

b) **Lack of transparency:** when action taken, problem of records of seized goods (not given to IPR owner) => destroyed or back on the market.

c) **Legal grounds to act:** landlord liability for online infringement (website shut down) and Money Laundering Act. No action ex officio, up to the IPR owner to invest, investigate and enforce.

Parallel Import:

Permitted in Thailand: Genuine products imported from other countries into the Thai market and sold by third parties without the prior consent of the owner of the IPR attached to these products (imports primarily economically motivated). Thailand is usually following the “First sale doctrine” for IPRs also called the International exhaustion doctrine meaning that once a brand owner or authorized distributor first sells the trademarked 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.

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 a 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: 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.").

Recommendations:

1. The EABC strongly urges the Thai government to protect Trademarks for businesses. There remains no direct evidence that plain packaging or notifications on alcohol label policy or the like improves public health, and it has the tendency to devalue trademarks. This in turn makes businesses compete on price, which is likely to increase tobacco and alcohol consumption. Thailand is also member of WTO. We recommend it is necessary for Thailand to comply with WTO's TRIPS to improve IP protection for foreign investments and to promote a suitable environment for innovation.
2. Consider alternative social policies to address the consumption of alcohol beverages and tobacco products, including harm reduction policy, which provides less harmful alternatives to consumers.
3. We encourage regular consultation with the EABC IPR working group prior to the formation of any policies related to IPs, in order to improve foreign perspectives on Thailand's investments and competitiveness.

Patent and Trademark registration procedures via the Licencing Facilitation Act (LFA)

The implementation of the Licensing Facilitation Act B.E. 2558 (2015) in July 2015, requires all government agencies that grant permit approvals to issue and release a public manual for the application process, encompassing relevant regulation, required steps and estimate timeline. In practice, however, the enforcement of the LFA creates difficulties for some business communities. There are two main concerns; a timeline and a single submission of required documents. Since the LFA has been enforced, formal documents missed in the filing at the time of the patent application can be submitted only once within the non-extendable deadline of 90 days from the application filing date. It turns out that allowing a single submission of required documents provides room for authorities to easily reject applications, and is a burden on applicants, who are requested to provide unnecessary or unrelated documents.

Recommendations:

EABC requests clearer instructions from the Thai Government and flexibility in the submission process.

3. Intellectual Property Rights for ICT

IPR protection is an important aspect of building a knowledge and innovation economy and in supporting investor confidence overall. The Digital Economy brings new and important issues such as the management of data and privacy. These are covered in the Digital Economy / ICT Chapter.

New Copyright Act (No. 2) B.E. 2558 (2015) and New Computer Crime Act (No. 2) B.E. 2560 (2017) welcome against online IPR infringements.

However, online intermediaries (ISPs) are still **exempted from liability** meaning that they can neither be held responsible for the counterfeit goods and illegal data uploaded on the Web by third parties, nor they are bound by an obligation to monitor the information and products offered for sale.

Additionally, strict conditions to obtain injunctions (high burden of proof on the IP owner) and enforceability issue of foreign ISPs with servers hosted outside of Thailand remain.

Software Piracy: Software piracy practices in Thailand are at an acute level. It is common practice for example to use counterfeit operating systems and other unauthorised versions of software. BSA, the Software Alliance, notes that Thailand's piracy rate has marginally improved, but at about 70% is still amongst the highest in the world. The harm this causes is not just about loss of benefit to IP owners, but more directly it is about the harm to systems through infections, and the time and effort they take to rectify. 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

Copyright – eCommerce context

In the bricks-and-mortar world, a shop or provider of goods or services (merchant) can be liable for infringing IPRs in the goods of services provided. In the online world, the online merchant may be similarly liable.

Responsibilities of online intermediaries (e.g. data centre operators, and ISPs, including mobile network operators) have spawned much debate. Apart from online merchants, the conveyors or hosts of data are not in ideal positions to be the protectors of IPRs.

For ISPs (which merely provide access) the only real remedy is to block access to the site. This is also the case for data centre operators, although in for these, take down orders are also possible. Blocking orders which are validly obtained through a court process or are validly issued by a government agency after due process may apply, but they can be a big stick in situations where only a limited number of infringing goods is relevant, and there have been situations of harm caused to an online business through over-reach with such orders.

Amendments to the Copyright Act which came into force in early 2015 attempted to achieve a good balance between the need to protect IPRs on the one hand and a workable means for online intermediaries to go about their business on the other. However, the requirement for IP owners to obtain a court order prior to requesting that ISPs take down infringing content is likely to be unworkable at scale, creating the risk of overburdening the courts and creating significant backlogs of takedown

requests. A more frictionless approach would benefit both IP owners and ISPs by allowing ISPs to self-regulate adequate notices of suspected infringing material from IP owners. In more severe cases of infringement, IP owners could involve the court when it becomes cost-effective for them to pursue litigation against the infringers.

On a similar note, the 2017 amendments to the Computer Crime Act provided IP owners with the remedy of website blocking by petitioning the Ministry of Digital Economy and Society for offenses committed using a computer system. As stated above, this mechanism has the potential to overburden the government authority and may be unwieldy for many cases on online infringement. In addition, this procedure appears to be applicable to all cases of online infringement, regardless of the IP involved. As a result, there is the potential for overlap with the similar provisions of the Copyright Act and may create uncertainty for IP owners and ISPs as to the applicable standard they must satisfy

The operation of the amendments is being monitored for any possible suggested adjustments.



THE CLOCK IS TICKING !

1. SYNOPSIS

On September 11, 2017, the International Conference on “The Kra Canal – Sustainable Paths to Thailand’s Future” took place. It marked the start of the ticking clock in the recent development of this mega project. The Kra Canal has been reintroduced to the public in 2016. It has been exciting to recognize and feel the effect, attraction and spiritual power of the Kra Canal, while enjoying to work under the leadership of General Saiyud Kerdphol with the core of the KIDCO team, Surin Dunnvatanachit, Pakdee Thanapura, Thanit Pogpaung and Harald Wagner. The Kra Canal has a special code, keeping the dormant project vibrant over more than 300 years. In the foreground it has the power to unite the South of Thailand with the rest of the country, as infrastructure promotes peace because it supports understandings between people promoting democracy and showing the road to a prosperous future for Thailand.

2. MISSION

The Kra Canal shows the power to embrace and unite parties and people, cultures and religions, friends from yesterday, today, and those who will become friends tomorrow. It is far more than a Mega Project, considered a vital symbol, signaling peace and prosperity to Thailand, and to the 21st century world.

The Project matches new government’s initiatives, such as Eastern Economic Corridor of Innovation (EECI), High-Speed Railway, Startup Thailand, which have been rolled out fulfilling Thailand’s future. The future belongs to engineers with dreams who want to build Thailand the greatest Nation in a global family of nations.

3. IMPLEMENTATION

KIDCO, reestablished and independent, will respond, with governmental authorization to multilateral increasing request for strong representation of the Kra Canal. It is based on a code of ethics for independent consultancy serving exclusively the interest of the Thai Government, to succeed in proving to the government the competent and appropriate performance of the feasibility study. KIDCO will provide the forecasted impact of the Kra Canal on global trade patterns, on the regional environment, ecology, on Thailand’s economy and prosperity. It shall be evaluated on base of robust Feasibility Study results, on financial and construction concepts, such providing the base for decisions on future project implementation.



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Rail and Road Infrastructure

SUMMARY OF RECOMMENDATIONS

EABC recommends:

The Royal Thai Government shall create the legal basis for the consideration of modern technologies in design and procurement, including Life-Cycle-Management.

An urgent rejection of the policy is needed, which only consider the initial costs and ignores the operating costs.

The Know-How already submitted by European Institutions and Countries shall be quickly implemented.

By forming a legal basis for long-term framework agreements, the basis for a Thai railway industry shall be created.

Railway Main Focus

For 2018, the quick implementation of the already transmitted European Know-How seems most urgent.

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 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.

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.

The EABC recommends getting information and experiences from comparable Services of European Governments. EABC will gladly make contacts and organize meetings.

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 the state railway 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. 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 taken into account when determining the best bidder.

This procedure is also indispensable for the financing model of PPP, preferred by the government.

Introduction of Contemporary Technologies

We were pleased to note that 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 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).

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.

Set Up Thai Railway Industry

The EABC believes Thailand has excellent conditions given for assembling and production of railway systems and rolling stock, e.g. locomotives and wagons.

Discussions with leading European manufacturers have shown that a local production presupposes an adapted procurement policy. Instead of repeatedly buying a small number of material, master agreement long-term contracts on larger quantities shall be concluded.

So, Thailand can build its own railroad industry - like it succeeded great in the automotive industry. This could not only help in meeting the Thai railway requirements, but also allow exports mainly to other ASEAN countries. Such industry, with support of the European Industry, will also be able to refurbish old and outworn rolling stock in order to save a lot for the railway operators.

The Thai government is recommended to set up the legal basis for the conclusion of long-term framework contracts for the production of railway systems and components. Creating a Thai railway industry would be the ideal complement to the EEC project.

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 railway 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 railway 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 railway 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.

Education

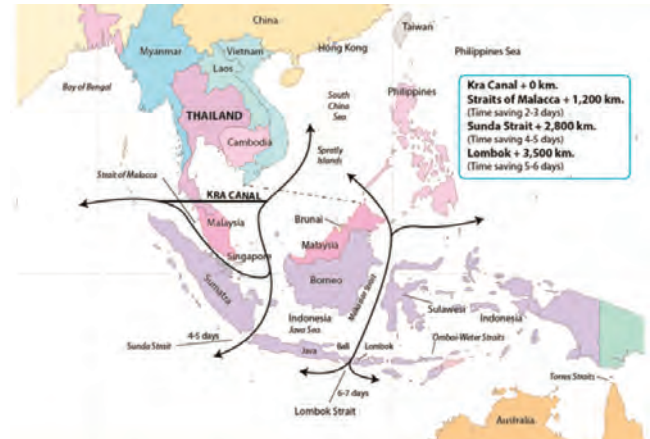
From European point of view in terms of railway experts the Thai universities have a potential to develop the level of science and, moreover, the number of students in this field seems to be much too low for the explosion in demand. Today salaries for good professionals rise so high that they can no 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.

Special Recommendation – Thai Canal:

The Royal Thai Government shall with high priority have a closer look to the Thai Canal Project and start a Feasibility Study.



Looking at the long-term well-being of the Thai people, the Thai Canal - cutting the Kra Isthmus in Songkla/Satun in Southern Thailand linking the Indian and Pacific Ocean - could be an important help to great improvements.

The canal would bypass the narrow, piracy-prone and strategically sensitive Strait of Malacca, the world's busiest trade route, which links China, Japan and other East Asian nations with the oil fields of the Middle East and major markets in Europe, Africa and India. The distance saved for ships passing between the Indian and Pacific Oceans would be at least 1,200km, or up to three days' sailing time.

Equally significant, it would provide an alternative to a strait through which a record 86,000 vessels passed last year -- a figure that is rapidly approaching borders of capacity.

Many very large vessels (beyond 333 m length and 20 m draft), not allowed to use the Strait of Malacca, will save even 5 to 6 days and 3,500 km.

As the canal offers tremendous advantages for freight traffic between Eastern Asia, Japan and China, and the West, India and Europe, we are sure that international shipping is willing to pay appropriate charges. So financially, this project shall not be a problem and will not burden the Thai taxpayer.

It must be remembered that the canal will not only offer international transport advantages, but also create a lot of jobs in the south of Thailand, both in the construction of the canal as well as in operation.

Around the canal, we also see an ideal location for free trade zones that are internationally sought after and can make a huge positive contribution to the economic upturn.

We are also sure that the construction of the canal will bring a lot of new industrial investments in the region. The income in the region is significantly increased and unemployment is reduced. This will also make a valuable contribution to peace in the region, where a vast majority is supporting the project.

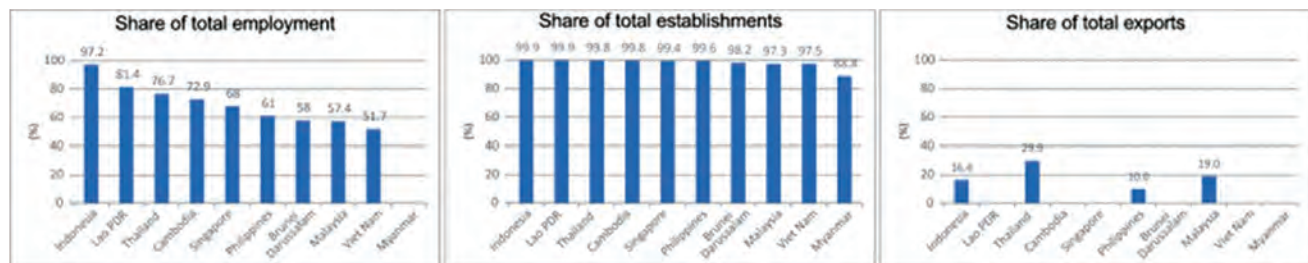
SME

SUMMARY OF RECOMMENDATIONS

- EABC urges Thailand to provide enhanced access to finance for SMEs to the Loan Guarantee Facility provide guarantees and counter-guarantees to financial institutions (e.g. guarantee societies, banks, leasing companies) so financial institutions can provide more loan and lease finance to SMEs.
- We encourage the Royal Thai Government to also include foreign SMEs to Smart SMEs program and can certainly support the Thai industry in research and development, innovations and high-tech industries areas to achieve the development boost the Government aims for.
- EABC recommends special treatments for SME's to be exempted to obtain such certificates with low business value to do away cumbersome bureaucratic / approval process in particular for SMEs
- EABC recommends that the government to consider non-tax incentives for SMEs in R&D since development may not be profitable enough to realise benefits in the current period.

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 1-1. The European Commission and the Royal Thai Government have realized this discrepancy and therefore have promoted entrepreneurship and improve the business environment for MSMEs, to allow them to realize their full potential in today's global economy.

Figure 1.1: Statistics of MSMEs



Source: ASEAN SME Policy Index, 2014

For EABC, one of the main features of the EU Grant Contract was to establish a sustainable Centre that facilitates market access for European businesses, especially European SMEs, in Thailand and promote Thailand and ASEAN as high potential trade and investment markets for European businesses. This was also reiterated in the Narrative Report to focus more on SME's and help them to overcome the many problems SME's are facing in the Thai economic environment. The establishment of the EABC SME Working Group is following exactly these recommendations.

EABC is deeply involved with the various programs the EU Commission has launched in close cooperation with the regional partners like the ICI+ program connecting all European Chambers in ASEAN. Also, the membership in the EU ASEAN Business Council and EBO, the global connection to all the European Chambers globally, gives us access to many resources in the EU that will help European MSME's to obtain these vital information and connections.

We also have close connections with the European Commission in Brussels, in particular DG Grow, being responsible for European SME programs. EABC can provide information and establish connections to the respective authorities and organizations in Europe, since unfortunately such information is not easily accessible. The available EU programs can be summarized below:

Access to finance

One of the main objectives is to provide enhanced access to finance for SMEs in different phases of their lifecycle:

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.

Access to markets

EU funds various European Chambers of Commerce in particular in ASEAN 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.

Creating better framework conditions for competitiveness

EU supports actions 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 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.

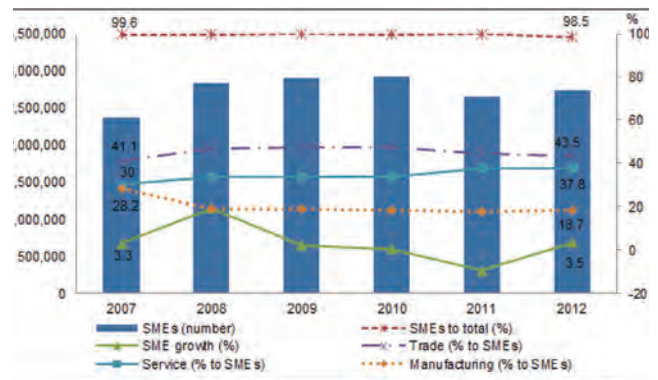
Encouraging entrepreneurship

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, women 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.

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 2) 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 MSME's. The EABC SME Working Group will assist European SME's in Thailand in various ways like:

Figure 2: SMEs in Thailand



SME's face challenges from increased competition, the ability to adapt to rapidly changing market demands, technological changes, and capacity constraints relating to knowledge, innovation, and creativity.

- lack of resources (finance, technology, 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 a lack of information, know-how, and experience of domestic and international markets;
- increased market competition and concentration from large multinational enterprises caused by globalization and economic integration;
- inability to compete against larger firms in terms of R&D expenditure and innovation (product, process, and organization);
- lack of goals and subject to instability; and
- lack of entrepreneurial capability, capacity, and know-how.

In addition, many small businesses find that their geographical isolation puts them at a competitive disadvantage. There are many programs attached to every of these activities and EABC can provide connections to the right authority and support MSME's with the necessary details.

Of course, there are other agencies of the Thai Government dealing with supporting MSME's. Some worth mentioning are the SME Bank and BOI. Both have special programs for MSME's and it is worth evaluating such support. For example the SME Bank had a program investing in equity of SME's reducing the interest burden. While BOI promotes the so called S-Curve industries also to SME's. Very often SME's are highly innovative and specialized making it possible to obtain BOI promotion. SME's often do not have knowledge of the various programs these agencies provide, so EABC can assist SME's to access the necessary information and connect the companies to the right desk at these Government Agencies.



The graphic above clearly indicates the direction Thailand wants to take to advance its economy and obtain future growth. As many European SME's operating in growth industries and advanced technology sectors, they would be an ideal match to support Thailand 4.0 policies. As stated above we have to understand that SME's have limited resources in capital, personal, manufacturing capacity and management capability. Therefore, they will carefully study investment opportunities before making their decisions. Thailand must realize that incentives alone will not yield the necessary success in their strategy to attract new growth industries. Soft factors are sometimes more important like **ease of doing business**, obtaining of **visas and work permits, living conditions, education and security**. EABC believes and have stated many times that Thailand must improve on these soft factors, most importantly the visa regime including 90 days reporting and work permit relaxation by introducing different types of work permits to make things more efficient, easier and less discriminatory.

Project plan for boosting SME 4.0



The Royal Thai Government's plans to develop **Smart SME's** is fully supported by EABC. We see great opportunities for European SME's to excel in these industries as Europe is the center of **research and development, innovations and high-tech industries**. However, it appears that European SME's operating in Thailand are not included in this program. As it appears that Thailand does not have the necessary resources or expertise in these fields while European SME's can certainly support the Thai industry in these areas to achieve the development boost the Government aims for. EABC and its member companies are willing to link European and Thai companies, provide expertise to Thai manufacturers and jointly invest in **research and development** projects with Thai corporations. Since many years EABC is in the forefront to support the Government in improving the **competitiveness** of the Thai industry. European corporations are willing to share **new technologies** and educate Thai suppliers to **improve the quality** of their products to meet **European standards** and consequently will be integrated in the supply chain of European companies. This will increase exports of Thai industrial goods in the new technologies.

Project plan for boosting SME 4.0



EABC encourages Thai SME's to become more international. This is a key step forward to grow the capacities of SME's. We have already arranged some matchmaking events between Thai and European SME's. We also provide advice to Thai SME's on how to export to Europe. This certainly requires detailed information and knowledge about the market. There are European enterprises that can provide this necessary knowledge. There is information available on EU websites. However, it is essential to follow European Standards. Sometimes it's difficult for Thai SME's 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 to cooperate with EU companies operating in Thailand. They will educate their SME's suppliers how to improve the quality and which certificates and standards are applicable. EABC is able to make such connections which will be a win-win situation for both European manufacturers and Thai SME's.

SME's face challenges from increased competition, the ability to adapt to rapidly changing market demand, technological change, and capacity constraints relating to knowledge, innovation, and creativity. For many SMEs, their potential is often not fully realized due to factors related to their small scale: lack of resources (finance, technology, 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 a lack of information, know-how, and experience of domestic and international markets; increased market competition and concentration from large multinational enterprises caused by globalization and economic integration; an inability to compete against larger firms in terms of R&D expenditure and innovation (product, process, and organization); lack of goals and subject to instability; and a lack of entrepreneurial capability, capacity, and know-how.

Considering all these factors we feel that despite the many support schemes and organizations engaged in internationalizing, technological, innovative and R&D upgrades, marketing and administrative support the programs seem not to work to an extent necessary to lift SME's to the next level of development. This might be due to a wrong design of the programs, the lack of communication with SME's or even structural limitation. The most important obstacle lies in the financial limitation of SME's due to several factors. To improve the growth potential of SME's financial support for SME's must be completely restructured. We will provide some suggestion below as a discussion point of improvement. And finally, the fast changing pace of innovation, technology and R&D makes it difficult for SME's to follow since they do not have the necessary resources and know how to stay on top of these developments.

Therefore, our suggestions to the Royal Thai Government to improve the current situation in Thailand for SME's are mentioned below. However, we like to emphasize that European SME's operating in this country are facing the same problems. They are the ones who are most innovative and employ a high number of Thai employees. Considering the high ambitions of the Royal Thai Government to transform the country into Thailand 4.0 these European companies can be a great help and support to make this vision a reality.

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 to SMEs is mainly because of the high 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 teach the new methods of online or internet sales, or 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:

- provide comprehensive and advanced business advice
- offer support in organizing seminars on important topics for particular problems of SME's
- 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 SME's in Thailand are the cumbersome Customs procedures, Trade facilitations practices and other legal requirements to do business in this country. These are viewed by many companies across the region as being overly complex, burdensome, and sometimes inconsistent in terms of application. Numerous studies have clearly indicated the economic and trade benefits of reducing and simplifying such procedures and practices. Doing so boosts trade and provides exponential assistance to MSMEs who are often less well placed to understand and navigate customs rules when exporting. However also the restriction for foreign companies to operate in the service industry is long overdue to review since especially SME's are the driving force of innovation and development in the key industries the Thai Government is trying to promote as growth industries to achieve the Thailand 4.0 goals.

Most innovative European SME's are operating in the Service Sector. As mentioned before these firms are small, flexible and highly innovative. They do not have the capacity nor the mentality to fight bureaucratic burdens. However, these are the 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 ease the **visa and work permits** for SME's and scrap the 90 days reporting requirement as well as the limitation to work only in a certain area. Visas and work permits should be applied online. EABC also recommend introducing several visa categories in particular for business owners and people with an educational degree. That will make it possible to grant longer visa and work permit terms, which terms should be aligned.
- The same is true for the cumbersome approval process of **permits, licenses and other entry barriers**. SME's 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 SME's to be exempted to obtain such certificates with low 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 SME's. 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 SME's are operating to 100% foreign ownership.
- Another issue is the 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 and SME's are in the forefront in these developments. Only if their IPR rights are protected and enforceable SME's are willing to invest in this country. With the aim of the Thai Government to become an innovative 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.

- Finally, as the name implies SME's 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 limits that are not necessarily required by SME's 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 of 4 million Baht. 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 Startups companies who follow this concept and the program is highly successful. So EABC recommend establishing similar guidelines also for SME's.

SME's are also facing major difficulties when it comes to operational aspects of doing business. So EABC would recommend certain improvements to make life for SME's in this area easier:

- Full establishment of **National Single Windows** (NSWs) and, ultimately, the ASEAN Single Window

- (ASW) to reduce the administrative burden for SME's.
- Simplifying and harmonizing **Customs procedures** in line with international agreements and best practices to facilitate trade and reduce costs for SME's importers and exporters.
 - **E-Commerce** creates opportunities for SME's 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 SME's do not utilize the numerous **Free Trade Agreements** (FTA's) that ASEAN have negotiated due to the burdensome and costly procedures in many countries to obtain Certificates of Origin (CoO's). Instead, smaller companies export on a Most Favored Nation basis, hence, the SME's that should benefit most from the FTA's, do not enjoy the benefits. Therefore, 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.
 - SME's need a clear guidance of rules and regulations they can follow. Any insecurity may prevent them from doing business. EABC recommend introduction of advance 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.

Tourism

SUMMARY OF RECOMMENDATIONS

The Tourism Working Group has overwhelmingly participants of the hotel industry although we also welcome companies as the 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. The guest's arrival experience in Thailand is one of them where we suggest to move into online visa before arrival where guests only have to scan their passport to enter the country. A digital solution to the taxi services by using an App is further suggested. This digital driven taxi service would diminish the doubt, cheating, uncertainty and the perception of unsafety to all who want to use the service. Our second suggestion area is regarding fair price competition where it is suggested to strengthen the implementation of existing hotel operations rules and regulations. Additionally, the working group would like to see a further emphasis on registrations, licenses, and insurances that will help ensure minimum quality standards and provide visible ratings. Our third suggestion is to have 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.

Our 3 focus areas with suggestions:

1. Guests' arrival experience in Thailand

As a hotel industry it is very important to have an easy immigration process for your 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 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 too.

The departure with the departure card is the same experience as it is a hassle to get this document filled in if not already lost by that time. For 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, as a working group, we would like to suggest a few long term potential solutions in order to improve this 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 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 has been talking to 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. 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.

The 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 that we want to look into with the working group and then present potential solutions in our next paper.

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 the 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 mile stones 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.

With great respect,

EACB Tourism Working Group

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 Authorised 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 materialise 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.

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 recognise 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 recognise 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 recognising 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 organisations 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 penalised.

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 recognised 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 liberalisation 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

Liberalising 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 endeavour to achieve substantial liberalisation" by 2013. The objectives of the Logistics Roadmap are to "create an ASEAN single market by 2015 by strengthening ASEAN economic integration through liberalisation 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 Authorised 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 expansion into new markets.

The EABC would gladly put Private or Public Sector organisations in Thailand into contact with experts on any of the above-mentioned Areas of Interest.

Annex I: WTO - The Agreement on Trade-Related Aspects of Intellectual Property Rights

Please see Chapter, Intellectual Property Rights. The relevant provisions of the TRIPS Agreement in respect of Thailand's labelling regulation are the following:

Article 15.1 providing that Members shall allow "any distinctive sign" to be capable of constituting a "trademark," i.e. a mark used or to be used on products to distinguish products. Trademarks are functional and relational rights. A distinctive sign that cannot be used on a product to perform its principal function is no longer protected as a trademark in violation of Article 15.1.

Article 15.4 prohibiting trademark "discrimination" based on the nature of the product. If the nature of the product rather than the nature of the trademark is the basis for refusing protection as a trademark, a violation exists.

Articles 16.1 and 16.3 affording registered trademark owners a minimum guaranteed level of protection that is directly related to the strength of the mark. Given that the strength of the mark and thus the scope of protection is determined by the use that can be made of the mark, a measure that prohibits the use of the trademark on the product reduces the scope of protection below the minimum agreed level; and

Article 20 providing that the use of trademarks shall not be unjustifiably encumbered by special requirements. A measure that prevents the use of a trademark imposes the ultimate encumbrance on the use of the mark and impairs the very substance of the trademark which is designed to distinguish products. Such a measure is per se unjustifiable unless it can be shown that the mark is misleading, deceptive or contrary to public morals.

Article 24.3 requiring each Member not to lower the protection for GIs that existed prior to 1 January 1995, which is the date of entry into force of the WTO Agreement. A measure that prohibits the use of a GI on the product when such use was permitted in 1995 violates this obligation.

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